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

ARMED FORCES RETIREMENT HOME

5 CFR Ch. XI

Agencies Incorporated: United States Soldiers' and Airmen's Home and United States Naval Home

AGENCY: Armed Forces Retirement Home (AFRH).

ACTION: Final rule.

SUMMARY: The Armed Forces Retirement Home Act of 1991, incorporated the United States Soldiers' and Airmen's Home (USSAH) and the United States Naval Home (USNH) into an independent agency in the Executive Branch of the Federal Government to be known as the Armed Forces Retirement Home (AFRH). For this reason, Title 5 CFR Ch. XI and its current contents are obsolete. The chapter is to be renamed the Armed Forces Retirement Home.

EFFECTIVE DATE: December 28, 1993.

FOR FURTHER INFORMATION CONTACT: Doris Montgomery, Administrative Officer, Resource Management Directorate, U.S. Soldiers' and Airmen's Home, 3700 N. Capitol Street, NW., Washington, DC 20317–0002, (202) 722–3230.

SUPPLEMENTARY INFORMATION: The United States Soldiers' and Airmen's Home and the United States Naval Home are continuing care retirement facilities for former members of the Armed Forces. The USSAH was established by an Act of Congress on March 3, 1851, and operated as a separate independent Federal agency in the nature of a Congressional Trust. The USSAH is located in Washington, District of Columbia, and has been at that location since 1852. The USNH was established by Congress in 1832, as a trust fund entity in Philadelphia, Pennsylvania. During the 1930's that trust fund was incorporated into the Navy Personnel Fund and the USNH was established as a Naval Shore Command. In 1976, the USNH was moved to its present site in Gulfport, Mississippi.

For specific administrative purposes, the USSAH and the USNH operate independently with each having a Local Board of Trustees for operational oversight. The Armed Forces Retirement Home Board exercises policy oversight over both facilities and the Local Boards. The AFRH Board and the Directors of each facility are appointed by the Secretary of Defense. Local Boards are appointed by the Service Secretaries. The AFRH Board reports to the Congress on the programs, activities, and progress of the two facilities.

With the enactment of the Armed Forces Retirement Home Act of 1991, 24 U.S.C. 401–441 (Pub. L. 101–510), effective November 5, 1991, the USSAH and USNH were incorporated into an independent establishment in the Executive Branch of the Federal Government to be known as the Armed Forces Retirement Home.

For the reasons set forth in the preamble, under the authority at 24 U.S.C. 401–441 (Pub. L. 101–510), Chapter XI consisting of Part 2100 of Title 5 of the Code of Federal Regulations is removed in its entirety and a new chapter heading is added and reserved to read as set forth below:

Chapter XI—Armed Forces Retirement Home—[Reserved]

Dennis W. Jahnigen,
Armed Forces Retirement Home Chair.

[FR Doc. 93–31673 Filed 12–27–93; 8:45 am]
BILLING CODE 8250–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–144–1]

Validated Brucellosis-Free States; Kansas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of swine by adding Kansas to the list of validated brucellosis-free States. We have determined that Kansas meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on the interstate movement of breeding swine from Kansas.

DATES: Interim rule effective December 28, 1993. Consideration will be given only to comments received on or before February 24, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–144–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, Swine Health Staff, Veterinary Services, APHIS, USDA, suite 204, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*. The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) prescribe conditions for the interstate movement of cattle, bison, and swine.

Under the swine brucellosis regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for swine are based upon the disease status of the individual animal, or the herd or State from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated brucellosis-free States, to include Kansas. Validated brucellosis-free status is based on a State having:

(1) The necessary authorities for classification as a validated brucellosis-free State for swine;

(2) No known focus of swine brucellosis at the time of validation, and completion of one of several methods of surveillance; or no diagnosed case of swine brucellosis in the 12-month period preceding the classification, and a statistical analysis of the combined results of the Market Swine Testing program and other tests that indicate the testing is equivalent to either complete herd testing or slaughter surveillance during a 1- or 2-year period chosen by the State; and

(3) Certification by the appropriate State animal health official, the Veterinarian in Charge, and the Administrator. A State may qualify as a validated brucellosis-free State regardless of the brucellosis status of feral swine in the State, if the feral swine are not in physical contact with domestic swine.

Breeding swine originating from a validated brucellosis-free State or herd may be moved interstate without having been tested with an official test for brucellosis within 30 days prior to interstate movement, which would otherwise be required.

After reviewing its brucellosis program records, we have concluded that Kansas meets the criteria for classification as a validated brucellosis-free State. Therefore, we are adding Kansas to the list of States in § 78.43. This action relieves certain restrictions on the interstate movement of breeding swine from Kansas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of swine from Kansas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action removes the requirement that breeding swine be tested for brucellosis prior to movement interstate from Kansas.

Swine herd producers in Kansas are all essentially small businesses (defined by the Small Business Administration as having annual gross receipts of less than $500,000). Currently, these small producers have about 30,000 adult swine tested annually for brucellosis. We are not able to determine exactly how many of these tests are performed for the purpose of certifying breeding swine for movement interstate, but we estimate the number to be very small.

Kansas State laboratories perform swine brucellosis tests at no charge. However, swine herd producers must employ private veterinarians to take the blood samples that are used in these tests.

We anticipate, therefore, that this action will have a minimal, but beneficial, economic impact on swine herd producers in Kansas. The few small producers that move breeder swine interstate will no longer be required to have them tested for brucellosis prior to movement and so will no longer need to employ private veterinarians to take the blood samples used in such tests. This action will result, therefore, in a minimal savings for swine herd producers in Kansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.43 [Amended]

2. Section 78.43 is amended by adding "Kansas," immediately after "Iowa,".

Done in Washington, DC, this 22nd day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31677 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 85

[Docket No. 92–170–2]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pseudorabies regulations by adding the Particle Concentration Fluorescence Immunoassay (PCFIA) test to the list of official tests for pseudorabies. The PCFIA test is an effective diagnostic test that can be conducted in less time than other diagnostic tests currently allowed. Adding the PCFIA test to the list of official tests for pseudorabies will help prevent the spread of the disease by making available an additional means by which animal health personnel may obtain timely and accurate diagnoses of pseudorabies.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, Swine Diseases Staff, Veterinary Services, APHIS, USDA, room 204, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–4916.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 85 (referred to below as "the regulations") govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies. Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus.

Official pseudorabies tests are used under certain circumstances to determine the pseudorabies status of swine. The regulations require that certain swine test negative to an official pseudorabies test before they may be moved interstate.

On July 13, 1993, we published in the Federal Register (58 FR 37666–37667, Docket No. 92–170–1) a proposal to amend the regulations by adding the Particle Concentration Fluorescence Immunoassay (PCFIA) test to the list of official pseudorabies tests.

We solicited comments concerning our proposal for a 60-day comment period ending September 13, 1993. We received one comment by that date, from a veterinary medical association. The commenter supported our proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

This action will provide for the use of an additional official test for determining whether an animal is infected with pseudorabies. The testing requirements for pseudorabies will not change. Moreover, the use of the PCFIA test will not affect the market price for swine. Although the date of sale may change as a result of the faster testing, the economic effect on swine producers will not be significant.

According to information gathered by the Animal and Plant Health Inspection Service, animal health authorities in nine States have expressed interest in using the PCFIA test to test for pseudorabies in swine. Of those nine States, six already own PCFIA equipment, which they currently use in brucellosis testing. The PCFIA test for pseudorabies can be run on either a fully automated Screen Machine, which has a list price of $62,000, or a semi-automated FCA Machine, which has a list price of $27,000; used and reconditioned machines may be obtained at lower cost, according to the manager of the Livestock Business Unit at IDEXX Laboratories, Westbrook, ME (January 1993).

Of the five currently approved official pseudorabies tests, the one most often used is the enzyme-linked immunosorbent assay (ELISA) test. A HerdChek® ELISA screening kit for pseudorabies contains 480 tests and costs $187.20, or $0.39 per test. By comparison, a PCFIA pseudorabies screening kit contains 4,800 tests and costs $1,776, or $0.37 per test. When the per-test savings is added to anticipated savings in time and personnel costs, we estimate that the PCFIA could cost as much as $0.07 less per test than the ELISA test. If the $0.07 per-test savings were applied to the 1.19 million pseudorabies tests run during Fiscal Year (FY) 1992 in the nine States interested in using the PCFIA, those States would realize a total savings of $83,000 for the year. Some States require swine producers, nearly all of which are considered to be small entities, to pay a share of test costs. In the nine States that have expressed an interest in using the PCFIA, the savings to swine producers would work out to approximately $25,000 for the tests run in FY 1992.

Because of the small dollar savings that is expected, and because its use is optional, the addition of the PCFIA test to the list of official pseudorabies tests will have only a negligible economic impact on State animal health agencies and affected swine producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 is amended as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, the definition of *official pseudorabies test* is amended by removing the words "tests and 5. Latex Agglutination Test (LAT)" and adding the words "tests; 5. Latex Agglutination Test (LAT); and 6. Particle Concentration Fluorescence Immunoassay (PCFIA) Test" in their place.

Done in Washington, DC, this 21st day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31680 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 92

[Docket No. 93–063–2]

Importation of Cattle From Mexico; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations to require that all cattle imported from Mexico be individually identified with a numbered, blue metal eartag issued by the Mexican Ministry of Agriculture and Water Resources. Currently, the regulations require all cattle imported from Mexico to be individually identified with numbered metal tags, but the source of the eartags is not specified. We are taking this action in response to the increasing numbers of tuberculosis-infected animals disclosed at slaughter among cattle imported into the United States from Mexico. Requiring cattle imported from Mexico to be identified with eartags issued by the Mexican Ministry of Agriculture and Water Resources will ensure that we have a uniform means of tracing an animal back to its herd of origin in Mexico, if necessary, following its importation into the United States. This requirement will facilitate the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as "the regulations") prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D—Ruminants, §§ 92.400 through 92.435 of 9 CFR part 92, pertains to the importation of ruminants into the United States. Sections 92.424 through 92.429 of the regulations contain specific provisions regarding the importation of ruminants from Mexico.

On September 7, 1993, we published in the **Federal Register** (58 FR 47084–47085, Docket No. 93–063–1) a proposal to amend the regulations to require that all cattle offered for importation into the United States from Mexico be individually identified with numbered, blue metal eartags issued by the Mexican Government. We also proposed to make several minor changes to rectify omissions or errors that had occurred during previous rulemaking.

We solicited comments concerning our proposal for a 30-day comment period ending October 7, 1993. We received four comments by that date, from a cattle buyer, a veterinary medical association, a State animal health board, and a veterinary research laboratory. All four commenters supported the proposal. However, two of the commenters were concerned that an eartag might be removed following an animal's importation, thus making it unlikely that the animal could be traced back to its origin. We recognize that such a possibility exists, and recently published two proposed rules in the **Federal Register** that would make it less likely that a person would remove an eartag.

The first proposed rule, "Interstate Movement of Mexican-Origin Cattle; Certification Requirements," published in the November 12, 1993, **Federal Register** (58 FR 59959–59962, Docket No. 93–084–1), would amend the regulations in 9 CFR part 71 concerning the interstate movement of animals. If adopted, that proposed rule would, in part, have the effect of prohibiting the tampering with or removal of the eartags required by this final rule.

The second proposed rule, "Importation of Cattle from Mexico; Identification Requirements," also published in the November 12, 1993, **Federal Register** (58 FR 59963–59965, Docket No. 93–006–1), would, in part, amend the animal importation regulations in 9 CFR part 92 to require that all cattle imported into the United States from Mexico—not just steers, as is currently the case—bear an "M" brand on the right jaw at the time of importation. The "M" brand would permanently identify an animal as being of Mexican origin, thus making it less likely that a person would remove an eartag simply to mask an animal's Mexican origin.

During a recent meeting attended by representatives of the Animal and Plant Health Inspection Service and the Mexican Government, the Mexican officials requested that the amended regulations state that the official eartags are issued by the *Secretaria de Agricultura y Recursus Hidraulicos* (SARH), which is the Mexican Ministry of Agriculture and Water Resources. To honor that request, we have changed the amended regulations where the general term "Mexican Government" appears to indicate that the eartags are issued by SARH.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

Cattle imported from Mexico account for about 1 percent of the total U.S. cattle population, which in 1991 stood at 99.4 million head. The average price per head for cattle from Mexico in 1991 was $349.06, with the total value of imported Mexican cattle exceeding $361 million for the year. During 1991, approximately 1 million live cattle were imported into the United States from Mexico.

We are amending the regulations to require all cattle imported into the United States from Mexico to be individually identified with a numbered, blue metal eartag issued by SARH. Although all cattle imported into the United States from Mexico have been required to be identified with numbered metal tags, the source of the tags was not specified in the regulations. This rule requires that the eartag be obtained from a specific source, i.e. SARH. We anticipate that this requirement will have no economic effect on any U.S. businesses, large or small, because it will not increase or decrease their cost of doing business. We expect that any unanticipated additional costs that may be incurred will be borne by the exporter of the cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations; (2) has no retroactive effect; and (3) does not

require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.400 [Amended]

2. In § 92.400, in the definition of *Permitted dip*, the word "Division" is removed and the word "Administrator" added in its place.

§ 92.406 [Amended]

3. In § 92.406(a), in the first sentence, the reference "(b) and (c)" is removed and the reference "(c) and (d)" added in its place.

§ 92.427 [Amended]

4. Section 92.427 is amended as follows:

a. In paragraph (c)(1), in the first sentence, the words ", except cattle" are added immediately after the word "Mexico".

b. In paragraph (c)(1), the third sentence is amended by removing the reference "§ 92.430" and adding the reference "§ 92.429" in its place.

c. In paragraph (c)(1), the fourth sentence is amended by removing the words "or ear tag number" and adding the words "and official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag numbers" in their place.

d. In paragraph (c)(1), the fifth sentence is amended by removing the words "the subparagraph" and adding the words "this paragraph" in their place and by removing the words "eartag or" and adding the words "official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag and" in their place.

e. In paragraph (d), the introductory text is amended by removing the words "a numbered metal tag;" and adding the words "a numbered, blue metal eartag issued by the Mexican Ministry of Agriculture and Water Resources (SARH);" in their place.

f. In paragraph (d)(2), in the third proviso, the words "a numbered metal tag" are removed and the words "a numbered, blue metal eartag issued by the Mexican Ministry of Agriculture and Water Resources (SARH)" added in their place.

g. In paragraph (e)(2), the reference "§ 92.423(b)" is removed and the reference "§ 92.424(b)" added in its place, and the reference "§ 92.426(d)" is removed and the reference "§ 92.427(d)" added in its place.

Done in Washington, DC, this 21st day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31681 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A; Docket No. R-0808]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule to implement section 142 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which amends section 10B of the Federal Reserve Act (FRA) in order to discourage advances, under that section, to undercapitalized and critically undercapitalized depository institutions. The Board is implementing this provision by revising rules relating to the provision of Federal Reserve credit presently contained in Regulation A—Extensions of Credit by Federal Reserve Banks.

EFFECTIVE DATE: January 30, 1994.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), or Manley Williams, Attorney (202/736-5565), Legal Division; or Gary Gillum, Senior Economist (202/452-3253), or Jim Clouse, Economist (202/452-3922), Division of Monetary Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On August 31, 1993, the Board published for comment proposed revisions to Regulation A— Extensions of Credit by Federal Reserve Banks, to implement section 142 of FDICIA (Title I of Pub. L. 102-242), 58 FR 45851, August 31, 1993. Section 142 amended section 10B of the FRA (12 U.S.C. 347b) to discourage advances under that section to undercapitalized and critically undercapitalized depository institutions by imposing liability on the Board for certain losses incurred by the funds administered by the Federal Deposit Insurance Corporation (FDIC). Specifically, the Board incurs limited liability for increased losses attributable to Federal Reserve Bank advances under section 10B of the FRA to an undercapitalized insured depository institution after that institution has borrowed for 60 days in any 120-day period. The 60 days may be extended for additional 60-day periods with a determination by the Chairman or the head of the appropriate Federal banking agency that the institution is viable. The Board also incurs limited liability for increased losses attributable to section 10B advances to a critically undercapitalized insured depository institution after a five-day period beginning on the day the institution becomes critically undercapitalized. The Board's liability for these increased losses is limited to the lesser of the amount of the loss that the Board or a Federal Reserve Bank would have incurred on any increases in the amount of advances after the expiration of the applicable lending period if those advances had been unsecured, or the amount of interest received on the increased amount of the advances. The Board must report to Congress on any such liability it incurs.

In order to reflect the new provisions of section 10B, the proposed rule made several substantive changes to Regulation A. It also incorporated a number of technical and stylistic changes to update and clarify the regulation. The principal substantive changes were:

(1) Placing limitations on Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions;

(2) Describing the loss calculations;

(3) Defining undercapitalized and critically under-capitalized insured depository institutions;

(4) Clarifying the term viable, as it applies to an undercapitalized insured depository institution; and

(5) Providing for assessments on the Federal Reserve Banks for amounts that the Board may be required to pay the FDIC under section 142.

The Board received nine comment letters on the proposed rule. The commenters included four Federal Reserve Banks, two bank holding companies, a commercial bank, a credit union, and a trade association. One commenter opposed the rule, asserting that it was needlessly complex and difficult to interpret. The Board believes, however, that these revisions to Regulation A are necessary to implement section 142 and that the complexity results from the provisions of section 142. Four commenters supported the regulation's implementation of section 142. The remaining commenters offered qualified support for the rule, urging the Board to clarify or modify particular aspects of the rule. With the exception of a clarification of the provision concerning assessments for amounts that the Board of Governors pays to the FDIC due to any excess loss, the final rule is substantially unchanged from the proposed rule.[1] The comments are discussed in greater detail below.

Limitations on Availability

Paragraphs (a) and (b) of § 201.4 of the final rule describe the limitations on the availability of Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions, respectively. These limitations apply not only to advances under section 10B of the FRA, which permits advances secured to the satisfaction of the Federal Reserve Bank and which is the only type of advance to which section 142 applies, but also to discount window credit under other sections of the FRA, such as sections 13(2) and 13(8), that are not expressly covered by section 142. The one commenter addressing the scope of the limitations approved of their extension to all discount window credit.

In the case of an undercapitalized insured depository institution, the final rule provides that a Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution only:

(1) If, in any 120-day period, the advances or discounts are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution;

(2) During the 60 days after the receipt of a written certification of viability from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency; or

(3) After consultation with the Board of Governors.

In the case of a critically undercapitalized insured depository institution, the final rule provides that a Federal Reserve Bank may make or have outstanding advances to or discounts for an institution that it knows to be a critically undercapitalized insured depository institution only during the five-day period beginning on the date the institution became a critically undercapitalized insured depository institution or after consultation with the Board of Governors.

In each case, the consultation requirement generally formalizes existing practices under which Federal Reserve Bank staff discuss significant advances to troubled institutions with the Board or Board staff. It also facilitates Board involvement in discount window assistance that may exceed the section 142 limits and trigger Board liability and a reporting requirement. There could be situations, however, in which it would be difficult or impossible for a Federal Reserve Bank to consult with the Board before extending credit that could exceed the section 142 limits. For example, a Federal Reserve Bank may not know that an institution has been critically undercapitalized for more than five days or may only learn this information at the time that the lending decision arises. The final rule, therefore, provides that in unusual circumstances when prior consultation with the Board is not possible, the Federal Reserve Bank should consult with the Board as soon as possible after the extension of credit.

The consultation requirement does not necessarily contemplate formal Board consideration of each extension of credit. In many cases, the requirement could be satisfied through a discussion of a Federal Reserve Bank's plans for dealing with a particular institution. In addition, the Board contemplates delegation of the authority to conduct such consultation to the Chairman, or in his absence, the Vice Chairman in order to facilitate that consultation. The Board is preparing a written policy delineating the consultation requirement.

Five commenters addressed the consultation requirement. Three of them generally endorsed the prior consultation requirement while the fourth commenter urged that the final rule require prior authorization. One of the commenters supporting prior consultation suggested that while the Board should reserve authority over macroeconomic decisions, the primary decision-making authority concerning individual lending decisions should remain with the lending Federal Reserve Bank. The fifth commenter urged that the Board and the Conference of Federal Reserve Bank Presidents come to a general agreement on discount window credit which may result in liability under section 142, especially if Federal Reserve Banks may be liable for another Federal Reserve Bank's lending decisions.

As established by the Federal Reserve Act, a Federal Reserve Bank has the authority to make a discount or advance to a depository institution while the Board of Governors is responsible for establishing policy for the Federal Reserve System and has supervisory authority over the Federal Reserve Banks. The Board believes that the final rule's prior consultation requirement preserves the Board's authority while maintaining Federal Reserve Bank capacity to respond to individual situations as they arise. The Board expects to continue to have close coordination with the Federal Reserve Banks on discount window policy. The current rule was developed in close collaboration with Federal Reserve Bank personnel and the Subcommittee on Discounts and Credits of the Conference of Presidents. The Board is continuing to work with Federal Reserve Bank personnel to develop coordinated approaches to concerning credit to undercapitalized or critically undercapitalized depository institutions.

The Loss Calculations

The final rule introduces three new definitions, "liquidation loss," "increased loss," and "excess loss," which together function to implement the liability provisions of section 142. The term "liquidation loss" refers to the amount of loss that the FDIC would have incurred if it had liquidated the depository institution at a particular point in time. The term "increased loss" refers to the amount of the FDIC's loss which exceeds the liquidation loss due to certain advances which remain outstanding or to new advances which are made after the time the FDIC would have liquidated the institution under the liquidation loss calculation. The

[1] The definition of undercapitalized insured depository institution has been changed to indicate that a depository institution is an undercapitalized insured depository institution if *its* appropriate Federal banking agency has rated it a CAMEL 5, or equivalent rating, as of the most recent examination of such institution; and the section on seasonal credit has been redrafted to improve clarity.

term "excess loss" refers to the amount of the increased loss for which the Board is liable to the FDIC under section 142. The one comment that the Board received on this section indicated that the regulation's loss calculations add clarity to the definitions in section 142.

Capital Category

Under section 142, the limitations on access to Federal Reserve Bank credit depend in part on the capital category—undercapitalized or critically undercapitalized—of the borrowing depository institution. These categories are defined in section 142 through reference to Federal banking agency ratings and through reference to the Prompt Corrective Action standards in section 38 of the Federal Deposit Insurance Act (FDI Act). Section 38 of the FDI Act largely leaves the definition of the capital categories to the Federal banking agencies. The Federal banking agencies define the categories in terms of capital ratios and link changes in capital categories to specific events (including the date that a Call Report is required to be filed, the delivery of an exam report, or the provision of written notice by the appropriate Federal banking agency). The final Regulation A, therefore, adopts the Prompt Corrective Action rules establishing capital categories, including the provisions defining when the categories become effective. This approach avoids linking changes in capital categories solely to day-to-day balance sheet fluctuations that would be impossible to track, is relatively simple, and is consistent with the Prompt Corrective Action standards. The two comments on these definitions favored the Board's approach.

The final rule also provides that a Federal Reserve Bank, before extending credit, should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution. One commenter expressed concern that it may be difficult to ascertain a depository institution's capital category and this commenter along with a second one expressed concern about information flows among Federal banking agencies. The Board is working with the other Federal banking agencies to ensure that Federal Reserve Banks have timely information concerning changes in institutions' capital categories.

Viable

Under section 142, a Federal Reserve Bank may extend discount window credit to an undercapitalized insured depository institution beyond 60 days in a 120-day period if the head of the appropriate Federal banking agency or the Chairman of the Board of Governors of the Federal Reserve System, after an examination, certifies in writing that the institution is viable. An institution is viable under section 142 if, giving due regard to the economic conditions and circumstances in the market in which the institution operates, the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. This definition not only permits broad discretion in taking economic factors into account, but also allows widely varying levels of expectation as to whether an institution will become critically undercapitalized or be placed into conservatorship or receivership.

In order to provide some guidance to the other Federal banking agencies in making viability determinations, the final regulation states that although there are a variety of criteria for determining viability, the Board ordinarily would consider an undercapitalized institution to be viable if it had submitted a capital restoration plan as required under prompt corrective action, if its primary Federal regulator had accepted the plan, and if the institution is complying with the plan.

Two commenters approved of the Board's clarification of the term viable. One of these commenters noted, however, that a viable institution may require credit while it is in the process of preparing a capital plan or while its primary regulator is in the process of reviewing that plan. This commenter noted that an agricultural bank which suffers losses due to a natural disaster is an example of a viable institution which may need advances before it has an approved capital restoration plan in place.

Prompt corrective action allows a depository institution up to 45 days to submit a capital restoration plan and the appropriate Federal banking agency 60 days to approve the plan. Thus, the appropriate Federal banking agency may not have approved a depository institution's capital restoration plan before the limitations on the availability of credit become effective. While the Board believes that an undercapitalized institution should swiftly restore its capital, the Board also recognizes that a viable institution may not have a capital restoration plan in place before it reaches the borrowing limitations. In such cases, the Board or the appropriate Federal regulator should look to the statutory criteria to evaluate viability.

The third commenter on the definition of viability suggested that a distinction be drawn between undercapitalized and significantly undercapitalized depository institutions and that the latter class of institution be held to a more stringent standard of viability. The Board believes that the standard of viability should be a consistent standard. It recognizes, however, that, as a general matter, the lower a depository institution's capital, the more difficult it will be to demonstrate that the institution is viable.

Assessment

Under section 142, the Board is liable to the FDIC for certain losses due to Federal Reserve Bank lending to an undercapitalized or critically undercapitalized insured depository institution beyond the time periods specified in that section. The final regulation provides that the Boardwill assess the Federal Reserve Banks for the amount of any such loss. While the regulation does not specify an assessment formula, the supplementary material accompanying the proposed rule had indicated that the Board expected that any such loss would assessed on all the Federal Reserve Banks on a *pro rata* basis rather than only on the Federal Reserve Bank making the advance.

Three of the commenters addressed the assessment on Federal Reserve Banks and all three of them proposed that the loss be borne by the lending Federal Reserve Bank. These commenters suggested that pro rata assessments would dilute the incentives intended by section 142, would reduce discipline in lending decisions, and would impose on a Federal Reserve Bank a share of the costs associated with lending decisions in which it played no role. Two of these commenters proposed that extremely large losses could be covered by the loss-sharing arrangement currently in effect among the Federal Reserve Banks and one noted that loss-sharing would prevent the Federal Reserve Banks from becoming too conservative in their lending decisions. This commenter also suggested that the Boards of Directors of the Federal Reserve Banks should be kept apprised of any potential liability under such a loss-sharing arrangement. Under the final rule, the Board expects that any assessment under section 142 will be levied on the lending Federal Reserve Bank unless the loss is large. Large losses will be covered in a manner analogous to the loss sharing agreement currently in effect among the Federal Reserve Banks.

One commenter inquired about assessments for losses due to lending to undercapitalized and critically undercapitalized credit unions. Because credit unions are not FDIC insured, there could be no loss to the FDIC insurance funds due to advances to or discounts for a credit union and thus there could be no Board liability to the FDIC for which the Board would have to assess the Federal Reserve Banks. Nonetheless the Board expects that similar standards in extending credit will be applied to credit unions.

Other

The Board also received a number of comments which addressed issues other than those raised by section 142 and the attendant amendments to Regulation A. For example, one commenter sought clarification of the reference, in § 201.3(b)(2), to an institution's average total deposits in the preceding calendar year. This section has been redrafted to improve clarity.

One commenter, while supporting the amendment to § 201.6(d) which would permit a Federal Reserve Bank to authorize a depository institution to act as an agent of another depository institution in receiving Federal Reserve Bank credit, proposed that the Board coordinate all lending to commonly controlled depository institutions through a lead Federal Reserve Bank in the banking organization's home Federal Reserve District. The Board believes that individual depository institutions are separate corporate entities with individual access to the discount window. The proposed change would permit, but not require, affiliated institutions to coordinate their borrowing through an individual Federal Reserve Bank, with the authorization of the lending Federal Reserve Bank.

This commenter also raised a number of questions concerning permissible types of collateral. Under the Federal Reserve Act, the collateralization of discount window advances is the primary responsibility of the individual Federal Reserve Banks. The Federal Reserve Banks generally are willing to accept collateral of adequate quality in which it can perfect a security interest. The commenter also proposed that the Board permit depository institutions to borrow against collateral held by operating subsidiaries, and that the procedures and criteria for Federal Reserve Bank credit be clarified and made uniform throughout the Federal Reserve Districts. Finally, the commenter proposed that the procedures and criteria for Federal Reserve Bank credit be based on market practices. A high level of communication exists among the Federal Reserve Banks and between the Federal Reserve Banks and the Board and to the degree appropriate, the Federal Reserve Banks adhere to market standards in evaluating collateral. The Board does not believe, however, that it is appropriate at this time to restrict a Federal Reserve Bank's discretion in accepting or valuing collateral or in evaluating the enforceability of security interests. The Board also notes that the liquidation value of collateral may be lower than the market value of that collateral.

One commenter proposed that all Federal banking agencies be combined into one body. Such an action is beyond the scope of this Regulation.

Regulatory Flexibility Act Analysis

Pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board published for comment an initial regulatory flexibility analysis of its proposed Regulation A. Section 604 of the Regulatory Flexibility Act requires the Board to publish a final regulatory flexibility analysis with the final rule containing:

(1) A statement of the need for and objectives of, the rule;

(2) A summary of the issues revised by the public comment in response to the initial regulatory flexibility statement, a summary of the assessment if such comments and a statement of changes made in the proposed rule in response to comments;

(3) A description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities, and a statement of why these alternatives rejected.

Each of these items discussed in the Supplementary Information above.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit.

For reasons set forth in the preamble, the Board is amending 12 CFR part 201 as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for part 201 is revised to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 374, 374a and 461.

2. Sections 201.1 through 201.6 are revised and §§ 201.7 through 201.9 are added to read as follows:

§ 201.1 Authority, scope and purpose.

(a) *Authority and scope.* This part is issued under the authority of sections 10A, 10B, 13, 13A, and 19 of the FRA (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 374, 374a, and 461), other provisions of the FRA, and section 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d) and relates to extensions of credit by Federal Reserve Banks to depository institutions and others.

(b) *Purpose.* This part establishes rules under which Federal Reserve Banks may extend credit to depository institutions and others. Extending credit to depository institutions to accommodate commerce, industry, and agriculture is a principal function of Federal Reserve Banks. While open market operations are the primary means of affecting the overall supply of reserves, the lending function of the Federal Reserve Banks is an effective method of supplying reserves to meet the particular credit needs of individual depository institutions. The lending functions of the Federal Reserve System are conducted with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

§ 201.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Appropriate Federal banking agency* has the same meaning as in section 3 of the FDI Act (12 U.S.C. 1813(q)).

(b) *Critically undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that is deemed to be critically undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(E)) and the implementing regulations.

(c) (1) *Depository institution* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is:

(i) An *insured bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(h)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) A *mutual savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(f)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) A *savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(g)) or a bank which is eligible to

make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) A *member* as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); or

(vi) A *savings association* as defined in section 3 of the FDI Act (12 U.S.C. 1813(b)) which is an insured depository institution as defined in section 3 of the Act (12 U.S.C. 1813(c)(2)) or is eligible to apply to become an insured depository institution under section 5 of the Act (12 U.S.C. 1815(a)).

(2) The term *depository institution* does not include a financial institution that is not required to maintain reserves under Regulation D (12 CFR part 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public.

(d) *Liquidation loss* means the loss that any deposit insurance fund in the FDIC would have incurred if the FDIC had liquidated the institution:

(1) In the case of an undercapitalized insured depository institution, as of the end of the later of:

(i) Sixty days:

(A) In any 120-day period;

(B) During which the institution was an undercapitalized insured depository institution; and

(C) During which advances or discounts were outstanding to the depository institution from any Federal Reserve Bank; or

(ii) The 60 calendar day period following the receipt by a Federal Reserve Bank of a written certification from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency that the institution is viable.

(2) In the case of a critically undercapitalized insured depository institution, as of the end of the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution.

(e) *Increased loss* means the amount of loss to any deposit insurance fund in the FDIC that exceeds the liquidation loss due to:

(1) An advance under section 10B(1)(a) of the FRA that is outstanding to an undercapitalized or critically undercapitalized insured depository institution without payment having been demanded as of the end of the periods specified in paragraphs (d)(1) and (2) of this section; or

(2) An advance under section 10B(1)(a) of the Federal Reserve Act that is made after the end of such periods.

(f) *Excess loss* means the lesser of the increased loss or that portion of the increased loss equal to the lesser of:

(1) The loss the Board of Governors or any Federal Reserve Bank would have incurred on the amount by which advances under section 10B(1)(a) exceed the amount of advances outstanding at the end of the periods specified in paragraphs (d)(1) and (2) of this section if those increased advances had been unsecured; or

(2) The interest received on the amount by which the advances under section 10B(1)(a) exceed the amount of advances outstanding, if any, at the end of the periods specified in paragraphs (d)(1) and (2) of this section.

(g) *Transaction account and nonpersonal time deposit* have the meanings specified in Regulation D (12 CFR part 204).

(h) *Undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that:

(1) Is not a critically undercapitalized insured depository institution; and

(2) (i) Is deemed to be undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(C)) and the implementing regulations; or

(ii) Has received from its appropriate Federal banking agency a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by its appropriate Federal banking agency under a comparable rating system) as of the most recent examination of such institution.

(i) *Viable*, with respect to a depository institution, means that the Board of Governors or the appropriate Federal banking agency has determined, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate Federal banking agency has accepted a capital restoration plan for the depository institution under 12 U.S.C. 1831o(e)(2) and the depository institution is complying with that plan.

§ 201.3 Availability and terms.

(a) *Adjustment credit.* Federal Reserve Banks extend adjustment credit on a short-term basis to depository institutions to assist in meeting temporary requirements for funds or to cushion more persistent shortfalls of fundspending an orderly adjustment of a borrowing institution's assets and liabilities. Such credit generally is available only for appropriate purposes and after reasonable alternative sources of funds have been fully used, including credit from special industry lenders such as Federal Home Loan Banks, the National Credit Union Administration's Central Liquidity Facility, and corporate central credit unions. Adjustment credit is usually granted at the basic discount rate, but under certain circumstances a special rate or rates above the basic discount rate may be applied.

(b) *Seasonal credit.* Federal Reserve Banks extend seasonal credit for periods longer than those permitted under adjustment credit to assist smaller depository institutions in meeting regular needs for funds arising from expected patterns of movement in their deposits and loans. A special rate or rates at or above the basic discount rate may be applied to seasonal credit.

(1) Seasonal credit is only available if:

(i) The depository institution's seasonal needs exceed a threshold that the institution is expected to meet from other sources of liquidity (this threshold is calculated as certain percentages, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year);

(ii) The Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks; and

(iii) Similar assistance is not available from special industry lenders.

(2) The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain.

(c) *Extended credit.* Federal Reserve Banks extend credit to depository institutions under extended credit arrangements where similar assistance is not reasonably available from other sources, including special industry lenders. Such credit may be provided where there are exceptional circumstances or practices affecting a particular depository institution including sustained deposit drains, impaired access to money market funds, or sudden deterioration in loan repayment performance. Extended

credit may also be provided to accommodate the needs of depository institutions, including those with longer term asset portfolios, that may be experiencing difficulties adjusting to changing money market conditions over a longer period, particularly at times of deposit disintermediation. A special rate or rates above the basic discount rate may be applied to extended credit.

(d) *Emergency credit for others.* In unusual and exigent circumstances, a Federal Reserve Bank may, after consultation with the Board of Governors, advance credit to individuals, partnerships, and corporations that are not depository institutions if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. The rate applicable to such credit will be above the highest rate in effect for advances to depository institutions. Where the collateral used to secure such credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, an affirmative vote of five or more members of the Board of Governors is required before credit may be extended.

§ 201.4 Limitations on availability and assessments.

(a) *Advances to or discounts for undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution, only:

(1) If, in any 120-day period, advances or discounts from any Federal Reserve Bank to that depository institution are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution; or

(2) During the 60 calendar days after the receipt of a written certification from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency that the borrowing depository institution is viable; or

(3) After consultation with the Board of Governors.[1]

(b) *Advances to or discounts for critically undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be a critically undercapitalized insured depository institution only:

(1) During the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution; or

(2) After consultation with the Board of Governors.[2]

(c) *Assessments.* The Board of Governors will assess the Federal Reserve Banks for any amount that it pays to the FDIC due to any excess loss. Each Federal Reserve Bank shall be assessed that portion of the amount that the Board of Governors pays to the FDIC that is attributable to an extension of credit by that Federal Reserve Bank, up to one percent of its capital as reported at the beginning of the calendar year in which the assessment is made. The Board of Governors will assess all of the Federal Reserve Banks for the remainder of the amount it pays to the FDIC in the ratio that the capital of each Federal Reserve Bank bears to the total capital of all Federal Reserve Banks at the beginning of the calendar year in which the assessment is made, provided, however, that if any assessment exceeds 50 percent of the total capital and surplus of all Federal Reserve Banks, whether to distribute the excess over such 50 percent shall be made at the discretion of the Board of Governors.

(d) *Information.* Before extending credit a Federal Reserve Bank should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution.

§ 201.5 Advances and discounts.

(a) Federal Reserve Banks may lend to depository institutions either through advances secured by acceptable collateral or through the discount of certain types of paper. Credit extended by the Federal Reserve Banks generally takes the form of an advance.

(b) Federal Reserve Banks may make advances to any depository institution if secured to the satisfaction of the Federal Reserve Bank. Satisfactory collateral generally includes United States government and Federal agency securities, and, if of acceptable quality, mortgage notes covering 1-4 family residences, State and local government securities, and business, consumer and other customer notes.

(c) If a Federal Reserve Bank concludes that a depository institution will be better accommodated by the discount of paper than by an advance, it may discount any paper endorsed by the depository institution that meets therequirements specified in the FRA.

§ 201.6 General requirements.

(a) *Credit for capital purposes.* Federal Reserve credit is not a substitute for capital.

(b) *Compliance with law and regulation.* All credit extended under this part shall comply with applicable requirements of law and of this part. Each Federal Reserve Bank:

(1) Shall keep itself informed of the general character and amount of the loans and investments of depository institutions with a view to ascertaining whether undue use is being made of depository institution credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and

(2) Shall consider such information in determining whether to extend credit.

(c) *Information.* A Federal Reserve Bank shall require any information it believes appropriate or desirable to insure that paper tendered as collateral for advances or for discount is acceptable and that the credit provided is used in a manner consistent with this part.

(d) *Indirect credit for others.* No depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve Bank extending credit.

§ 201.7 Branches and agencies.

Except as may be otherwise provided, this part shall be applicable to United States branches and agencies of foreign banks subject to reserve requirements under Regulation D (12 CFR part 204) in the same manner and to the same extent as depository institutions.

§ 201.8 Federal Intermediate Credit Banks.

A Federal Reserve Bank may discount for any Federal Intermediate Credit Bank agricultural paper or notes payable to and bearing the endorsement of the Federal Intermediate Credit Bank that cover loans or advances made under subsections (a) and (b) of section 2.3 of the Farm Credit Act of 1971 (12 U.S.C. 2074) and that are secured by paper eligible for discount by Federal Reserve Banks. Any paper so discounted shall have a period remaining to maturity at the time of discount of not more than nine months.

§ 201.9 No obligation to make advances or discounts.

A Federal Reserve Bank shall have no obligation to make, increase, renew, or

[1] In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph.

[2] See footnote 1 in § 201.4(a)(3).

extend any advance or discount to any depository institution.

3. In §§ 201.108 and 201.109, footnotes 1, 1a, 2, and 3 are redesignated as footnotes 3, 4, 5, and 6, respectively.

By order of the Board of Governors of the Federal Reserve System, December 16, 1993.

William W. Wiles, .

Secretary of the Board.

[FR Doc. 93-31198 Filed 12-27-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 27558; Amdt. No. 1578]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

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

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

By Subscription—

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control approaches, Standard instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC, on December 17, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
12/07/93 ...	CO	Montrose	Montrose Regional	FDC 3/6512	VOR/DME Rwy 13, Amdt 8...
12/07/93 ...	CO	Montrose	Montrose Regional	FDC 3/6513	VOR Rwy 13, Amdt 7...
12/07/93 ...	CO	Montrose	Montrose Regional	FDC 3/6515	ILS/DME Rwy 17, Orig-A...
12/07/93 ...	GA	Atlanta	The William B. Hartsfield Atlanta Intl.	FDC 3/6506	ILS Rwy 8L Amdt 1A...
12/07/93 ...	GA	Atlanta	The William B. Hartsfield Atlanta Intl.	FDC 3/6507	ILS Rwy 8R Amdt 58...
12/07/93 ...	GA	St Marys	St Marys	FDC 3/6511	Radar-1, Orig...
12/07/93 ...	TX	Navasota	Navasota Muni	FDC 3/6525	VOR–A Amdt 1...
12/09/93 ...	CO	Montrose	Montrose Regional	FDC 3/6554	ILS/DME Rwy 17, Orig...
12/09/93 ...	MI	Iron Mountain	Ford	FDC 3/6546	LOC/DME BC Rwy 19 Amdt 11A...
12/09/93 ...	MI	Muskegon	Muskegon County	FDC 3/6569	ILS Rwy 32 Amdt 16...
12/09/93 ...	MI	Sault Ste Marie	Chippewa County Intl	FDC 3/6570	NDB Rwy 34 Amdt 4A...
12/09/93 ...	MI	Sault Ste Marie	Chippewa County Intl	FDC 3/6571	NDB Rwy 16 Amdt 5A...
12/09/93 ...	MI	Sault Ste Marie	Chippewa County Intl	FDC 3/6572	VOR–A or Tacan-A Amdt 5A...
12/09/93 ...	OH	Wooster	Wayne County	FDC 3/6563	VOR Rwy 9 Orig...
12/09/93 ...	OH	Wooster	Wayne County	FDC 3/6564	VOR Rwy 27 Orig...
12/09/93 ...	OH	Wooster	Wayne County	FDC 3/6565	NDB Rwy 27 Amdt 7...
12/09/93 ...	OH	Wooster	Wayne County	FDC 3/6566	Departure procedure/Take-off minimums Orig...
12/10/93 ...	OK	Tulsa	Tulsa Intl	FDC 3/6584	Radar-1 Amdt 16...
12/14/93 ...	AR	Fort Smith	Fort Smith Regional	FDC 3/6660	VOR or Tacan Rwy 25 Amdt 20...
12/16/93 ...	SC	Hilton Head Island	Hilton Head	FDC 3/6668	RNAV Rwy 21 Amdt 4A...

[FR Doc. 93–31625 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27557; Amdt. No. 1577]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

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

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

By Subscription—

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on December 17, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective March 3, 1994

Firebaugh CA, Firebaugh, VOR/DME–A, Amdt. 2

Montrose, CO, Montrose Regional, ILS/DME RWY 17, Amdt.1

Teterboro, NJ, Teterboro, ILS RWY 6, Amdt. 26

Chandler, OK, Chandler Muni, NDB RWY 17, Amdt. 3

Provo, Utah, Provo Muni, VOR–A, Amdt. 6, CANCELLED

Provo, Utah, Provo Muni, VOR RWY 13, Orig.

Provo, Utah, Provo Muni, VOR//DME RWY 13, Amdt. 3, CANCELLED

Provo, Utah, Provo Muni, ILS RWY 13, Amdt. 3

Mosinee, WI, Central Wisconsin. ILS RWY 8, Amdt. 11

Effective February 3, 1994

Los Angeles, CA Whiteman, VOR–A, Orig.

Chariton, IA, Chariton Muni, VOR RWY 17, Amdt.1

Chariton, IA, Chariton Muni, NDB RWY 17, Amdt. 3

Knoxville, IA, Knoxville Muni, NDB RWY 15, Amdt. 5

Knoxville, IA, Knoxville Muni, NDB RWY 33, Amdt. 4

Phillipsburg, KS, Phillipsburg Muni, NDB RWY 31, Amdt. 6

Clarion, PA, Clarion County, VOR–A, Amdt. 1

Clarion, PA, Clarion County, VOR/DME RNAV RWY 6, Orig.

Clarion, PA, Clarion County, VOR/DME RNAV RWY 24, Orig.

Caddo Mills, TX, Caddo Mills Muni, NDB RWY 35L, Amdt. 1

Effective January 6, 1994

Sacramento, CA, Mather Field, VOR RWY 4R, Orig.

Sacramento, CA, Mather Field, VOR/DME RWY 22L, Orig.

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, ILS RWY 27R, Amdt. 5

Morris, IL, Morris Muni-James R Washburn Field, VOR–A, Amdt. 9

Indianapolis, IN, Greenwood Muni, VOR–A, Amdt. 4

Indianapolis, IN, Greenwood Muni, NDB RWY 1, Amdt. 2

Beaufort, NC, Michael J. Smith Field, NDB RWY 14, Amdt. 7

Beaufort, NC, Michael J. Smith Field, NDB RWY 14, Orig.

Beaufort, NC, Michael J. Smith, NDB RWY 21, Amdt. 3A, CANCELLED

Beaufort, NC, Michael J. Smith, NDB RWY 21, Orig.

Nashville, TN, Nashville Intl, ILS RWY 2R, Amdt. 3

San Antonio, TX, San Antonio Intl, ILS RWY 3, Amdt. 17

San Antonio, TX, San Antonio Intl, ILS RWY 12R, Amdt. 12

San Antonio, TX, San Antonio Intl, RADAR–1, Amdt. 25

San Antonio, TX, San Antonio Intl, VOR/DME RNAV RWY 30L, Amdt. 10

Oconto, WI, Oconto Muni, NDB RWY 11, Amdt. 4, CANCELLED

Oconto, WI, Oconto Muni, NDB RWY 29, Orig.

Effective December 3, 1993

Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt. 8

[FR Doc. 93–31624 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Commodity Options; Prohibited Trading

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending Rule 1.19, 17 CFR 1.19 (1992), by including an additional exception from the prohibition on futures commission merchants ("FCMs") from assuming any financial responsibility for the fulfillment of commodity options. To help ensure the financial integrity of FCMs undertaking such transactions, the Commission also is amending Rule 1.17, the Commission's rule regarding required regulatory capital for FCMs, to provide an appropriate capital treatment.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Deputy Director, Division of Trading and Markets, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–8955, 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

Commission Rule 1.19 prohibits futures commission merchants ("FCMs") and introducing brokers ("IBs") from assuming any financial responsibility for the fulfillment of any commodity option, with two exceptions. These exceptions are for options traded on or subject to the rules of a designated option contract market or on or subject to the rules of a foreign board of trade, in accordance with the requirements of part 30 of the Commission's rules.[1]

The Commission, on August 13, 1993, published a further proposed exception from the Rule 1.19 prohibition on FCMs from assuming any "financial responsibility for the fulfillment of any commodity option." 58 FR 43087. The effect of this proposed revision would have been to permit FCMs to grant certain off-exchange trade options which are permitted under Commission Rule 32.4, 17 CFR 32.4.[2]

Commission Rule 1.19 was first promulgated by the Commission's predecessor agency, the Commodity Exchange Authority, in 1973, prior to the adoption of Commission rules relating to regulatory capital.[3]

In proposing an additional exception from this prohibition for any option permitted under § 32.4 for which a capital treatment is specified in § 1.17, the Commission reasoned that:

> The Commission, upon further experience over the years, is convinced that its previously stated intent to delete the prohibition in Rule 1.19 as it applies to FCMs, subject to a capital treatment, is appropriate. In this regard, the Commission notes that Rule 1.19 already excepts FCMs from its prohibitions for options traded on exchanges. The prohibition of Rule 1.19 therefore, currently applies to off-exchange options permitted under Part 32 of the Commission's rules. Although concern over the risk to FCMs from dealing in certain over-the-counter options previously may have supported the prohibition, the Commission believes that FCMs generally have had a sufficient opportunity during the intervening years to become sufficiently familiar with option trading and theory, so that they can institute appropriate internal controls to address their risk from such positions provided that the Commission has articulated a capital treatment for such positions.
>
> 58 FR at 43088.

The risk to the FCM of assuming the positions permitted under this exception must be reflected fully by FCMs in the computation of their adjusted net capital under Commission Rule 1.17. Accordingly, the Commission proposed to extend the capital treatment provided under Rule 1.17 that certain "haircuts" be taken in computing net capital for "securities options," 17 CFR 1.17(c)(5)(vi),[4] to over-the-counter options on foreign currencies, security indices and options on government debt."[5] Moreover, the Commission proposed to apply the same capital treatment to granted over-the-counter options or options on such "securities," applying the charges to capital specified in § 1.17(c)(5)(vi) for those positions.

As noted in the Notice of Proposed Rulemaking, option positions for which Rule 1.17(c)(5)(vi) fails to specify a method of computation are excluded from the relief available under this exception until such time as Rule 1.17 is amended to reflect the risk of such positions or the Commission addresses applications on a case-by-case basis. See e.g., CFTC Interpretative Letter 91–1, (1991–1992 Transfer Binder) Comm. Fut. L. Rep., (CCH) ¶ 25,065 (May 29, 1991).[6] In this regard, the Commission

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[1] Commission Rule 1.19 provides that: No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except:

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of part 33 of this chapter; or (b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of part 30 of this chapter.

[2] Rule 32.4 provides, in part, that: the provisions of this part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

By proposing to amend the prohibition of Rule 1.19 that FCMs not assume financial responsibility for the fulfillment of any commodity option, the Commission was not also proposing to expand the scope of options which can be traded legally. Accordingly, in light of the existing general suspension for off-exchange trading of commodity options under Commission Rule 32.11, the proposed amendment to Rule 1.19 only would have permitted FCMs to grant options, pursuant to Commission Rule 32.4, where the offeree is a producer, processor, or commercial user of, or a merchant handling, the underlying commodity in its business.

[3] A fuller explanation of the history of Commission Rule 1.19 is provided in the Notice of Proposed Rulemaking, 58 FR 43087–88.

[4] 17 CFR 1.17(c)(5)(vi) incorporates by reference the net capital rules of the Securities and Exchange Commission (SEC), which contains a generic treatment for options positions, as interpreted, stating that in computing net capital, the calculation should use: In the case of securities options used by the applicant or registrant in computing net capital, the deductions specified, in § 240.15c3–1 appendix A of this title, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix:

An SEC interpretative letter, covering the net capital treatment of baskets of securities offset by securities options on broad based security indices was issued to Mr. David Marcus, New York Stock Exchange, Inc., on February 27, 1986. SEC interpretative letters covering foreign currency option spreads and forwards offset by foreign currency options were issued to Ms. Susan R. Mann and Mr. Robert B. Gilmore, of the Philadelphia Stock Exchange, Inc., dated January 15, 1985 and February 14, 1986, respectively. The SEC interpretative letter covering the treatment of government debt options was issued to Mr. Salvatore Pallante, New York Stock Exchange, Inc., on January 31, 1990. Commission Rule 1.17 currently incorporates by reference securities haircuts, and is intended to automatically incorporate any amendments or adjustments to those haircuts permitted by the SEC.

[5] By extending the capital treatment of such instruments under SEC regulations to certain instruments, which are regulated by the Commission under the CEA, see, section 2(a)(1)(B) of the Act, the Commission does not intend to affect jurisdictional boundaries, but rather, merely to treat equally, for regulatory capital purposes, economically similar instruments.

[6] As noted therein, Rule 1.17(c)(5)(vi) currently does not explicitly specify the net capital treatment for all option positions which otherwise could be included under the exception, nor has the SEC rule been interpreted to reference a particular treatment for commodity options, except that the treatment of forex options, government debt securities and stock indices is separately identified by SEC

sought comment regarding the issue of the appropriate methodology for potentially computing haircuts for those options for which no capital treatment was proposed and consequently which were not included within the proposed exception. Specifically, the Commission asked seven questions concerning this, and related, issues.

Two comments were submitted. One commenter is an industry association representing FCMs and other segments of the futures industry. This commenter:

> Strongly endorses the amendments to Commission rules 1.17 and 1.19 as proposed and urges their prompt promulgation. In this connection, it is important that the adoption of final rules as they relate to options on foreign currencies, stock indices and government debt should not be delayed pending resolution of those issues with respect to which the Commission has requested additional comment.
>
> [The commenter] is particularly pleased that the Commission has proposed to coordinate its capital requirements with those prescribed by the SEC. For purposes of both regulatory efficiency and competitive balance, it is essential that FCMs, many of which are also registered as broker-dealers, be subject to uniform capital treatment.

The commenter also supported the further extension of the proposed exception to over-the-counter trade options other than those specified in the proposed rule. It noted that "participation of FCMs in OTC trade options may benefit both commercial participants and the regulated markets." They reasoned that FCMs had the necessary knowledge to hedge their resulting financial exposure, and that appropriate changes to Commission and self-regulatory oversight systems could be made to accommodate this change. Finally, although noting with approval the coordination of capital rules by the Commission and the SEC, and advocating the use of capital charges that are risk-based in nature, the commenter nevertheless did not offer recommendations regarding the appropriate level of capital charges for such positions.[7]

The Commission is adopting, as final, the rules as proposed. In light of the significant issues regarding the appropriate methodology for computing net capital for option positions for which a capital treatment was not proposed in the release, the Commission believes that it is premature to extend the proposed exception to all options which are exempt under Commission Rule 32.4. Nevertheless, the Commission believes that it should proceed immediately in granting this exception for those types of options for which there is ready agreement and general acceptance of an appropriate capital treatment. The Commission is of the view that proceeding with this exception, though limited, will remove from U.S. FCMs a potential competitive disadvantage without adversely affecting the integrity of the regulated futures markets. The Commission will consider further expansions of this exception in connection with its ongoing consideration of revisions to the capital requirements.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "FCMs" and similar entities are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These rules modify certain minimum capital requirements for FCMs. The amendments also permit FCMs to undertake additional option strategies and do not otherwise impose any additional burdens, but rather, alleviate an already existing prohibition. Accordingly, if promulgated, this rule would have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Acting Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

In this regard, the Commission invited comments from any firms or other persons which believe that the promulgation of the proposed rule amendments might have a significant impact upon their activities. None were received.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act the Commission has submitted these amended rules and their associated information collection requirements to the Office of Management and Budget ("OMB"). Rule 1.19, including its proposed revision, has no burden associated with it and is not part of a group of rules having a burden.

With respect to the proposed amendments to Rule 1.17, OMB approved the collection of information associated with these rules on January 25, 1993, and assigned OMB control number 3038–0024. The burden associated with this specific final rule is as follows:

Average burden hours per response—0.50
Number of respondents—100 (FCMs); 15 (IBs)
Frequency of response—Annually

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503; (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity options, Financial requirements, Reporting and record keeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4f, 4g, and 8a of the Act, 7 U.S.C. 6c, 6f, 6g, and 12a (1988), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a-1, 13a-2, 16, 19, 21, 23 and 24, unless otherwise noted.

2. Section 1.17 is amended by revising paragraph (c)(5)(vi) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

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interpretation. The CFTC adopts this treatment, to the extent that FCM positions can be characterized as commodity options under the Act. 58 FR 43089.

[7] The second commenter was a law firm inquiring about the application of the proposed exception from Rule 1.19 to instruments offered under parts 34 and 35 of the Commission's rules (Regulation of Hybrid Instruments and Exemption for Certain Swap Agreements, respectively.) In this regard, the Commission notes that to the extent an instrument has option-like features, and would be otherwise eligible for exemption under Rule 32.4 as a trade option, and an appropriate capital treatment has been specified, as discussed above, then this exception from Rule 1.19 would apply to FCM counterparties. However, the swaps portion of any such instrument would be treated consistent with the capital treatment specified in the concept release issued by the SEC, 58 FR 27486 at 27490, which requires treatment of the unrealized profit as an unsecured receivable and specifies a haircut on the notional amount plus an options charge pursuant to appendix A, cited above.

(c) * * *

(5) * * *

(vi) In the case of securities options and/or other options for which a haircut has been specified for the option or for the underlying instrument in § 240.15c3–1 appendix A of this title, the treatment specified in, or under, § 240.15c3–1 appendix A, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix;

* * * * *

3. Section 1.19 is amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 1.19 Prohibited trading in certain "puts" and "calls".

* * * * *

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of part 33 of this chapter;

(b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of part 30 of this chapter; or

(c) For futures commission merchants, any option permitted under § 32.4 of this chapter, *provided however*, that a capital treatment for such options is referenced in § 1.17(c)(5)(vi).

Issued in Washington, DC, this 21st day of December, 1993, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–31557 Filed 12–27–93; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–33358]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate authority to the Director of the Division of Market Regulation to exempt any initiation or resumption of quotations, either unconditionally or on specified terms and conditions, pursuant to Rule 15c2–11(h) under the Securities Exchange Act of 1934. This amendment should facilitate prompt, careful review and consideration of applications for such exemptions.

EFFECTIVE DATE: December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ilene Koenigsberg, Attorney, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, telephone (202) 272–2848.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced amendments to its rules governing delegation of authority to the Division of Market Regulation ("Division").

The amendment to Rule 30–3(a)[1] authorizes the Director of the Division of Market Regulation ("Division Director") to grant exemptions where appropriate pursuant to Rule 15c2–11(h)[2] under the Securities Exchange Act of 1934 ("Exchange Act").[3] This delegation of authority will facilitate prompt, careful review and consideration of applications for such exemptions. In addition, the amendment will help conserve the resources of the Commission and Division, since the staff will not be required to present exemption requests under Rule 15c2–11 to the Commission, but can act upon them pursuant to the delegated authority. Notwithstanding these delegations of authority, the Division may bring any requests for exemptions that raise any serious questions to the Commission for consideration.

Another amendment adopted by the Commission makes certain technical changes to Rule 30–3(a)(6).[4]

The Commission finds, in accordance with Section 553(b)(A) of the Administrative Procedure Act,[5] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is also unnecessary.

[1] 17 CFR 200.30–3(a).

[2] 17 CFR 249.15c2–11(h) provides: This rule shall not prohibit any publication or submission of any quotation if the Commission, upon written request or upon its own motion, exempts such quotation either unconditionally or on specific terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this rule.

[3] 15 U.S.C. 78a *et seq.*

[4] The paragraph in Rule 10b–6 under the Exchange Act, 17 CFR 240.10b–6, granting the Commission exemptive authority has been redesignated as (j) and Rule 10b–4 has been redesignated as Rule 14e–4 under the Exchange Act, 17 CFR 240.14e–4.

[5] 5 U.S.C. 553(b)(A).

List of Subjects in 17 CFR Part 200

Administrative, practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the preamble, title 17, chapter II of Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by revising paragraph (a)(6) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(6) Pursuant to Rules 10b–6(j), 10b–7(o), 10b–8(f), 106–13(d), 14e–4(c), and 15c2–11(h) (§§240.10b–6(j), 240.10b–7(o), 240.10b–8(f), 240.10b–13(d), 240.14e–4(c), and 240.15c2–11(h) of this chapter), to grant requests for exemptions from Rules 10b–6, 10b–7, 10b–8, 10b–13, 14e–4, and 15c2–11 §§ 240.10b–6, 240.10b–7, 240.10b–8, 240.10b–13, 240.14e–4, and 240.15c2–11 of this chapter).

* * * * *

By the Commission.

Dated: December 20, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–31562 Filed 12–27–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 24, 122, 123, and 134

[T.D. 94–2]

RIN 1515–AB30

Pay Reform for Customs Inspectional Services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to implement those provisions of the Omnibus Budget

Reconciliation Act of 1993 concerning certain pay reforms applicable to Customs inspectional services. These regulations implement, in part, a new and exclusive compensation and pay schedule for Customs Officers who provide inspectional services. The compensation and pay schedule is applicable to work performed on regularly-scheduled Sundays, Federal holidays, and at night, where the majority of the hours worked occur during specific hours, as well as to work performed on an overtime and callback basis. Further, the regulations subject this compensation and pay to the applicable fiscal year pay cap established by Congress and prevent abuses in the assignment of callback work and overtime, as well as in the payment of commuting time compensation. Also, certain language and legal citation changes are made to the Customs Regulations to reflect similar statutory changes. Regulations implementing other aspects of the pay reform provisions will be issued by the Office of Personnel Management and Customs at a later date.

DATES: Interim rules are effective January 1, 1994. Comments must be received on or before February 28, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at Franklin Court, 1099 14th Street, NW—suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kevin Cummings, Office of Workforce Effectiveness and Development (202) 927–1391.

SUPPLEMENTARY INFORMATION:

Background

As employees of the principal border enforcement agency of the United States, Customs Officers enforce some 600 laws for 60 agencies while facilitating the flow of merchandise in international commerce. Customs Officers protect American industry by safeguarding trade agreements, public health and safety, and intellectual property rights; protect the revenue; and interdict narcotics, contraband, and other illegal importations. To respond to changing trade trends, Customs Officers are continually called upon to increase their level of service, usually by working overtime.

The nature of Customs inspectional overtime services is unique in the Federal Government. For Customs Officers providing such services, the overtime is mandatory, regularly recurring, and routinely performed under the most physically and mentally demanding of conditions. These conditions routinely include activities such as confronting the criminal element, climbing aboard vessels, breathing carbon monoxide fumes on the international border traffic lanes, crawling inside cargo containers which reach temperatures in excess of 120 degrees Fahrenheit in the summer, monitoring the bowel movements of a suspected narcotics swallower, examining hazardous material, and exposing oneself to blood-borne pathogens. Further, the vast majority of this overtime is performed at times and on days when other Federal employees normally do not work: at night, *i.e.*, between the hours of 5 p.m. and 8 a.m., and on Sundays and holidays.

The Present Overtime Compensation Law (the 1911 Act)

Customs Officers who perform inspectional services after normal working hours of a port—work in excess of a 40-hour week or 8-hour day, Monday through Saturday, 8 a.m. through 5 p.m.—are currently compensated under the provisions of section 5 of the Act of February 13, 1911 (the 1911 Act) (19 U.S.C. 261 and 267). The 1911 Act compensates such services at a rate that is twice the officer's hourly rate of base pay (double-time) and provides for certain minimum hour guarantees that, in some instances, bear no relationship to the hours actually worked. Further, under the provisions of the 1911 Act, overtime earnings are not considered in pension calculations, which discourages Customs Officers from retiring because their retirement annuities are disproportionate to their total actual earnings.

Other statutory provisions that relate to compensation for inspectional services are 19 U.S.C. 1450, which pertains to the unlading of vessels after the regular hours of a port, and 19 U.S.C. 58c(f)(3), which pertains to the disposition of user fees for reimbursable inspectional overtime services.

The regulations implementing these overtime pay provisions are found in part 24 of the Customs Regulations (19 CFR part 24); other references to overtime pay are found in parts 4, 122, 123, and 134 of the Customs Regulations (19 CFR parts 4, 122, 123, and 134). The primary provision pertaining to overtime services and pay in part 24 is § 24.16, but that provision does not provide compensation or pay for night differential or other premium pay. In parts 4, 122, 123, and 134, certain sections reference reimbursable inspectional services as being performed at night, which only includes the hours between 5 p.m. and 8 a.m.

Customs Officer Pay Reform (the 1993 Act)

Today, because of the phenomenal growth in international trade, some ports of entry are routinely open 24 hours a day, 7 days a week. And although performing inspectional services after normal working hours carries unique burdens and risks, which merit a higher rate of compensation than is otherwise provided under the provisions of the Federal Employees Pay Act (FEPA) (5 U.S.C. 5542), the U.S. Customs Service subscribes to the principle that Customs Officers' compensation for overtime and work on Sundays and holidays should be directly related to the number of hours actually worked.

Due to inequities that developed under the provisions of the 1911 Act, Congress passed the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, 107 Stat. 312, 668 (August 4, 1993), Title XIII of which pertains to Customs Officer Pay Reform (the 1993 Act). In general, while the amendments retain the basic double-time compensation rate for Customs Officers performing overtime services, the three sections of Part II (§§ 13811–13813) impact Customs Officers' pay and compensation in the following way. Section 13811 creates a new and exclusive compensation and pay schedule for Customs Officers providing inspectional services after normal working hours, and requires the Secretary of the Treasury to prevent certain abuses pertaining to overtime assignments. Section 13812 allows overtime compensation to be included in the calculation of Federal retirement annuities for Customs Officers, up to an amount equal to 50 percent of the applicable statutory pay limitation, and authorize foreign language proficiency awards. Section 13813 makes certain adjustments concerning reimbursements from the Customs User Fee Account.

Section 13811

Section 13811 of the 1993 Act amends 19 U.S.C. 261, 267, and 1450 (and repeals 19 U.S.C. 1451a) to create a new and exclusive compensation arrangement for Customs Officers who perform inspectional overtime services, including work performed on a callback basis. However, this section also restricts the amount of overtime compensation payable to actual overtime hours worked, and treats certain callback duty as being not less

than two hours of work in duration and provides limited additional compensation (three hours of pay) for certain commuting time.

This section also authorizes the payment of newly-created premium pay differentials (pay in excess of base pay) for certain shiftwork performed between the hours of 3 p.m. and 8 a.m. (15% and 20%, depending on when the majority of regularly-scheduled hours are worked), and work performed on Federal holidays (double-time pay) and Sundays (time-and-a-half pay), but further provides that this premium pay will not be treated as constituting overtime pay or compensation for any purpose. This section also limits the amount of overtime compensation and premium pay a Customs Officer can earn in a year, by including both in the applicable fiscal year pay limitation, and makes this compensation and pay schedule exclusive, so that a Customs Officer who receives overtime compensation or premium pay under the new legislation may not receive pay or other compensation for that work under any other provision of law.

Section 13811 also requires the Secretary of the Treasury to prevent the disproportionately more frequent assignment of overtime work to Customs Officers who are near to retirement, and the abuse of callback work assignments and commuting time compensation. In addition, this section limits the applicability of the new compensation and pay schedule by defining eligible "Customs Officers" as those performing functions properly classified as Customs Inspectors and Canine Enforcement Officers. Customs Employees other than Customs Officers who perform overtime services will continue to be paid for such services under the provisions of FEPA, as provided at 19 CFR 24.17. Further, this section authorizes Customs to change the administrative workweek to include Sunday, changes the overtime computation rules, deletes the provisions of 19 U.S.C. 1451a, which pertain to compensation for inspectional services payable by the United States, defines the term "holiday" (broadened to include those declared by Executive Orders), and makes certain other conforming changes to 19 U.S.C. 1450, which pertains to the unlading of vessels after the regular duty hours of a port, *i.e.*, correct the phrase "at night" to read "during overtime hours."

Thus, under the provisions of § 13811, overtime compensation or premium pay differentials will be paid to Customs Officers performing inspectional services as follows:

(1) For work performed in excess of the 40 hours of the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day, overtime compensation will be paid at an hourly rate of pay that is equal to 2 times the hourly rate of the officer's basic pay (not including any premium pay);

(2) For overtime work performed on a callback basis, a Customs Officer may be entitled to: (a) Pay for a minimum of two hours of work regardless of the time actually worked; and, (b) commute compensation in an amount equal to three times the hourly rate of the officer's basic pay (not including any premium pay);

(3) For regularly-scheduled work performed between the hours of 3 p.m. and 8 a.m., premium pay will be paid based on differentials of 15 percent and/or 20 percent, depending on when the majority of the regularly-scheduled shift work occurs;

(4) For regularly-scheduled work performed on Sundays, premium pay will be paid based on a differential of 50 percent of the hourly rate of base pay for hours worked, and;

(5) For regularly-scheduled work performed on holidays, premium pay will be paid based on a differential of 100 percent of the hourly rate of base pay for hours worked.

Sections 13812 and 13813

Sections 13812 and 13813 of the Customs Officer Pay Reform legislation are not covered in this document. Section 13812 amends 5 U.S.C. 8331(3) to provide for the inclusion of certain overtime earnings, up to 50 percent of the applicable fiscal year pay limitation, in the calculation of retirement benefits, and to authorize foreign language proficiency cash awards. Section 13813 amends section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) to provide for overtime compensation and premium pay reimbursements from the Customs User Fee account, which is not a regulatory matter.

Changes to Regulations

As the provisions of section 13811 of the 1993 Act impact on the Customs Regulations, the following sections of the Customs Regulations must be amended: §§ 4.30, 24.16, 24.17, 24.18, 122.38, 123.8, and 134.55. In § 4.30, paragraph (g) references the license to unlade vessels "at night," which under the 1911 Act meant between the hours of 5 p.m. and 8 a.m. Under the 1993 Act, however, reimbursable inspectional services may be performed at any time during a day. Accordingly, this section is amended by deleting the limiting time frame for overtime compensation; the section is so amended by substituting the phrase "during overtime hours" for the phrase "at night." The provisions of §§ 122.38 and 123.8 are similarly amended to refer to "during overtime hours" instead of "at night."

Section 24.16 is revised, in part, to reflect the new and exclusive overtime compensation and premium pay provisions of the 1993 Act, applicable only to those Customs Officers performing inspectional services; however, paragraphs (a) and (c) are retained, for the most part, without change. Since § 24.16 now has a restricted application, § 24.17 is amended and revised to apply to Customs employees performing other reimbursable services that will continue to be paid for such services under the provisions of the FEPA.

In § 24.18, the legal citation for § 5 of the Act of February 13, 1911, is amended by adding § 261, to reflect the current amendment to both 19 U.S.C. 267 and 261. In § 134.55, paragraph (b)(2) refers to Customs Officers and employees and overtime compensation within the context of § 24.16 only. To make it clear that only Customs Officers performing reimbursable overtime inspectional services are eligible to receive overtime compensation and premium pay under the provisions of § 24.16 and that Customs employees performing other reimbursable services will be compensated under the provisions of the FEPA, a reference to § 24.17 is added, as this section provides for compensation for such reimbursable overtime services.

Work Assignment Priorities

In an effort to address Congressional concerns regarding the abuse of callback work assignments and commuting time compensation, and the disproportionately more frequent assignment of overtime work to Customs Officers who are near to retirement, Customs has identified three work assignment priorities which Customs managers will follow in the assignment of regularly-scheduled and overtime work: (1) alignment of staff with the Customs workload, (2) equalization of Customs Officer's overtime earnings within participating groups, and (3) assessment of the least cost to the agency or other interested parties. These priorities are established and contained in § 24.16(d).

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public

inspection in accordance with § 552 of the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b)) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th St., NW, 4th floor, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Although public comments are solicited by this document, pursuant to the provisions of 5 U.S.C. 553(a)(2), public notice is inapplicable to this interim regulation because it is a matter relating to agency management and personnel; the regulation implements compensation and management changes applicable to Customs inspectional personnel mandated by statute. Furthermore, because the effective date for these changes is statutory, pursuant to 5 U.S.C. 553(d)(3), good cause exists for dispensing with the requirement for a delayed effective date. Since this action is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Harbors, Imports, Maritime carriers, Merchandise, Passenger vessels, Reporting and recordkeeping requirements, Seamen, Vessels, Yachts.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Wages.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Bonds, Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 134

Country of origin, Customs duties and inspection, Labeling, Marking, Packaging and containers.

Amendments to the Regulations

For the reasons stated above, Title 19, Chapter 1, parts 4, 24, 122, 123, and 134 of the Customs Regulations (19 CFR parts 4, 24, 122, 123, and 134) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

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

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1433, 1446, 1448, 1450–1454, 1490;

* * * * *

2. In § 4.30, paragraph (g) is amended by removing the words "at night" and adding, in their place, the words "during overtime hours".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 is revised, in part, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 261, 267, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624; 31 U.S.C. 9701, unless otherwise noted.

* * * * *

Section 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623; 46 U.S.C. 2111, 2112;

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112;

* * * * *

2. In § 24.16:

a. the section heading is revised;

b. paragraph (a) is amended by removing the third sentence and adding, in its place, a new sentence;

c. paragraph (b) is revised;

d. paragraphs (d) through (h) are revised; and

e. paragraphs (i) through (k) are removed.

The additions and revisions read as follows:

§ 24.16 Overtime services; overtime compensation and premium pay for Customs Officers; rate of compensation.

(a) *General.* * * * Customs Officers entitled to overtime compensation and premium pay, pursuant to the provisions of the Customs Officer Pay Reform legislation (19 U.S.C. 261 and 267, as amended), shall not receive pay or other compensation for that work under any other provision of law. * * *

(b) *Definitions.* For purposes of this section, the following words and phrases have the meanings indicated:

(1) *The Act* refers to Part II, Subchapter D of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66.

(2) *Administrative workweek* means a period of seven consecutive calendar days beginning Sunday and continuing through the following Saturday.

(3) *Base pay* means the rate of pay fixed by law or administrative action for the position held by the Customs Officer.

(4) *Callback* means the irregular or occasional overtime work performed by a Customs Officer either on a day when work was not regularly scheduled for that officer or which begins at least one hour after the end of the officer's regularly-scheduled tour of duty and ends at least one hour before the beginning of the following regularly-scheduled assignment and requires the officer to return to a place of work.

(5) *Commute compensation* means that compensation a Customs Officer is entitled to for returning to work, under certain conditions, to perform an overtime work assignment. Commute compensation shall be deemed overtime compensation and is includable for Federal retirement benefit purposes.

(6) *Continuous assignment* means the grouping of multiple overtime assignments, performed by the same Customs Officer(s), which are separated by periods of non-work, into a single unit for computation of pay purposes.

(7) *Customs Officer* means only those individuals assigned to position descriptions entitled "Customs Inspector," "Supervisory Customs Inspector," "Canine Enforcement Officer," or "Supervisory Canine Enforcement Officer."

(8) *Fiscal year pay cap* refers to the statutory maximum, in effect for the year involved, in overtime and premium pay a Customs Officer shall receive in that fiscal year. This aggregate limit may be waived by the Commissioner of Customs or his/her designee in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

(9) *Holiday* means any day designated as a holiday by a Federal statute or declared by an Executive order.

(10) *Intermittent employee* is a non-full-time employee who does not have a regularly-scheduled tour of duty.

(11) *Majority of hours*, within the context of night work differentials, means more than half of the hours of the daily regularly-scheduled tour of duty.

(12) *Night work* means regularly-scheduled work performed by a Customs Officer on tours of duty, in which a majority of the hours worked occur between the hours of 3:00 p.m. and 8:00 a.m.

(13) *Overtime pay* means that compensation given to a Customs Officer in excess of the officer's base pay for performing officially-assigned work in excess of the 40 hours of the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day, which may include commute compensation as defined at paragraph (b)(5) of this section. Overtime pay, within the limits prescribed by the Act, is includable for Federal retirement benefit purposes.

(14) *Participating group* means an identifiable set of Customs Officers whose overtime and commute compensation earnings are considered in total and apart from those of other Customs Officers for equalization averaging purposes.

(15) *Premium pay differential* means that pay given to a Customs Officer in excess of the officer's base pay for work on holidays, Sundays and at night. Premium pay is not includable for Federal retirement benefit purposes.

(16) *Regularly-scheduled administrative workweek* means, for a full-time employee, the 40 hour period within an administrative workweek within which the employee is regularly scheduled to work, exclusive of any overtime; for a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

* * * * *

(d) *Work Assignment Priorities.* The establishment of regularly-scheduled administrative tours of duty and assignments of Customs Officers to overtime work under this section shall be made in accordance with the following priorities, listed below in priority order:

(1) *Alignment.* Tours of duty should be aligned with the Customs workload.

(2) *Equalization.* Performing assigned overtime work is a condition of employment for Customs Officers. The overtime pay and commute compensation earnings of all Customs Officers within a designated participating group shall be equalized based upon the earnings range described in this paragraph. Unless operational considerations dictate otherwise, Customs Officers shall not be assigned to overtime if their total overtime earnings exceed the average overtime earnings of their participating group by an amount that is equal to 5 percent of the fiscal year pay cap. Customs Officers shall be required to work assigned overtime if their total overtime earnings are less than the average overtime earnings of their participating group by an amount that is equal to 5 percent of the fiscal year pay cap unless operational considerations dictate otherwise or the overtime pay for the assignment would result in the Customs Officer exceeding the fiscal year pay cap. The agency may consider new employees, or employees who return to their duty station after an extended absence, or employees who are entering a participating group, to have obtained the average overtime earnings of that group for equalization averaging purposes.

(3) *Least Cost.* All work assignments should be made in a manner which minimizes the cost to the government or party in interest. Decisions, including, but not limited to, what hours should be covered by a tour of duty or whether an assignment should be treated as a continuous assignment or subject to commute compensation, should be based on least cost considerations. However, base pay comparison of eligible employees shall not be used in the determination of staffing assignments.

(e) *Overtime Pay.* (1) A Customs Officer who is officially assigned to perform work in excess of the 40 hours in the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day shall be compensated for such overtime work performed at 2 times the hourly rate of the officer's base pay, including any locality pay, but not including any premium pay differentials for holiday, Sunday, or night work.

(2) The computation of the amount of overtime worked by a Customs Officer is subject to the following conditions:

(i) *Overtime that is less than one hour.* A quarter of an hour shall be the smallest fraction of an hour used for paying overtime under this subpart. When work is performed in other than the full quarter hour, seven minutes or less shall be rounded down and eight minutes or more shall be rounded up and the Customs Officer shall be paid accordingly.

(ii) *Absence during overtime.* Except as expressly authorized by statute, regulation, or court order (i.e., military leave, court leave, continuation of pay under the workers compensation law, and back pay awards), a Customs Officer shall be paid for overtime work only when the officer reports for the work assignment.

(f) *Special provisions relating to overtime work on a callback basis*—(1) *Minimum duration and callback requirements.* Any work for which overtime pay is authorized and for which the Customs Officer is required to return to a place of work shall be treated as being at least 2 hours in duration, but only if such work begins at least 1 hour after the end of any previous regularly-scheduled work assignment and ends at least 1 hour before the beginning of the following regularly-scheduled work assignment. An unpaid meal period shall not be considered a break in service for purposes of callback.

(2) *Commute compensation—Eligibility.* A Customs Officer shall be compensated for overtime when the officer is called back and officially assigned to perform work that:

(i) Is in excess of the 40 hours in the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day;

(ii) Begins at least 1 hour after the end of any previous regularly-scheduled work assignment;

(iii) Commences more than 2 hours prior to the start of the officer's next regularly-scheduled work assignment;

(iv) Ends at least 1 hour before the beginning of the officer's next regularly-scheduled work assignment; and,

(v) Commences less than 16 hours after the officer's last regularly-scheduled work assignment. The 16 hours shall be calculated from the end of the Customs Officer's last regularly-scheduled work assignment.

(3) *Commute compensation—Amount.* Commute compensation under this section shall be in an amount equal to 3 times the hourly rate of the Customs Officer's base pay for a one hour period, which includes applicable locality pay, but does not include any premium pay differentials for holiday, Sunday or night work. The Customs Officer shall be entitled to this amount for an eligible commute regardless of the actual commute time. However, an unpaid meal period shall not be considered a break in service for purposes of commute compensation. In addition, to prevent the inappropriate payment of commute compensation, a Customs Officer who is officially assigned to perform overtime work, which is scheduled to begin within 1 hour of the end of the officer's regularly-scheduled tour of duty, shall be held in a continuous overtime pay status from the time the officer's regularly-scheduled tour of duty ends until the end of the assignment.

(4) *Maximum Compensation for Multiple Assignments.* If a Customs Officer is assigned to perform more than one overtime assignment, in which he is required to return to a place of work more than once in order to complete the assignment, and otherwise satisfies the callback requirements of paragraph (f)(1) of this section, then the officer shall be entitled to commute compensation each time the officer returns to the place of work provided that each assignment commences less than 16 hours after the officer's last regularly-scheduled work assignment. However, in no case shall the compensation be greater than if all assignments were treated as one continuous callback assignment.

(g) *Premium pay differentials.* Premium pay differentials may only be paid for non-overtime work performed on holidays, Sundays, or, at night (work performed, in whole or in part, between the hours of 3:00 p.m. and 8:00 a.m.). A Customs Officer shall receive payment for only one of the differentials for any one given period of work. The order of precedence for the payment of premium pay differentials is holidays, Sundays, and night work.

(1) *Holiday differential.* A Customs Officer who performs any regularly-scheduled work on a holiday shall receive pay for that work at the officer's hourly rate of base pay, including locality pay as authorized, plus premium pay amounting to 100 percent of that base rate. Holiday pay shall only be paid for the time worked. Intermittent employees are not entitled to holiday differentials.

(i) When a holiday is designated by a calendar date, for example, January 1, July 4, November 11, or December 25, the holiday will be observed on that date regardless of Saturdays and Sundays. Customs Officers who perform regularly-scheduled, non-overtime, tours of duty on those days shall be paid the holiday differential. Holidays not designated by a specific calendar date, such as President's Day (the third Monday in February), shall be observed on that date, and Customs Officers who perform regularly-scheduled, non-overtime, work on those days shall be paid the holiday differential.

(ii) Inauguration Day (January 20 of each fourth year after 1965), is a legal public holiday for the purpose of the Act. Customs Officers whose duty locations are in the District of Columbia, or Montgomery and Prince George counties in Maryland, or Arlington and Fairfax counties in Virginia, or in the cities of Alexandria and Falls Church in Virginia, who perform regularly-scheduled, non-overtime, work on that day shall be paid the holiday differential. When Inauguration Day falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is the legal public holiday.

(iii) If a legal holiday falls on a Customs Officer's regularly-scheduled day off, the officer shall receive a holiday "in lieu of" that day. Holidays "in lieu of" shall not be granted for Inauguration Day. A Customs Officer who works on an "in lieu of" holiday shall be paid the holiday differential.

(iv) If a Customs Officer is assigned to a regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the 24-hour calendar day of the holiday—for example, a tour of duty starting at 8 p.m. the day prior to the holiday through 4 a.m. on the holiday, and another tour of duty starting at 8 p.m. on the holiday through 4 a.m. on the day following the holiday—the management official in charge of assigning work shall designate one of the tours of duty as the officer's holiday shift and the officer shall receive holiday differential for work performed during the entire period of the designated holiday shift. The Customs Officer shall not receive holiday differential for any of the work performed on the tour of duty which has not been designated as the holiday shift but will be eligible for Sunday or night differential as appropriate.

(v) Customs Officers who are regularly scheduled, but not required, to work on a holiday shall receive their hourly rate of base pay for that 8-hour tour plus any Sunday or night differential they would have received had the day not been designated as a holiday. To receive holiday pay under this paragraph, the Customs Officer must be in a pay status (at work or on paid leave), either the last work day before the holiday or the first work day following the holiday.

(2) *Sunday differential.* A Customs Officer who is regularly scheduled to work on a Sunday that is not a Federal holiday shall receive pay for work performed at the officer's hourly rate of base pay, including locality pay as authorized, plus a premium pay of 50 percent of that hourly rate of base pay for the work performed. The 50 percent differential shall not be applicable to overtime work performed on a Sunday. A Customs Officer whose regularly-scheduled work occurs in part on a Sunday, that is not a Federal holiday, and in part on the preceding or following day, shall receive a premium of 50 percent of the officer's hourly rate of base pay for the hours of work which are performed between 12:01 a.m. and 12 Midnight on Sunday. Intermittent employees are not entitled to Sunday differentials.

(3) *Night work differentials.* A Customs Officer shall receive a night premium pay differential for work performed during the officer's regularly-scheduled administrative workweek, including locality pay as authorized, but shall not receive a night premium pay differential for work performed during overtime assignments. When all or the majority of the hours of a Customs Officer's regularly-scheduled work occur between 3 p.m. and 8 a.m., the officer shall receive a night differential premium for all the hours worked during the assignment. Intermittent employees are not entitled to night differentials.

(i) *3 p.m. to Midnight.* If more than half of the hours of a Customs Officer's regularly-scheduled shift occur between the hours of 3 p.m. and 12 Midnight, the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 15 percent of that hourly rate of base pay for all the hours worked.

(ii) *11 p.m. to 8 a.m.* If more than half of the hours of a Customs Officer's regularly-scheduled shift occur between the hours of 11 p.m. and 8 a.m., the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 20 percent of that hourly rate of base pay for all the hours worked.

(iii) *7:30 p.m. to 3:30 a.m. Shift.* If the regularly-scheduled shift of a Customs Officer is 7:30 p.m. to 3:30 a.m., the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 15 percent of that hourly rate of base pay for the work performed between 7:30 p.m. and 11:30 p.m. and 20 percent of that hourly rate of base pay for the work performed between 11:30 p.m. and 3:30 a.m.

(iv) *Work Scheduled During Two Differential Periods.* A Customs Officer shall only be paid one night differential rate per regularly-scheduled shift, except as provided for in paragraph (iii) above. A Customs Officer whose regularly-scheduled work occurs during two separate differential periods shall receive the night differential premium rate which applies to the majority of hours scheduled.

(v) *Night Work Which Occurs in Part on a Sunday.* When a Customs Officer's regularly-scheduled shift occurs in part on a Sunday, the officer shall receive Sunday differential pay for those hours of the work which are performed during the 24 hour period of the Sunday, and the night differential pay for those hours which do not fall on the Sunday. For example, a Customs Officer who is

assigned and works a shift which starts at 8 p.m. Sunday and ends at 4 a.m. Monday, shall receive 4 hours of Sunday premium pay and 4 hours of night pay. The night differential pay shall be calculated based on the rate applicable to the particular tour of duty.

(h) *Limitations.* Total payments for overtime/commute, and differentials for holiday, Sunday, and night work that a Customs Officer is paid shall not exceed any applicable fiscal year pay cap established by Congress. The Commissioner of Customs or the Commissioner's designee may waive this limitation in individual cases to prevent excessive costs or to meet emergency requirements of the Customs Service. However, compensation awarded to a Customs Officer for work not performed, which includes overtime awards during military leave or court leave, continuation of pay under workers compensation law, and awards made in accordance with back pay settlements, shall not be applied to any applicable pay cap calculations.

3. In § 24.17, the words "officer or" or "officers or" are removed, wherever they appear.

4. Section 24.17 is further amended by:

a. revising the section heading;

b. removing the word "officer" in the first sentence of paragraph (d) introductory text and adding, in its place, the word "employee";

c. removing the word "officer" in the first sentence of paragraph (d)(1) and adding, in its place, the word "employee";

d. removing the words "services of a Customs employee temporarily assigned to act as a Customs officer" in the second sentence of paragraph(d)(1) and adding, in their place, the words "such services";

e. removing the word "officer" in the first sentence of paragraph (d)(3) and adding, in its place, the word "employee"; and,

The revision reads as follows:

§ 24.17 Reimbursable services of Customs employees.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

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

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

§ 122.38 [Amended]

2. In § 122.38, paragraph (a)(2) is amended by removing the words "at night" and adding, in their place, the words "during overtime hours" in the parenthetical matter at the end of the sentence.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

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

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

§ 123.8 [Amended]

2. In § 123.8, paragraph (a) is amended by removing the words "at night" and adding, in their place, the words "during overtime hours" in the second sentence.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is amended to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

§ 134.55 [Amended]

2. In § 134.55, paragraph (b)(2) is amended by adding the reference "or § 24.17" after the reference to "§ 24.16".

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: December 17, 1993.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 93–31561 Filed 12–27–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1926]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements Chapter 16 of the North American Free Trade Agreement (NAFTA), and sections 341 and 342 of the North American Free Trade Agreement Implementation Act, (the Implementation Act), signed December 8, 1993, which address the movement of business persons among the United States, Canada, and Mexico. This rule amends regulations concerning two nonimmigrant visa classifications, treaty traders and investors and intracompany transferees, and promulgates new regulations for a category for professionals under INA section 214(e), as amended by the Implementation Act. The new regulations spell out the requirements for classification as a NAFTA professional. The Immigration and Naturalization Service and the Department of Labor will also publish necessary regulations and/or issue appropriate instructions.

DATES: This rule shall be effective on January 1, 1994 or on the date NAFTA enters into force if that date is subsequent to January 1, 1994. The Department will publish a document confirming the effective date if the effective date is not January 1. Interested persons are invited to submit written comments on or before January 30, 1994.

ADDRESSES: Written comments with a reference to this rule to insure proper and timely handling may be submitted in duplicate to: Chief, Legislation and Regulations Division, Visa Office, Washington, DC 20522–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulation Division, Visa Office, (202) 663–1204.

SUPPLEMENTARY INFORMATION:

General

The United States Government concluded the North American Free Trade Agreement (NAFTA) with the governments of Canada and Mexico in December 1992. Congressional approval was given in the North American Free Trade Agreement Implementation Act (Implementation Act), which was signed into law on December 8, 1993. Section 341 of the Implementation Act specifically implements Chapter 16 of NAFTA, entitled "Temporary Entry for Business Persons", and addresses the movement of business persons among the Parties to the Agreement. Chapter 16 is patterned on the similarly titled Chapter 15 of the United States Canada Free Trade Agreement (CFTA). This chapter relates to four nonimmigrant visa categories in the U.S. Immigration and Nationality Act: Temporary visitors for business under INA 101(a)(15)(B); treaty trader and investors under INA 101(a)(15)(E); intracompany transferees under INA 101(a)(15)(L); and NAFTA professionals under INA 214(e) as amended by the Implementation Act.

Section 104 of the Immigration and Nationality Act gives the Secretary of State authority to promulgate the necessary regulations regarding the issuance and refusal of visas.

Accordingly, this rule makes the necessary changes to title 22 of the CFR to implement the Implementation Act in regard to visa issues.

Section 341 of the Implementation Act has two provisions that require visa-related regulatory action. First, the law authorizes the issuance of visas to citizens of Canada or Mexico who qualify as professionals under new INA 214(e)(2)–(5). Secondly, the law adds a new INA 214(j), which restricts issuance of a visa to a citizen of Canada or Mexico who is applying for a visa as a treaty trader or investor, an intracompany transferee, or a professional, if the admission of that person might adversely affect a labor dispute.

Professionals

This category was established by section 214(e) of the INA to implement the United States-Canada Free Trade Agreement (CFTA). Under this category a Canadian citizen who is a professional as defined by CFTA Annex 1502.1 (i.e., someone engaging in one of the listed professional activities and possessing the requisite professional credentials) may accept employment in the United States to engage in that professional activity. Section 341 of the Implementation Act amends section 214(e) of the INA to authorize the issuance of visas to Mexican and Canadian professionals as well as their derivatives. Consequently, spouses and children (as defined by the INA) of the principal can seek admission to the United States under this category.

The amended INA 214(e) expressly treats this professional category as if it were a nonimmigrant visa classification under INA 101(a)(15) for all purposes. Consequently, Canadian citizens who are generally exempt from the visa requirement may seek visa issuance, if they so desire, but Mexican citizens must apply for a visa to gain admission to the United States under this category. Unlike Canadian citizens, Mexican citizens are also subject to procedural requirements similar to those imposed on applicants for H–1A and H–1B visa classifications under INA 101(a)(15)(H)(i)(a) and (b). The prospective employer must file a labor condition attestation and obtain approval of a petition filed with INS. Furthermore, an annual numerical limitation of 5,500 has been established for Mexican citizens in this category. This professional category is designed solely for temporary entry and does not constitute a permanent or quasi-permanent visa category. The Department is therefore proposing general definitional standards which seek to provide guidance to prospective users of this category.

Labor Disputes

Chapter 16, article 1603, paragraph 2, of NAFTA authorizes each party to deny employment authorization to an alien whose "temporary entry * * * might affect adversely: (a) The settlement of any labor dispute that is in progress at the place or intended place of employment; or (b) the employment of any person who is involved in such dispute." This provision is implemented by section 341(c) of the Implementation Act which amends INA 214 by adding a new subsection (j) which in effect mandates that citizens of Canada or Mexico not be accorded nonimmigrant classification under INA 101(a)(15)(E) as treaty traders or investors, INA 101(a)(15)(L) as intracompany transferees, or INA 214(e) as professionals, if the admission of such aliens would affect a labor dispute (strike or lockout) in the fashion described above. Consequently, paragraph (f) is added to § 41.51 (treaty aliens), paragraph (e) to § 41.54 (intracompany transferees), and paragraph (c) to new section § 41.59 (professionals) to implement those provisions of INA 214(j).

Application of this provision will be triggered when the Secretary of Labor certifies to the Attorney General that these adverse conditions are present. The alien may establish, pursuant to regulations to be promulgated by the Attorney General, that his or her employment will not affect adversely the settlement of the strike or lockout. The new regulations provide for certification by the Attorney General that the showing has not been made.

Interim Rule

The implementation of this rule as an interim rule, with provision for post-promulgation public comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(3). NAFTA is expected to enter into force on January 1, 1994, at which time the INA amendments made by the Implementation Act will also take effect. (See sec. 342 of the Implementation Act.) This rule must take effect at the same time.

In accordance with 5 U.S.C. 605(b), it is certified that this rule will not have a "significant economic impact" on a substantial number of small entities. This rule does not have Federalism implications warranting the preparation of Federal Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and certified to be consistent therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Intracompany Transferees, (executives, managers, and specialists), Professionals under the North American Free Trade Agreement, Treaty trader or investor, Visas.

Accordingly, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 is revised to read as follows:

Authority: Pub. L. 82–414, sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Pub. L. 103–182, sec. 341, 107 Stat. 2057.

2. Sec. 41.51 is revised by adding paragraph (f) to read as follows:

§ 41.51 Treaty trader or investor.

* * * * *

(f) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

3. Sec. 41.54 is amended by redesignating paragraphs (e) and (f) to (f) and (g) and adding a new paragraph (e) to read as follows:

§ 41.54 Intracompany transferees (executives, managers, and specialists).

* * * * *

(e) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

4. Sec. 41.59 is added to read as follows:

§ 41.59 Professionals under the North American Free Trade Agreement.

(a) *Requirements for classification as a NAFTA professional.* An alien shall be classifiable under the provisions of INA 214(e) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) In the case of citizens of Mexico, the consular officer has received from INS an approved petition according classification as a NAFTA Professional to the alien or official confirmation of such petition approval, or INS confirmation of the alien's authorized stay in such classification; or

(3) In the case of citizens of Canada, the alien shall have presented to the consular officer sufficient evidence of an offer of employment in the United States requiring employment of a person in a professional capacity consistent with NAFTA Chapter 16 Annex 1603 Appendix 1603.D.1 and sufficient evidence that the alien possesses the credentials of that profession as listed in said Appendix; or

(4) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Visa validity.* The period of validity of a visa issued pursuant to paragraph (a) of this section may not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section. The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa. The period of validity of a visa issued pursuant to subparagraph (a)(3) of this section may not exceed the period established on a reciprocal basis.

(c) *Temporary stay.* The alien must satisfy the consular officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart.

(d) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

Dated: December 17, 1993.

David L. Hobbs,

Deputy Assistant Secretary for Consular Affairs.

[FR Doc. 93–31527 Filed 12–27–93; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for Economic Policy

31 CFR Part 129

Benchmark Survey of U.S. Ownership of Foreign Long-Term Securities as of March 31, 1994

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements and availability of survey forms and instructions.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey to measure the magnitude, aggregate market value, and character of foreign long-term securities owned by United States persons (defined below) for portfolio investment purposes. The current survey is the first comprehensive attempt to evaluate U.S. long-term portfolio investment abroad since May 1943. The data that will be collected on this survey will be used to improve the measurement of official balance of payments and national income accounts and the international investment position of the United States.

The survey has been designed to collect accurate and complete information on the ownership of foreign long-term securities by United States persons as of March 31, 1994 while keeping reporting requirements to a minimum. For the purposes of this survey, foreign long-term securities include all foreign equities, including subscription rights and warrants, and all foreign debt securities whose term-to-maturity from date of issue (i.e., original maturity) is more than one year. More detailed instructions on what securities to report (and what not to report) on this survey are provided in the Survey Forms and Instructions.

This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in the section below on Who Must Report that they must respond to, and comply with, this survey. United States persons who meet the reporting requirements but who do not receive a set of the survey forms and instructions should contact the Department of Treasury at (202) 622–2240 to obtain a copy.

DATES: All United States persons who receive a set of survey forms and instructions must acknowledge their receipt by December 31, 1993 or 30 days after receipt, whichever is later. More detailed instructions on how to acknowledge receipt of the *Survey Forms and Instructions* are provided in the ACTION GUIDE to the Department of the Treasury Benchmark Survey of U.S. Ownership of Foreign Long-Term Securities as of March 31, 1994, which is contained in the survey forms and instructions booklet. All reports, including applications to file for an exemption from reporting on this survey, must be mailed to the Department of the Treasury by June 30, 1994.

ADDRESSES: All reports, including acknowledgements of receipt of the Survey Forms and Instructions as well as applications to file for an exemption from reporting on this survey, should be mailed to: Department of the Treasury, Outbound Portfolio Investment Survey Project, room 5438 Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Milton Pappas, Director of the Outbound Portfolio Investment Survey, Office of the Assistant Secretary for Economic Policy, Department of the Treasury, Washington, DC 20220, Telephone (202) 622–2240, FAX (202) 622–1294.

SUPPLEMENTARY INFORMATION: The International Investment and Trade in Services Act (22 U.S.C. 3101 *et. seq.*, [the Act]), as amended, and *E.O. 11961 of January 19, 1977 (42 FR 4321)*, as amended, authorizes the Department of Treasury to conduct a regular data collection program, including such studies and surveys as may be necessary and feasible, to secure current information on international portfolio investment, including (but not limited to) such information as may be necessary for computing and analyzing the balance of payments and international investment position of the United States. Regulations 31 CFR part 129 governing the current survey were published in the **Federal Register**, May 27, 1993, *58 FR 30707–30708*. It was stated in the Supplementary Information section that notice of specific surveys, including applicable report forms and instructions, would be published separately in the **Federal Register**.

Definitions

For purposes of reporting requirements on this survey:

(a) "Direct investment" means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

(b) "Foreign", when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States. International organizations such as the International Bank for Reconstruction and Development (IBRD), or World Bank, and the Inter-American Development Bank (IDB) are also considered to be foreign even if they are physically located in the United States.

(c) "Foreign person" means any person (defined below), including a United States citizen, resident outside the United States or subject to the jurisdiction of a country other than the United States.

(d) "Foreign security" means a security that is issued by legal entities organized under the laws and subject to the jurisdiction of the courts of a foreign country, such as a foreign business enterprise or government, and a security that is issued by an international organization such as the IBRD or the IDB. The types of foreign securities to report on this survey include all foreign equities, including subscription rights and warrants, and all foreign debt securities whose term-to-maturity from date of issue (i.e., original maturity) is more than one year.

(e) "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(f) "Portfolio investment" means any investment that is not direct investment.

(g) "United States", when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(h) "United States parent" means any United States person who owns or controls, directly or indirectly, 10 percent or more of the voting securities of an incorporate United States business enterprise, or an equivalent interest in an unincorporated United States business enterprise.

(i) "United States person" means any person (defined above), including a foreign citizen, resident in the United States or subject to the jurisdiction of the United States.

Who Must Report

All United States persons who manage the custody or safekeeping of foreign long-term securities for themselves and/or on behalf of other United States persons, if the total market value of these securities—aggregated over all accounts, including own custody accounts—is at least $20 million on an actual settlement-date basis as of March 31, 1994.

All United States persons who own foreign long-term securities and/or who have the authority to purchase or sell these types of securities on behalf of other United States persons, if the total market value of owned securities—aggregated over all United States funds under their management—is at least $5 million on an actual settlement-date basis as of March 31, 1994.

Any other United States persons who receive a set of survey forms and instructions.

How To Report

Respondents may file either single reports based on the consolidated business operations of the parent company and all its affiliates in the United States; or, if their normal business practice dictates, the parent company and its individual affiliates in the United States may file separate reports based on their respective business operations. Respondents who maintain multiple systems to manage the safekeeping of foreign long-term securities may file separate reports for each system.

Respondents who are submitting multiple reports for the same parent company should inform survey staff members at (202) 622–2240 that separate reports are being prepared and should obtain different control numbers for each submission. However, respondents must consolidate their own accounts and the accounts of all their affiliates in the United States to determine whether they are exempt from reporting on this survey. More detailed instructions on how to report on this survey, along with applicable report forms, are provided in the Survey Forms and Instructions.

Enforcement Provided by Law

Respondents are advised that United States persons who meet the reporting requirements set forth in this Notice and who fail to respond to, and to comply with, this survey may be subject to civil and/or criminal penalties provided by law, including injunctive relief ordering such person to comply; and, if an individual, to imprisonment not to exceed one year; any officer, director, employee, or agent of any corporation who knowingly participates in such failure to comply, upon conviction, may also be punished by a like fine, imprisonment, or both (22 U.S.C. 3105).

Dated: December 14, 1993.

Alicia H. Munnell,

Assistant Secretary for Economic Policy.

[FR Doc. 93–31241 Filed 12–27–93; 8:45 am]

BILLING CODE 4810–25–M

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; Participation in International Institutions' Development Projects in Vietnam

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations to announce the availability of a general license permitting participation by persons subject to U.S. jurisdiction in development projects in Vietnam formally proposed, approved, executed, funded or sponsored by an international institution listed in a new appendix A to the regulations, subject to certain registration and reporting requirements. Specific licenses may be issued to permit co-financing of or lending to such development projects. A further general license is added to permit banking institutions subject to U.S. jurisdiction to process transactions of the named international institutions with respect to Vietnam.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), Dennis P. Wood, Chief of Compliance Programs (tel.: 202/622–2490), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

In support of the President's decision of September 13, 1993, to recognize the recent steps taken by the Vietnamese government and encourage further progress on achieving the fullest possible accounting on U.S. prisoner of war and missing in action cases from the Vietnam war, the Office of Foreign Assets Control ("FAC") is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), to add § 500.576, which generally authorizes the participation by persons subject to U.S. jurisdiction in development projects in Vietnam formally proposed or approved for execution, funding or sponsorship by certain international institutions, such as the International Bank for Reconstruction and Development (the "World Bank"), the Asian Development Bank, the United Nations Development Program, and the World Health Organization. A list of qualified international institutions appears in new appendix A to the FACR.

Once a project (or a feasibility study for a project) has been formally proposed or approved by a qualified international institution for execution, funding or sponsorship by that institution (hereinafter referred to as a "Qualified Project"), persons subject to U.S. jurisdiction may, upon registration with FAC, provide both goods and services in relation to the Qualified Project, as contractors, subcontractors, or suppliers of related goods or services. An initial registration and annual reports are required to be filed with FAC with respect to the authorized transactions, as provided in § 500.576(d) and (e). No specific funding level on the part of qualified international institutions is required. This authorization also permits equity participation with qualified international institutions in Qualified Projects, as well as equity participation by persons subject to U.S. jurisdiction in entities in Vietnam, such as joint venture corporations, established exclusively to participate in Qualified Projects. Co-financing of or lending to Qualified Projects in Vietnam may be authorized by specific license on a case-by-case basis. Certain preparatory transactions may be undertaken by persons subject to U.S. jurisdiction with respect to proposed projects under specific licenses issued pursuant to FACR § 500.574, concerning executory contracts in which Vietnam or a Vietnamese national has an interest.

The authorization in § 500.576 does not permit performance of contracts or participation in development projects or feasibility studies for development projects prior to the formal proposal or approval of the projects or studies by a qualified international institution. Such participation is prohibited unless otherwise authorized, for example, by § 500.574 with respect to certain executory contracts in which Vietnam or a Vietnamese national has an interest. Section 500.413 is added to provide examples interpreting the scope of the authorization contained in this section.

Exports or reexports to Vietnam of goods and technical data or of the direct products of technical data (regardless of U.S. content), in connection with activities authorized by FAC with respect to Qualified Projects may require additional authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768–799.

The FACR are also amended to add § 500.577, authorizing by general license banking institutions subject to United States jurisdiction to process all transactions of qualified international institutions with respect to Vietnam.

Because the FACR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

This rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collection of information contained in FACR § 500.576(c) has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1501–****. Comments concerning the average annual burden and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503, with copies to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than February 28, 1994.

The collection of information in this rule is contained in FACR § 500.576(d) and (e). This information is required by the Office of Foreign Assets Control for compliance and enforcement purposes. This information will be used to determine the identity of organizations availing themselves of the general license in § 500.576, to determine whether persons subject to the FACR are in compliance with applicable requirements, and to determine whether and to what extent enforcement action is appropriate. The likely respondents are businesses.

Estimated total annual reporting and or recordkeeping burden: 600 hours.

The estimated annual burden per respondent/recordkeeper is expected to be 4 hours.

The estimated number of respondents and/or recordkeepers: 150.

Estimated annual frequency of responses: 1.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Blocking of assets, Cambodia, Communist countries, Currency, Exports, Finance, Foreign Claims, Foreign investment, Foreign trade, International organizations, North Korea, Penalties, Reporting and recordkeeping requirements, Securities, Services, Telecommunications, Travel restrictions, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948 Comp., p. 748.

Subpart D—Interpretations

2. Section 500.413 is added to subpart D to read as follows:

§ 500.413 Participation in certain development projects in Vietnam.

The following examples illustrate the scope of the authorization in § 500.576 for dealings in property in which Vietnam or a Vietnamese national has an interest with respect to development projects in Vietnam formally proposed or approved for execution, funding or sponsorship by a qualified international institution listed in appendix A to this part ("Qualified Projects").

Example # 1: The Government of Vietnam ("Vietnam") approaches a U.S. financial

consulting firm (the "U.S. Consulting Firm") for advice on building cement plants in Hanoi and Ho Chi Minh City. The project might be eligible for funding by the Asian Development Bank (the "ADB"), and Vietnam wants the U.S. Consulting Firm's assistance in conducting a feasibility study for submission to the ADB. Since the project has not yet been formally proposed or approved for funding by the ADB, no involvement of the U.S. Consulting Firm is authorized pursuant to § 500.576. However, had the ADB formally proposed the project in its monthly *ADB Business Opportunities* as a project being considered for funding, or had it funded the feasibility study, § 500.576 would authorize the U.S. Consulting Firm's transactions.

Example # 2: Upon ADB approval of funding for the cement plant project, a U.S. company (the "U.S. Company") forms a joint venture with a Vietnamese company to bid on construction of the cement plants in Hanoi and Ho Chi Minh City. The joint venture's bid is successful, and it purchases construction equipment from the United States, financed by a U.S. bank and insured by a U.S. company. Several items are sourced from the United States during construction, including cement equipment, which is covered by a ten-year service and maintenance agreement. The joint venture agreement calls for the continued management and operation of the plants by the U.S. Company after completion, and for the insurance of the plants by a U.S. insurance company. Each of these transactions with respect to the Qualified Project is authorized by § 500.576.

Example # 3: The International Finance Corporation ("IFC") offers equity investment in a Vietnamese company to finance environmental safeguards for drilling operations in offshore oil fields. Various U.S. investors, including venture capital companies, brokerage firms, and investment banks contribute capital and receive shares in the Vietnamese company. This equity investment in a Qualified Project is authorized by § 500.576. The U.S. companies purchasing these shares as part of the IFC-sponsored development project may hold or resell them, including resale to other persons subject to U.S. jurisdiction. Shares acquired by entities not subject to U.S. jurisdiction may not then be purchased or repurchased by a person subject to U.S. jurisdiction.

Example # 4: (a) An Indonesian company (the "Contractor") is a successful bidder on a Qualified Project, and hires a U.S. law firm to represent it in contract negotiations with Vietnam to build a fish processing and canning facility in Vietnam funded by the World Bank. The law firm may represent the Contractor throughout the course of the project pursuant to § 500.576, once the project has been formally proposed or approved for funding by the World Bank.

(b) Once the Qualified Project is underway, the Contractor purchases equipment manufactured in France by a French company. The long-term servicing of the equipment, however, will be provided by the French company's U.S. subsidiary. The service transactions are authorized pursuant to § 500.576.

(c) After the processing facility is completed, Vietnam hires a U.S. marketing firm to develop marketing strategies for the product worldwide. It further asks the marketing firm to execute the strategies it devises and to represent the product in South-East Asia, including the domestic market in Vietnam. The marketing firm in turn would hire the brokerage services of a U.S. citizen domiciled in Thailand for the sale of the product to that country. These transactions are outside the scope of § 500.576, and violate § 500.201, because they are not directly incident to the Qualified Project funded by the World Bank.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Section 500.576 is added to subpart E to read as follows:

§ 500.576 Authorization of transactions concerning certain development projects in Vietnam.

(a) All transactions by persons subject to U.S. jurisdiction in connection with participation in development projects in Vietnam formally proposed or approved for execution, funding or sponsorship by the international institutions listed in appendix A to this part ("Qualified Projects") are authorized. For purposes of this section, Qualified Projects include investment projects, structural adjustment lending, sector adjustment lending, International Monetary Fund balance-of-payments support, and general development assistance including grants, technical assistance, and loans.

(b) Persons subject to U.S. jurisdiction may provide both goods and services to any party contracting to participate in a Qualified Project pursuant to the authorization contained in this section.

(1) Services may include financial, legal, consulting, insurance, shipping and other services.

(2) Persons subject to U.S jurisdiction may participate in Qualified Projects as suppliers, contractors, or subcontractors, and through joint ventures with third-country nationals and Vietnamese nationals.

(3) Persons subject to U.S. jurisdiction may finance, or guarantee the performance of, activities of U.S. participants in a Qualified Project; co-financing of or lending to the Qualified Project itself by a person subject to U.S. jurisdiction may be authorized by specific license pursuant to § 500.801. Illustrative examples of transactions covered by this section are set forth in § 500.413.

(c) Except as otherwise authorized, persons subject to U.S. jurisdiction may not participate in development projects in Vietnam that are bilaterally funded and administered, or in projects or feasibility studies prior to formal proposal or approval by a qualified international institution for its involvement in the project or study. If a qualified international institution formally proposes but thereafter rejects, terminates, or abandons a project, the project shall no longer constitute a Qualified Project for purposes of this section. Except as otherwise specifically authorized pursuant to this part, persons subject to U.S. jurisdiction may not enter into any new commitments with respect to the project after the date of such rejection, termination, or abandonment. In addition, this section does not authorize:

(1) the importation of Vietnamese-origin goods into the United States, except as required to honor service or warranty contracts associated with Qualified Projects;

(2) offshore transactions of persons subject to U.S. jurisdiction involving the sale of Vietnamese-origin goods between Vietnam and third countries, or among third countries;

(3) flights into or out of Vietnam by aircraft owned or controlled by persons subject to U.S. jurisdiction, except when such persons transport, on aircraft they own, only passengers or cargo associated with a Qualified Project in which such persons are participating pursuant to this section;

(4) the use in Vietnam of credit cards issued by a U.S. banking institution; or

(5) a debit to a blocked account.

Example: A Vietnamese highway project feasibility study financed by a third-country development agency is not a Qualified Project for purposes of this section. However, the feasibility study would be a Qualified Project, notwithstanding the bilateral funding, if the International Development Association had formally proposed the highway project as one under consideration for funding in its *Monthly Operational Summary of World Bank and IDA Proposed Projects.*

(d) Within 10 business days after entering into an agreement for goods, services, financing, investment, or other participation in or related to a Qualified Project, the person(s) subject to U.S. jurisdiction entering into the agreement must register with the Office of Foreign Assets Control, Compliance Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220. The registration shall reference the fact that the agreement was entered into pursuant to 31 CFR 500.576(a), and shall provide:

(1) the name, address, telephone and facsimile numbers, and nationality of the person(s) subject to U.S. jurisdiction;

(2) if the reporting party is not an individual, the name, address, telephone and facsimile numbers of the individual to contact for further information,

(3) the name of the international institution listed in appendix A formally proposing, approving, executing, funding, or sponsoring the project;

(4) the name and a brief description of the project in Vietnam (with any contract, project, request for bid, or other identifying number);

(5) a brief description of the activity covered by the agreement, and the contract value; and

(6) if the reporting party is a subcontractor, the prime contractor's name, address, and nationality, and those of all intermediate subcontractors. Registration is not required of agencies of the Federal Government participating in Qualified Projects.

(e) Upon registration meeting the requirements of paragraph (d) of this section, the Office of Foreign Assets Control will assign a registration number to the contract involved. This number should be referenced in all funds transfers and other banking transactions that take place through banks subject to U.S. jurisdiction, and in all U.S. export documents, in connection with the Qualified Project in Vietnam in order to avoid the blocking of such funds and to facilitate export transactions.

(f) Annual reports must be filed with the Office of Foreign Assets Control on the anniversary of the issuance of a contract registration number, briefly describing the status of the project and any material changes in the information originally provided.

Note to § 500.576: Exports or reexports to Vietnam of goods and technical data, or of the direct products of technical data (regardless of U.S. content), in connection with activities licensed by FAC may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768–799.

4. Section 500.577 is added to subpart E read as follows:

§ 500.577 Authorization of bank transactions with respect to Vietnam by certain international organizations.

All transactions by banking institutions subject to U.S. jurisdiction incidental to the processing of transactions of the international institutions identified in appendix A with reference to Vietnam are authorized.

Example: A transfer to Vietnam or a Vietnamese national of funds from the U.S. account of a qualified international institution listed in appendix A to this part, for a program, rent or salary payment, is not blocked under this part.

5. Appendix A is added to the end of part 500 read as follows:

Appendix A to Part 500—Qualifying International Institutions

Asian Development Bank (ADB)
Food and Agricultural Organization (FAO)
International Bank for Reconstruction and Development (IBRD, the "World Bank")
International Civil Aviation Organization (ICAO)
International Development Association (IDA)
International Finance Corporation (IFC)
International Fund for Agricultural Development (IFAD)
International Labor Organization (ILO)
International Maritime Organization (IMO)
International Monetary Fund (IMF)
Multilateral Investment Guarantee Association (MIGA)
UN Capital Development Fund (UNCDF)
UN Children's Fund (UNICEF)
UN Development Fund for Women (UNDFW)
UN Development Program (UNDP)
UN Economic & Social Commission for Asian and the Pacific (UNESCAP)
UN Education, Scientific and Cultural Organization (UNESCO)
UN Environment Program (UNEP)
UN Food Program (UNFP)
UN Industrial Development Organization (UNIDO)
UN International Drug Control Program (UNIDCP)
UN Population Fund (UNPF)
World Health Organization (WHO)
World Meteorological Organization (WMO)

Dated: December 17, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 20, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–31749 Filed 12–23–93; 10:35 am]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[A–91–29; FRL–4683–8]

RIN 2060–AC96

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Heavy Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this rule, the Environmental Protection Agency (EPA) is announcing the availability of and rates for nonconformance penalties (NCPs) for heavy-duty vehicles (HDVs) and heavy-duty engines (HDEs) subject to the 1994 and later model year emission standards for particulate matter (PM). This rule also establishes the upper emission limits for HDVs and HDEs subject to those standards. The NCP will allow a manufacturer of heavy-duty engines or heavy-duty vehicles whose engines or vehicles fail to conform with certain applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. The specific emission standards for which NCPs are being made available are the 1994 and later model year PM standard for heavy-duty diesel engines (HDDEs) used in urban buses, and the 1994 and later model year PM standard for HDDEs used in vehicles other than urban buses.

Other issues also addressed are configuration selection for Production Compliance Audit (PCA) testing and PCA eligibility.

EFFECTIVE DATE: This rule will become effective January 27, 1994.

ADDRESSES: Public Docket: Copies of materials relevant to this final rule are contained in Public Dockets A–91–28 and A–91–29 at the Air Docket of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and are available for review in room M–1500 between the hours of 8:30 a.m. to noon and 1:30 to 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Erb, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 206(g) of the Clean Air Act (the CAA), 42 U.S.C. 7525(g), as amended by the Clean Air Act Amendments of 1990 (the CAAA), requires EPA to issue a certificate of conformity for HDEs or HDVs that exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then manufacturers who were "technological laggards" might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem; the laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty. Leaders would not suffer an economic disadvantage compared to nonconforming manufacturers because the NCP would be based, in part, on the amount of money the laggard and his customer saved from producing the nonconforming rather than a conforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine.

Section 206(g)(3) requires that NCPs:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide an incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove any competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g), and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the "compliance level" (CL) which is also the benchmark for warranty and recall liability. The manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

II. Background

A. The Generic Nonconformance Penalty Rule

The generic NCP rule, Phase I (50 FR 35374, August 30, 1985) established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year. First, the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent.

Second, substantial work must be required in order to meet the emission standard. EPA considers "substantial work" to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, needed to bring that vehicle or engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work.

Third, a technological laggard must be likely to develop. A technological laggard is defined as a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the market. EPA makes the determination that a technological laggard is likely to develop, based in large part on the first two criteria. However, these criteria are not always sufficient to determine the likelihood of the development of a technological laggard. An emission standard may become more difficult to meet and substantial work may be required for compliance, but if that work merely involves transfer of well-developed technology from another vehicle class, it is unlikely that a technological laggard would develop.

The above three criteria were used to determine eligibility for NCPs during Phase II of the NCP rulemaking (50 FR 53454, December 31, 1985). The availability of NCPs for 1991 model year HDE standards was addressed during Phase III of the NCP rulemaking (55 FR 46622, November 5, 1990).

As in the previous NCP rules, EPA is specifying values for the following parameters in the NCP formula for each standard: COC_{50}, COC_{90}, MC_{50}, and F. The NCP formula is the same as that promulgated in the Phase I rule.

COC_{50} is an estimate of the industrywide average incremental cost per engine associated with meeting the standard for which an NCP is offered. COC_{50} is based on typical engine technology, as nearly as EPA can identify. As in the previous NCP rules, costs considered to determine COC_{50} include additional manufacturer costs and additional owner costs. Owner costs include additional expenses for maintenance, parts replacement, and fuel that will be incurred throughout the useful life of the vehicle. Consistent with previous NCP rules, the calculation of COC_{50} does not include certification cost because both complying and noncomplying manufacturers must incur certification costs.

COC_{90} is EPA's best estimate of the 90th percentile incremental cost per-engine associated with meeting the standard for which an NCP is offered. COC_{90} is based on a near worst case technology, as nearly as EPA can identify. COC_{90}, like COC_{50}, includes both manufacturer and owner costs, but not certification costs.

MC_{50} is the steepest segment of the curve describing industrywide average marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{50} measures the economic tradeoff between emissions reduction and cost as certified emission levels are reduced from target levels needed to meet the NCP upper emission limit to target levels needed to meet the NCP standard itself. MC_{50} is measured in dollars per g/BHP-hr for HDEs and in dollars per gram per mile (g/mi) for LDTs.

F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} is defined as being the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. For this rulemaking, EPA has determined that no reasonable estimate of MC_{90} can be made based on existing marginal cost data and has set F at a value of 1.2. This is done in accordance with the Phase 1 final NCP rule, which states that in cases where no reasonable estimate of F can be made, F shall be set 1.2.

B. Notice of Proposed Rulemaking

In the Notice of Proposed Rulemaking (NPRM) (57 FR 22675, May 29, 1992), EPA applied the generic NCP concepts to the four emission standards which become more stringent in the 1994 model year. The Agency identified emission standards for which NCPs were proposed to be available, set upper limits for those standards and specified numerical values to be used in the

calculation of the NCP for particular subclasses of engines.

First, EPA addressed in the NPRM the availability of NCPs for the 1994 Methanol-Fueled HDE standards and concluded that those standards do not meet the eligibility criteria established in the generic NCP rule. The Agency's conclusion was based on information indicating that methanol engines will not require significant modification and that currently available technology can be incorporated to meet the new 0.10 g/BHP-hr PM standard applicable to methanol fueled HDEs.

Second, EPA considered in the NPRM the need for an NCP for the 1994 Cold CO standard for heavy light-duty gasoline fueled trucks. EPA proposed not to offer NCPs based on the conclusion that no new technology would be necessary to meet the new standard.

Third, EPA proposed that an NCP be offered to meet the proposed 0.05 g/BHP-hr PM standard applicable to 1994 and later model year urban bus HDDEs (56 FR 48350, September 24, 1991). This standard represented a significant increase in stringency from the previous standard. To demonstrate compliance, urban bus engine and vehicle manufacturers were expected to employ new technology including traps, alone or in conjunction with engine redesign and refinements, and fuel injection improvements.

Fourth, EPA proposed NCPs for the 0.1 g/BHP-hr PM standard applicable to HDDEs other than urban buses. The standard for these engines, while not as stringent as that for urban buses, represents a significant increase in stringency compared to the current 0.25 g/BHP-hr standard it replaces.

Other issues that were addressed by the NPRM include configuration selection for PCA testing and eligibility requirements. EPA proposed guidance for manufacturers for the testing of multiple configurations and compliance levels. With regard to PCA eligibility, EPA reviewed the matter in the context of the manufacturers' request, but proposed no modifications.

C. Re-opening of Comment Period

On April 12, 1993, EPA re-opened the comment period to accept public comment on whether offering NCPs for petroleum-fueled urban bus HDDEs remained justified given the less stringent than proposed final 0.07 g/BHP-hr PM standard for 1994 and later model year urban bus HDDEs (58 FR 19087, April 12, 1993).

D. Final Rule—Availability of NCPs for Urban Bus and Other HDDE PM Standards

1. 1994 Standards for Which NCPs Will Be Offered

a. 1994 Heavy-Duty Diesel Engine Urban Bus Particulate Matter Standard. Since publication of the NPRM, EPA finalized the 1994 PM standard for urban buses at 0.07 g/BHP-hr (58 FR 15781, March 24, 1993). Implementation of the 0.05 g/BHP-hr PM standard for urban bus engines for Certification and Selective Enforcement Audits (SEA) has been delayed until 1996. The need for an NCP for the 1996 urban bus HDDE PM standard will be addressed in a future rulemaking.

In a written statement dated November 4, 1991 (Public Docket A–91–28, IV–D–15), Detroit Diesel Corporation (DDC) noted that the proposed 1994 0.05 g/BHP-hr PM standard was very difficult to meet. DDC's low emission results had only been achieved on a single rating within one engine family using a non-bypassing dual trap system. DDC pointed out that trap technology may not be translated to all ratings and calibrations with equal success.

In response to the re-opened comment period, DDC and the Engine Manufacturers Association (EMA) stated that NCPs remain needed for urban bus HDDEs for the 0.07 g/BHP-hr PM standard adopted in the final rule. DDC explained that the 1994 urban bus PM standard is the most stringent PM standard ever enacted and requires the use of new and unproven technology. According to DDC, technological laggards already exist with regard to this standard. A further discussion of these comments is contained in the Summary and Analysis of Comments section of this rule.

After review, EPA finds that the 1994 urban bus 0.07 g/BHP-hr PM standard represents a significant increase in stringency over the current 0.1 g/BHP-hr standard, both in terms of magnitude and timing (the 0.1 g/BHP-hr standard has only been in effect for one year). Substantial effort will be required to meet the tighter standard. The 1994 standard will require the use of technologies that are not fully tested and have never been used on a mass produced scale. Petroleum-fueled urban bus engines will have to be equipped with oxidation catalyst systems, trap oxidizer systems or other devices currently under development. DDC manufactures the majority of urban bus HDDEs for the U.S. market, and it plans to use a catalyst on the urban bus engines it produces for sale in the U.S. in 1994. Regarding oxidation catalysts, no urban bus HDDE engine has been certified using this technology to date, even in model year 1993. Given the current state of diesel engine control technology and the short lead time associated with the recent promulgation of the urban bus PM standard for 1994, EPA agrees with EMA's statement that "the 0.07 g/BHP-hr standard is likely to result in the development of technological laggards." After due consideration, EPA finds the eligibility criteria for an NCP have been met. Therefore, an NCP will be made available for the 1994 urban bus PM standard. In accordance with the previous NCP rulemakings and 40 CFR 86.1104–87, the upper PM emission limit will be the previous emission standard of 0.1 g/BHP-hr.

In its comments on the urban bus standard, DDC indicated that it intends to produce urban bus engines equipped with oxidation catalysts for PM reduction in 1994. Since DDC produces the majority of engines for the U.S. urban bus market, EPA has modified its valuation of the average cost of compliance to reflect the use of this catalyst technology. The cost for the average engine (COC_{50}) will be based on the use of an oxidation catalyst, in place of the use of trap technology as proposed in the NPRM. Additional information supporting this technology projection can be found in EPA Public Docket A–91–28.

b. 1994 PM Standard For Petroleum-Fueled HDDEs Other Than Urban Bus Engines. Information obtained since publication of the NPRM supports EPA's conclusion that substantial work will be required to meet the more stringent 1994 HDDE PM standard. Current oxidation catalyst technology achieves 30% reduction in PM emissions, allowing for a reduction from the current PM standard of 0.25 g/BHP-hr to 0.175 g/BHP-hr. From this point, a manufacturer must exert considerable effort through engine refinements (e.g. to the fuel injection system, cylinders, pistons, manifold and/or turbochargers) to consistently bring the engine below the 0.1 g/BHP-hr standard.

With regard to the employment of a particulate trap to reduce PM emissions, while trap technology has demonstrated significant reductions, its application is similarly problematic. The level of experience among manufacturers with traps is unequal. Two HDDE engine manufacturers have gained experience with traps, but in the urban bus arena. Trap systems must be tailored for each application. They are uniquely affected by many parameters, including back pressure, particulate generation rates, fuel type, particulate composition,

regeneration rate and loading at the time of regeneration. In addition, trap system design affects fuel economy, electrical system loading and engine performance. Given the nature of trap technology application and the limited use of traps in the non-urban bus engine market, EPA expects that HDDE manufacturers would not be able to apply trap technology across the broad spectrum of engine families and engine ratings in time to meet the 1994 standard.

Based on the significant reduction in the PM standard for non-urban bus HDDEs in 1994 (a 60% reduction from the 1993 standard of 0.25 g/BHP-hr PM), the substantial work necessary to incorporate catalysts, traps or other modifications for the full range of HDDEs, and given the uncertainty concerning the effectiveness of the current technology to reduce emissions, EPA finds it likely that a technological laggard will develop relative to the 0.1 g/BHP-hr PM standard in 1994. Accordingly, EPA finds the NCP eligibility criteria have been met, and is offering an NCP for the 1994 PM standard of 0.1 g/BHP-hr for petroleum-fueled HDDEs other than urban bus engines. The upper emission limit will be the previous standard of 0.25 g/BHP-hr, consistent with guidelines set forth in the generic NCP rule.

In this final rule, the values of COC_{50} and COC_{90} for medium heavy-duty diesel engines (MHDDEs) and heavy heavy-duty diesel engines (HHDDEs) remain as proposed in the NPRM. However, for light heavy-duty diesel engines (LHDDEs) the value of COC_{90} has been changed in response to comment from General Motors. A further discussion of this is contained in the Summary and Analysis of Comments section of this rule.

2. 1994 Standards for Which NCPs Will Not Be Offered

a. 1994 Methanol-fueled HDE standard. Certification records reveal that two methanol engines for urban buses were certified for model year 1993. These engines each have a declared emissions limit for PM of 0.08 g/BHP-hr, with certification test results well below 0.05 g/BHP-hr. Given this information, and lacking any comments from industry justifying a need for NCPs for methanol-fueled engines for urban buses or other vehicles, EPA continues to maintain that a laggard is not likely to develop. Therefore, NCPs will not be available for the 1994 methanol-fueled HDE standard for either urban buses or other vehicles.

b. 1994 Cold CO standard for heavy light-duty gasoline fueled trucks. At the time the NPRM was written, the 1994 Cold CO standard had not been finalized. Since then, the standard was set at 12.5 g/mile @ 20 degrees Fahrenheit (57 FR 31888, July 17, 1992). EPA finds that the Cold CO standard does not meet the eligibility criteria for NCPs. The three year phase-in period will allow manufacturers ample time to incorporate currently available technology. Thus, EPA does not expect that substantial work will be required, nor is it likely that a technological laggard will develop. Thus, NCPs will not be offered for the 1994 Cold CO standard for heavy light-duty gasoline fueled trucks.

3. Other Issues

Below is a discussion of other issues addressed in this rule concerning Production Compliance Audits (PCAs) which are used to determine the compliance levels from which the amount of an NCP is determined.

a. Selection of Configuration for PCA Testing. As currently written, 40 CFR 86.1106–87(a)(2) requires Production Compliance Audit testing of the same configuration tested in certification, unless an alternate configuration is approved by the Administrator (50 FR 46622, November 5, 1990). In a letter of October 10, 1990, GM stated that this establishes an unworkable PCA requirement because certification testing often involves multiple vehicle or engine configurations and that no indication is given concerning how multiple configurations are to be PCA tested or how multiple compliance levels (CLs) are to be applied. EPA agrees with GM that the current regulations do not provide guidance as to how to determine the compliance level for one configuration based on the compliance level of engines tested from a different configuration. To remedy this problem GM suggested that § 86.1106–87(a)(2) be modified to state:

> "PCA testing must be conducted on the same configurations that exceeded the standard in certification. In lieu of that requirement, the Administrator may approve testing of a greater or lesser number of configurations provided the manufacturer agrees to pay the NCP determined from the CL of each tested configuration for that configuration and for other non-tested configurations that have similar emission characteristics. If an acceptable showing of similar emission characteristics is not made, the highest CL of the configurations tested will apply to all non-tested configurations exceeding the standard."

EPA agrees with GM and this language has been incorporated into 40 CFR 86.1106–87 (a)(2) of this rule.

b. Production Compliance Audits for Conforming Engines. As currently written, § 86.1106–87 states that a manufacturer may elect to conduct a PCA for a vehicle or engine configuration that has certification test results exceeding the emission standard for a particular pollutant or that fails a Selective Enforcement Audit (SEA) with respect to a particular pollutant. In its October 10, 1990 letter, GM stated that, as a result of emission test variability, compliance cannot always be clearly determined. Therefore, GM requested manufacturers be permitted to voluntarily conduct PCAs on a conforming engine family from certification, conforming configuration(s) from SEA or conforming configuration(s) from a production change, provided certain conditions are met. These conditions include the following:

1. A definite limit on the emission increment near the standard that would allow the manufacturer the choice of conducting a PCA; and
2. A requirement that the resulting CL(s) from the PCA testing be above the standard.

EPA reviewed GM's argument and concluded that PCA testing is not available for engine families that have demonstrated their conformity by meeting the standard during certification testing or through successful completion of an SEA. This issue is discussed further in the following section.

III. Summary and Analysis of Comments

In the NPRM, EPA proposed the availability of NCPs for the 1994 and later model year Particulate Matter standard for petroleum-fueled urban bus HDDEs and for petroleum-fueled HDDEs used in other than urban buses. EPA also proposed upper limits and penalty rates associated with the NCPs.

With regard to "Other Issues," EPA proposed regulations clarifying the PCA selection procedures as suggested by GM and rejected, as stated above, GM's request for allowing PCA's to be conducted for engines or vehicles which comply with emission standards during certification and SEA.

A public hearing was not requested and, therefore, was not held for this rulemaking.

On April 12, 1993 the comment period was re-opened for two weeks in order to receive comment on whether the generic NCP criteria continued to be met for the finalized urban bus standard.

Written comments were received from four entities during the initial comment period: Joint comments from the American Gas Association and the

Natural Gas Vehicle Coalition (hereinafter referred to jointly as AGANGV), the Manufacturers of Emission Controls Association (MECA), General Motors (GM), and the Transportation Manufacturing Corporation (TMC). Comments were received from the EMA and DDC during the re-opened comment period. Comments will be addressed by topic below:

A. Availability of Nonconformance Penalties

This final rule makes NCPs available for the 1994 and later model year PM standard for petroleum-fueled HDDEs used in urban buses and vehicles other than urban buses. AGANGV stated a concern with the proposal to provide nonconformance penalties for 1994 petroleum-fueled heavy-duty diesel urban bus engines. AGANGV commented that NCPs are unnecessary if a conventionally fueled engine can comply with emission standards when converted to run on alternative fuels. AGANGV believes NCPs should only be made available when an engine can not meet the prescribed emission standards and can not be converted to run on an alternative fuel that would permit it to meet emission standards. According to AGANGV, given that the technology to meet the revised standard clearly exists (i.e., converting to an alternative fuel), and that the two urban bus engine manufacturers are commercially offering alternatively-fueled engines capable of meeting 1994 standards, there is no reason for an NCP.

EPA does not agree with AGANGV's conclusion that NCPs are not needed for the 1994 petroleum-fueled urban bus PM standard. EPA believes that fuel type must be considered when determining the availability of NCPs. The basis for EPA's position rests on prior interpretations of the 1977 Clean Air Act statutory language and the Congressional ratification of such interpretations as evidenced by the language contained in the 1990 Clean Air Act amendments. With respect to setting emission standards, the 1977 version of section 202 (a)(3)(A)(iv) stated that "in establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, or such other factors as may be appropriate." EPA relied on this authority in the 1977 CAA to separate engines into different classes on the basis of the type of fuel consumed when making NCP availability determinations. In the Phase III NCP rulemaking (55 FR 46622 November 5, 1990), EPA did not make NCPs available for 1991 methanol-fueled heavy-duty engines and petroleum fueled heavy-duty Otto cycle engines. Yet in this same rulemaking, EPA made NCPs available for the 1991 PM and NO_x standards applicable to petroleum-fueled heavy-duty diesel engines. In the NCP Phase II rulemaking (50 FR 53454, December 31, 1985), NCPs were offered for the revised HC and CO standard for gasoline-fueled HDEs, but were not offered for the revised standards for diesel-fueled HDEs. As part of that same rulemaking, NCPs were offered for the revised NO_x standard for diesel-fueled engines, but were not offered for the gasoline-fueled HDEs.

As amended in 1990, the CAA ratified the appropriateness of fuel type considerations relied on in these previous rulemakings. Section 202 (a)(3)(A)(ii), as amended, states that "in establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, *type of fuel used* or other appropriate factors." (emphasis added). Congress thus explicitly authorized the Administrator to rely on fuel type classifications in setting HDE standards and, by extension, in determining NCPs for standards promulgated after the 1990 Amendments. Thus, EPA believes fuel-type consumed is an appropriate consideration when determining the availability of NCPs.

In response to the re-opened comment period, EMA and DDC indicated that they believe NCPs are needed and should be offered for urban bus HDDEs in 1994. DDC cited the fact that the 1994 PM standard for urban bus engines is the most stringent PM standard ever enacted anywhere in the world and represents a 30% reduction from 1993 and results in a 70% reduction from the standard in effect in 1992. DDC stated that substantial work will be required to meet the 1994 standard requiring the use of technologies which have never been used on a mass produced scale and which are not fully developed or proof tested. DDC stated that the entire industry is in a laggard position based on the March 24, 1993 promulgation of the 1994 urban bus PM standard. Both EMA and DDC pointed out that they believe there will be technological laggards associated with the 1994 PM standard for urban buses.

Based on the above information, EPA has decided to offer an NCP for the particulate matter standard applicable to 1994 and later model year petroleum-fueled urban buses.

B. Penalty Rate Costs

This final rule incorporates by reference the discussion of penalty rates in the Phase I rulemaking (50 FR 35374, August 30, 1985), Phase II rulemaking (50 FR 53454, December 31, 1985), and Phase III rulemaking (55 FR 46622, November 5, 1990) and uses the NCP formula as promulgated in the Phase I rule. For the 1994 petroleum fueled HDDE PM standard for HHDDEs and MHDDEs, this final rule adopts the proposed values for COC_{50}, COC_{90}, and MC_{50} as stated in the NPRM. For petroleum-fueled LHDDEs, the value for COC_{90} has been modified in response to comments. The values for COC_{50} and MC_{50} for LHDDEs remain as proposed in the NPRM. For the 1994 petroleum fueled HDDE PM standard for urban bus engines the values of COC_{50} and MC_{50} have been revised in conjunction with the recently promulgated PM standard. The value of COC_{90} for the urban bus PM standard remains as stated in the NPRM. The derivation of each of the proposed cost parameters which are unchanged and remain as stated in the NPRM are described in detail in the report, "Nonconformance Penalty Rates for 1994 and Later Model Year Heavy-duty Diesel Particulate Matter Standards" (with attachment). Revisions to the cost parameters for the petroleum-fueled LHDDE and urban bus NCPs are described in the report, "Revised Nonconformance Penalty Rates for 1994 and Later Model Year Heavy-duty Diesel Urban Bus Particulate Matter Standards". Both reports are available in Public Docket A–91–29.

EPA received comments on the penalty rates from four commenters.

AGANGV stated that EPA should base the cost for compliance for urban buses on the cost of utilizing alternative fuels.

MECA commented that EPA's estimate of COC_{50} for urban buses should be based on a packaged trap oxidizer system and not one which the manufacturers develop themselves. MECA also stated that COC_{50} and COC_{90} for urban buses should not be reduced to account for the cost of removing a catalyst when a trap system is employed.

TMC questioned the proposed urban bus trap costs and provided a list of bids for buses that were trap equipped and a list of bids for similar buses that were not trap equipped for cost comparison purposes.

GM questioned the values of COC_{50} and COC_{90} which EPA proposed to apply to LHDDEs. GM also suggested that EPA consider market implications when setting NCP rates for classes of engines that compete with other classes

of engines which can comply with the standard at a lower cost.

1. Urban Buses

a. Penalty Based on Use of Alternative Fuels. AGANGV stated that if EPA decides NCPs are necessary for urban buses, then EPA should base the cost of compliance on the costs of alternative fueled buses, including the cost of the refueling infrastructure required for alternative-fueled buses. EPA disagrees with AGANGV's comment. As discussed earlier, the emission standards and NCPs are set on a fuel specific basis, as authorized by the Clean Air Act. Moreover, while AGANGV is correct that manufacturers have certified urban bus engines which run on alternative fuels, these manufacturers also plan to use petroleum-fueled urban bus engines to meet the 1994 PM standard as is stated in a letter from Mr. Roger Penske of DDC to EPA (Public Docket A–91–28, IV–D–72, 09/10/92). This letter indicates that DDC, the manufacturer of the majority of the urban bus engines sold in the United States, plans to certify petroleum fueled urban bus engines which are equipped with oxidation catalysts to meet the 0.07g/BHP-hr PM standard. Based on this information indicating that petroleum-fueled urban bus engines will be produced in 1994 and the fact that the type of fuel used by an engine determines a class or category of HDEs for NCP purposes, EPA continues to base urban bus penalty rates on the costs associated with petroleum fueled engines.

b. Manufacturer Developed vs. Purchased Trap System Costs. MECA stated that it does not believe either of the two major urban bus engine manufacturers in the U.S. will manufacture their own trap system. Instead, MECA argued that manufacturers of bus engines will purchase trap systems from an independent supplier and so the value of the COC_{50} estimate should be revised.

As a result of this comment and information that has become available in connection with the rulemaking to revise the 1994 and later model year urban bus PM standard, EPA has reviewed the technology assumptions associated with this standard. Recent information contained in Public Docket A–91–28 indicates that most urban bus engines will use a catalyst to comply with the 0.07 g/BHP-hr PM standard. Thus, the value of COC_{50}, which represents the average cost that a manufacturer will encounter in demonstrating compliance with the standard, has been revised to reflect the cost associated with the use of a catalytic converter rather than a trap system. MECA's comments are no longer relevant with respect to COC_{50}. The change to COC_{50} is explained in the support document for the Final Rule, "Revised Nonconformance Penalty Rates for 1994 and Later Model Year Heavy-duty Diesel Urban Bus Particulate Matter (PM) Standards."

In the NPRM, EPA based the calculation of COC_{90} on the cost that a manufacturer would encounter when purchasing a trap system from an outside source. EPA continues to calculate COC_{90} on this basis as it is not thought that an engine manufacturer will research and develop a trap system itself but will instead purchase the packaged trap system from a particulate trap manufacturer.

c. Credit for Eliminating Catalyst Related Costs. MECA stated it disagrees with the finding in the NPRM that COC_{50} and COC_{90} should be reduced to reflect the elimination of the catalyst hardware and operating costs when a trap system is employed. MECA stated that since several HHDDE manufacturers indicated that they plan to meet the 0.1 g/BHP-hr PM standard without the use of any aftertreatment control technology, i.e., either a catalytic converter or a trap system, it is not appropriate for EPA to conclude that bus manufacturers would have employed a catalytic converter to meet that standard if a trap system were not employed.

As stated earlier, it is now known that urban bus engine manufacturers will employ a catalytic converter to meet the 0.07g/BHP-hr PM standard. Since a catalytic converter is projected to be used to meet the revised standard, the issue of a cost reduction due to the fact that the converter would be removed when the trap system is employed is no longer relevant to COC_{50}.

Regarding COC_{90}, the fact that the catalytic converter will be employed to meet COC_{50}, but will not be needed when the trap system is employed as in the case for COC_{90}, indicates that it is not appropriate to include in COC_{90} the cost of a catalytic converter. EPA believes that had the urban bus PM standard of 0.1 gram/BHP-hr been in effect for more than a single model year (1993), manufacturers would have employed a catalyst in 1993. The employment of a catalyst could have enabled the engine to meet the higher PM standard in 1993. However, it would not have enabled the engine to meet the anticipated 0.05 gram/BHP-hr. PM standard which was originally proposed for 1994. Rather than employ a new technology in 1993 with a projected lifespan of only one year, manufacturers instead certified these engines either using credits previously generated under the Banking and Trading program or through the employment of a trap system. Consequently, EPA finds that the employment of a trap system in 1994 would have eliminated the need for a catalyst. Consequently, the amount associated with the catalytic converter is deducted from the cost of the trap as it would be removed from the manufacturer's overall cost. COC_{90} remains as stated in the NPRM.

d. Cost of Trap System Hardware. TMC stated that based on its experience installing particulate trap systems, the expected cost of compliance may be more than the values listed in the NPRM. TMC provided a list of bids that were awarded for trap equipped and non-trap equipped buses. In a comparison of the awards for the 40 foot long buses the average dollar difference between the awards for trap vs. non-trap equipped buses was $14,462. In another comparison of buses on the list, two separate awards for trap equipped buses 40 feet long had low bids of $203,458 and $221,748 per bus. This difference of $18,288 was not accounted for with the information provided. It could be presumed that the differences may be attributed to different levels of optional equipment or special features which would not be relevant to trap costs. However, lacking sufficient information on the differences between the bids on the list and in view of the referenced two quotes with such a large cost difference for seemingly identical buses, EPA is not confident that all of the differences in cost between the bids for trap vs. non-trap equipped buses on the list can be attributed to the cost of the trap alone. Accordingly, EPA cannot draw any conclusions concerning the cost of the trap from the information provided, and is not revising the values stated in the NPRM.

Furthermore, as stated in the preamble for the final rule revising the 1994 PM standard for urban bus engines, EPA continues to project the costs to be in the range projected in the NPRM for this rule.[1]

2. MHDDE and HHDDE

No comments were received concerning the penalty rates for the MHDDE and HHDDE classes, and the final NCP rates are adopted as proposed in the NPRM.

3. LHDDE

GM commented that the COC_{50} and COC_{90} costs need to be revised for

[1] Written submittal from Donaldson Company, Inc. Public Docket A–91–28, IV-D–70, 09/08/92.

LHDDEs to reflect the fact that the average engine (COC_{50}) will require engine modifications and a catalytic converter, but will not require electronic controls (as projected by EPA in the NPRM). GM also stated that the near worst case engine (COC_{90}) will require electronic controls, engine modifications and a catalytic converter, but will not require a trap system (as projected by EPA in the NPRM). GM also commented that in estimating the COC_{90} cost and associated NCP factors, EPA presumed that trap technology is feasible for application to LHDDE vehicles. GM believes that feasibility must include appropriate consideration of both the availability of technology and the potential for that technology to be successfully marketed as a part of the specific vehicle product. GM stated that in the case of LHDDE vehicles, inclusion of a trap system would have a gross adverse impact on the ability of the diesel engine to compete in a vehicle market segment where gasoline and diesel engines are used almost interchangeably. GM stated that given the intense competition in the light truck market, it is unreasonable for EPA to set the NCP level at an amount that will price an engine/vehicle configuration out of the market.

a. COC_{50}. EPA does not agree with GM's position. EPA continues to believe that the costs and technology described in the NPRM for COC_{50} are appropriate. COC_{50} represents the industrywide average associated with meeting the standard. While GM may not be including electronic controls in its plans, EPA believes that other manufacturers will be including this technology and that in 1994 the average petroleum-fueled LHDDE will include electronic controls. Therefore, EPA continues to believe it is appropriate that the value for COC_{50} include the costs associated with engine modification, the employment of a catalytic converter and electronic controls.

b. COC_{90}. With regard to COC_{90} technology and associated costs, EPA agrees with GM's comment that manufacturers of LHDDEs will not require the use of trap systems to comply with the 1994 PM standards for the near worst case engine. Review of 1993 certification data and available information on 1994 model year plans confirmed GM's assessment that LHDDE manufacturers will use electronic controls, engine modifications and a catalytic converter but will not require the use of trap systems to comply with the 1994 PM standards for the near worst case engine (COC_{90}). Thus, EPA finds it appropriate to revise its calculation for COC_{90} to incorporate the costs of more expensive electronic controls and a larger catalytic converter and at the same time remove the cost of the particulate trap system from the COC_{90} calculation.

c. NCPs based on Market Considerations. With regard to GM's contention that it is not reasonable to set the NCP based on a trap system because it would price a product out of the marketplace, EPA does not believe that this issue is appropriate for consideration in this rule. The Clean Air Act requires that the NCP be set at a level which removes any competitive disadvantage to manufacturers that comply with the standard. The NCP levels in this rule are based on estimates of the costs that manufacturers will incur in complying with the 1994 PM standard, not on how a particular product will fare in the marketplace. EPA must base the NCP on the cost of the technology needed to comply with the standard to remove any competitive disadvantage to a manufacturer that complies with the standard. Although EPA disagrees with GM's comment, the issue is no longer relevant because EPA, as just explained, has removed the cost of a trap system from the COC_{90} calculation for LHDDEs.

C. Technology Application

1. Urban Buses

In the NPRM, EPA proposed that urban bus engine manufacturers would employ a dual filter front-face burner trap system to comply with the 1994 urban bus PM standard.

MECA believes that the likely trap technology used to meet the 1994 urban bus particulate standard will be a dual filter, electrically regenerated trap system rather than the front-face burner system as discussed in the NPRM. MECA stated that the COC_{50} and COC_{90} costs should be based on this technology.

Discussion of this issue with regard to COC_{50} is no longer relevant since a catalytic converter is now projected to be used in place of a trap in the case of COC_{50}. However, the use of a particulate trap is still projected for COC_{90}.

On further review, EPA agrees with MECA's statement that manufacturers employing trap technology will use an electrical heating device rather than a front face burner to regenerate trap systems. EPA has reevaluated cost based on an electrically-regenerated trap system and finds that the cost of the components for this system would be equivalent to the cost of a front face burner regenerated trap system. Therefore, although EPA agrees with MECA's comment, no changes were made in the amount of the NCP.

2. MHDDE and HHDDE

No comments were received concerning the technology applied for these classes, and EPA's views concerning the technology to be applied remain as proposed in the NPRM.

3. LHDDE

In the NPRM, EPA proposed that for LHDDEs COC_{50} be based on engine modifications and the use of a catalytic converter and electronic fuel control. COC_{90} for this class of engines was based on the use of a trap system and electronic fuel control.

GM found the NCP factors to be based on an unreasonable assessment of technology for both COC_{50} and COC_{90} with regard to LHDDEs. GM stated that COC_{50} should be based on engine modification and catalytic converter technology and that COC_{90} would include the addition of electronic engine control. Based on its own development studies, GM believes that the trap system is not required to achieve the PM Standard on any of its LHDDE configurations. Instead, GM stated that the technology presumed for the average engine in the NPRM (engine modifications, electronic control and exhaust catalytic converter) has sufficient capability to meet the PM standard.

As was stated in the Penalty Rate Costs section, EPA disagrees with GM's position relative to COC_{50} and the technology application remains as proposed. With regard to COC_{90}, EPA is in agreement with GM and has amended the COC_{90} value for LHDDEs accordingly.

D. Production Compliance Auditing (PCA) Procedures

1. Selection of Configuration for PCA Testing

In response to a suggestion by GM, EPA proposed in the NPRM that 40 CFR 86.1106–87(a)(2) be modified to allow the testing of alternative configurations provided the manufacturer agrees to pay the NCP for that configuration and other non-tested configurations that have similar emission characteristics, based upon the CL of the tested configuration. If the manufacturer does not adequately demonstrate to the Administrator that non-tested configurations have similar emission characteristics to tested configurations, the highest CL of the configurations tested will apply to all non-tested configurations.

GM stated that it strongly supports EPA's proposal. No other comments

were received on this issue. Thus, EPA is finalizing the provisions as proposed in the NPRM.

2. Production Compliance Auditing

In the NPRM, EPA proposed not to accept a GM suggestion to allow PCA testing of engines that have not demonstrated noncompliance by failure of certification or SEA testing. GM did not agree with EPA's proposal and requested that EPA reconsider the issue.

As stated in the NPRM, section 206(g) of the Clean Air Act provides NCPs to allow manufacturers with engines that emit at levels above the applicable standards to obtain certificates of conformity and to avoid having these certificates suspended or revoked. Engine families that have demonstrated compliance with emission standards during certification and have not failed an SEA are not in jeopardy of not obtaining a certificate of conformity or of having that certificate suspended or revoked. Thus, there is no need for NCPs or to conduct a PCA for such engines or vehicles. EPA does not believe Congress intended NCPs to be used in the manner GM has proposed.

Moreover, EPA's position is consistent with the consensus agreement signed by the members of the NCP negotiating committee during the regulatory negotiation process that took place prior to the first NCP rulemaking. This agreement specifically stated that a PCA may be initiated under any of the following circumstances:

1. Certification emission level above the new or revised standard.
2. Selective Enforcement Audit results above the new or revised standard.
3. Production running change that causes the certification emission level to be above the new or revised standard, but not above the upper limit.
4. Carryover of a PCA emission level from a previous year.

None of these criteria are met under the GM proposal. Therefore, EPA does not believe that § 86.1106–87 should be changed as GM has suggested.

IV. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. Major regulations are defined as any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation will not have an annual effect on the economy in excess of $100 million and will not cause a major increase in the price of HDEs above those that would otherwise occur from compliance with the emission standards themselves. This regulation is intended to assist manufacturers that are having difficulty developing and marketing vehicles which comply with the 1994 and later model year emission standards. Without this rule a manufacturer experiencing difficulty in complying with the 1994 model year emission standards (after the use of credits) has only two alternatives: Fix the nonconforming engines for the 1994 model year or not sell them at all. NCPs provide manufacturers with additional time to bring their engines into conformity.

In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantages stemming from marketing a nonconforming engine. Thus, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Administrator has determined that this proposal does not constitute a "major" regulation according to these established criteria and that a RIA is not required.

V. OMB Review

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the Public Docket (A–91–29).

VI. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires Federal agencies to consider potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

There will not be a significant impact on a substantial number of small business entities because none of the affected manufacturers can be classified as small. Moveover, as already discussed, the NCP program can be expected to benefit manufacturers. Some Small enities do exist as manufacturers' contractors for the testing of engines for PCAs. It is EPA's practice to conduct PCA scheduling (namely, tests per day limitations) in such a way as to consider the staff and manpower capabilities of such contractors and work around any problems.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, I certify that this regulation will not have a significant impact on a substantial number of small business entities.

VII. Information Collection Requirements

This rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C 3501, *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this rule have been addressed in the previous NCP rulemaking and approved by OMB (OMB control no. 2060–0132). At the time of the final rulemaking the Agency will submit an Inventory Correction Worksheet to OMB amending the approved burden hours to reflect the additional reports required by this rulemaking.

VIII. Statutory Authority

The promulgation of these regulations is authorized by sections 202, 203, 205, 206, 207, 208, 215, 216 and 301(a) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, and Reporting and recordkeeping requirements.

Dated: December 8, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 86, is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a), Clean Air Act, as amended, (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)).

2. Section 86.1105–87 of subpart L is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

* * * * *

(e) The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (c) and (d) of this section are expressed in December 1989 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (f) of this section are expressed in December 1991 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values, approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM, 1916 Race Street, Philadelphia, PA 19103, and is also available for inspection as part of Public Docket A–91–06, located at the Central Docket Section, EPA, 401 M Street, SW., Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(f) Effective in the 1994 model year, NCPs will be available for the following emission standards:

(1) Petroleum-fueled urban bus engine (as defined in § 86.091–2) particulate emission standard of 0.07 grams per brake horsepower-hour.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.094–11(a)(1)(iv)(A) in accordance with § 86.1113–87(a):

(A) COC_{50}: $3292.

(B) COC_{90}: $10,014.

(C) MC_{50}: $109,733.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–11(a)(1)(iv)(A) in accordance with § 86.1113–87(h): 0.38.

(2) Petroleum-fueled diesel heavy-duty engine particulate matter emission standard of 0.10 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $772.

(*2*) COC_{90}: $1,325.

(*3*) MC_{50}: $8,178 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.081.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1,276.

(*2*) COC_{90}: $3,298.

(*3*) MC_{50}: $15,370 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.098.

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $2,105.

(*2*) COC_{90}: $6,978.

(*3*) MC_{50}: $30,070 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.083.

3. Section 86.1106–87 is amended by revising paragraph (a)(2) to read as follows:

§ 86.1106–87 Production compliance auditing.

* * * * *

(a) * * *

(2) PCA testing must be conducted on the same configurations that exceeded the standard in certification. In lieu of that requirement, the Administrator may approve testing of a greater or lesser number of configurations provided the manufacturer agrees to pay the NCP determined from the CL of each tested configuration for that configuration and for other non-tested configurations that have similar emission characteristics. If an acceptable showing of similar emission characteristics is not made, the highest CL of the configurations tested will apply to all non-tested configurations exceeding the standard.

* * * * *

[FR Doc. 93–30890 Filed 12–27–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Docket No. 86–285; FCC 93–503]

Collection of Fees for Ship Inspections

In the Matter of Establishment of A Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Commission amends its rules regarding collection of fees for ship inspections and the SMRS Waiting List. The rule governing ship inspection fees has been amended because significant Commission resources are being diverted to the problem of collecting unpaid fees. Further, the Commission is eliminating the process of billing for SMRS waiting list entities because it has become administratively burdensome. The Commission will issue a Public Notice explaining how and when to remit the waiting list fee. The intended effect is to allow the Commission to operate more efficiently.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: James Mullins, Office of General Counsel, Federal Communications Commission (202) 254–6530.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 19, 1993; *Released:* December 17, 1993. By the Commission:

1. In this order the Commission adopts changes to its rules regarding collection of fees for ship inspections and the SMRS Waiting List. 47 CFR 1.1117. The rule changes are discussed

below and are fully set forth in the Rule Change.

2. Currently, fees for ship inspections are collected by billing after ship inspections are conducted. 47 CFR 1.1117. However, not all licensees are paying their bills. As of the first of this year, there were 62 outstanding accounts, totalling $22,100 from prior years. Moreover, significant Commission resources are being diverted to the problem of collecting unpaid fees. To resolve this problem, we no longer will use the administrative billing procedure to collect fees for ship inspections. In the future, we will only inspect ships that have paid their fees in advance and will amend 1.1117 of the Commission's Rules accordingly.[1]

3. As to those ships currently in arrears in paying their inspection fees, licensees are also on notice that the Commission in accordance with existing rules and policies plans to enforce fully the rules governing non-payment of fees. Specifically, the Commission plans to rescind existing certifications where payment has not been made and will defer action on other pending applications.[2]

4. Finally, the Commission is also amending its Rules to eliminate the applicability of the billing procedure to the SMRS Waiting List. The process of billing SMRS Waiting List entities has proved to be administratively burdensome. The Commission will issue a Public Notice explaining how and when to remit the Waiting List fee. Any entity that fails to pay in accordance with that Notice will be dismissed from the Wait List.

5. Because the change in applicability of the billing procedure adopted herein is a matter of agency practice and procedure, prior notice and comment is not required. 5 U.S.C. 553(b)(A).

6. Accordingly, it is ordered that § 1.1117 of the Rules and Regulations of the Federal Communications Commission is amended in the manner indicated below to be effective 60 days after publication in the **Federal Register.**

7. Authority for this action is contained in sections 4(i), 4(j)8 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 158 and 303(r).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 1 of title 47 of the CFR is amended as follows:

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

PART 1—PRACTICE AND PROCEDURE

§ 1.1102 [Amended]

2. In § 1.1102 in the table in entry 6.e., in the "Address" column, the words "Applicants will be billed for the amount due and should remit to the address shown on the bill" are removed and the words "The FCC will release a Public Notice annually stating the fee amount due and the address to which the fee should be sent" will be added in their place.

3. Section 1.1117(a) is amended by revising the first sentence to read as follows:

§ 1.1117 Billing procedures.

(a) The fees required for the International Telecommunications Settlements (Section 1.1103(19) of this subpart) and Common Carrier Field Audits (Section 1.1105 (21) (a) and (b) of this subpart) should not be paid with the filing or submission of the request.

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[FR Doc. 93–31453 Filed 12–27–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 93–218; DA 93–1517]

Cable Television Service; List of Major Television Markets

In the Matter of Amendment of § 76.51 of the Commission's Rules to Include Clearwater, Florida, in the Tampa-St. Petersburg, Florida, Television Market.

AGENCY: Federal Communications Commission.

ACTION: Final rule; change of effective date.

SUMMARY: By this Order, the Commission on its own motion changes the effective date established in the Report and Order in MM Docket No. 93–218, released December 15, 1993. In order to be consistent with the Commission's stated desire to expedite proceedings involving amendment of the Commission's Rules regarding major cable television markets and the public interest in synchronizing such amendments with the copyright royalty accounting periods, the rule change adopted in this proceeding will become effective by the end of the year.

EFFECTIVE DATE: December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 14, 1993; *Released:* December 16, 1993.

By the Chief, Mass Media Bureau:

1. In a Report and Order in the captioned proceeding (DA 93–1477, released December 15, 1993), § 76.51 of the Commission's rules were amended to include Clearwater, Florida, as a named community in the Tampa-St. Petersburg television market. That change was to become effective thirty days after publication in the **Federal Register.** For the reasons discussed below, pursuant to 47 CFR 1.108, we reopen this proceeding on our own motion to reconsider one aspect of the Report and Order.

2. The process of amending § 76.51 of the Commission's Rules was mandated by section 614(f) of the 1992 Cable Act.[1] In adopting rules to implement the Act, the Commission indicated that proceedings of this type were to be undertaken pursuant to an expedited process[2] and further indicated agreement as to the public interest in synchronizing the Commission's rules with the compulsory license copyright royalty accounting periods (January 1–June 30 and July 1–December 31).[3] In order to achieve that synchronization in the context of this proceeding, consistent with the Commission's stated desire to expedite the resolution of proceedings of this type, and in order to achieve the objectives set forth in Section 614 of the Cable Act, we had that good cause exists for making the rule changes adopted in this proceeding effective on less than 30 days notice,[4] so

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[1] Requiring advance payment is consistent with our procedures for most other fees. The billing procedure will continue to be used to collect applicable fees for requests for Special Temporary Authority, audits, and international Telecommunication Settlements. At this time, § 1.1117(a) is also amended to correct two references to other rule sections. These are minor technical amendments not requiring notice and comment.

[2] See 47 CFR 1.1110(c); *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act*, 67 RR2d 873, 879, 880 (1990); Public Notice 3491, released June 7, 1990, "Unpaid Fees Billing Procedures."

[1] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102–385, 106 Stat. 1460.

[2] Report and Order in MM Docket 92–259, 8 FCC Rcd 2965, para. 50 (1993), 58 FR 17350, April 2, 1993.

[3] *Id.* at para. 151.

[4] The Administrative Procedure Act generally requires publication in the Federal Register of

Continued

that this becomes effective by the end of the year.

3. Accordingly, it is ordered, That the rule change effective date adopted in Report and Order in MM Docket No. 93–218 (58 FR 67694, December 22, 1993) is reconsidered on our own motion and amended to become effective on December 31, 1993.

4. This action is taken by the Chief, Mass Media Bureau pursuant to authority delegated by § 0.283 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–31449 Filed 12–27–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 93–207; DA 93–1516]

Cable Television Service; List of Major Television Markets

In the Matter of: Amendment of § 76.51 of the Commission's Rules to Include Riverside, California, in the Los Angeles-San Bernardino-Corona-Fontana, California, Television Market.

AGENCY: Federal Communications Commission.

ACTION: Final rule; change of effective date.

SUMMARY: By this Order, the Commission on its own motion changes the effective date established in the Report and Order in MM Docket No. 93–207, released December 7, 1993. In order to be consistent with the Commission's stated desire to expedite proceedings involving amendment of the Commission's Rules regarding major cable television markets and the public interest in synchronizing such amendments with the copyright royalty accounting periods, the rule change adopted in this proceeding will become effective by the end of the year.

EFFECTIVE DATE: December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 14, 1993; *Released:* December 16, 1993

By the Chief, Mass Media Bureau:

1. In a Report and Order in the captioned proceeding (DA 93–1444, released December 7, 1993), § 76.51 of the Commission's rules were amended to include Riverside, California, as a named community in the Los Angeles-San Bernardino-Corona-Fontana television market. That change was to become effective thirty days after publication in the **Federal Register**. For the reasons discussed below, pursuant to 47 CFR 1.108, we reopen this proceeding on our own motion to reconsider one aspect of the Report and Order.

2. The process of amending section 76.51 of the Commission's Rules was mandated by section 614(f) of the 1992 Cable Act.[1] In adopting rules to implement the Act, the Commission indicated that proceedings of this type were to be undertaken pursuant to an expedited process[2] and further indicated agreement as to the public interest in synchronizing the Commission's rules with the compulsory license copyright royalty accounting periods (January 1–June 30 and July 1–December 31).[3] In order to achieve that synchronization in the context of this proceeding, consistent with the Commission's stated desire to expedite the resolution of proceedings of this type, and in order to achieve the objectives set forth in section 614 of the Cable Act, we find that good cause exists for making the rule changes adopted in this proceeding effective on less than 30 days notice,[4] so that this becomes effective by the end of the year.

3. Accordingly, it is ordered, That the rule change effective date adopted in Report and Order in MM Docket No. 93–207 (58 FR 67694, December 22, 1993) is reconsidered on our own motion and amended to become effective on December 31, 1993.

4. This action is taken by the Chief, Mass Media Bureau pursuant to authority delegated by § 0.283 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–31450 Filed 12–27–93; 8:45 am]

BILLING CODE 6712–01–M

substantive rules 30 days prior to their effective date but permits substantive rules to become effective with less than 30 days advance public in the Federal Register for good cause. See 5 U.S.C. 553(d)(1); See also 47 CFR 1.427(b).

[1] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102–385, 106 Stat. 1460.

[2] Report and Order in MM Docket 92–259, 8 FCC Rcd 2965, para. 50 (1993), 58 FR 17350, April 2, 1993.

[3] *Id.* at para. 151.

[4] The Administrative Procedure Act generally requires publication in the **Federal Register** of substantive rules 30 days prior to their effective date but permits substantive rules to become effective with less than 30 days advance publication in the **Federal Register** for good cause. See 5 U.S.C. 553(d)(1); See also 47 CFR 1.427(b).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 24

RIN 1018–AB28

Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (the Service) hereby amends the regulations concerning the importation, exportation, and reexportation of plants by adding Orlando, Florida, to the list of designated ports. The U.S. Department of Agriculture has opened a plant inspection station in Orlando, and the Service has determined that the station has adequate facilities and personnel to qualify as a designated port for the importation, exportation, and reexportation of plants under the terms of the Endangered Species Act of 1973, as amended (the Act), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The addition of Orlando to the list of designated ports will facilitate plant trade and the enforcement of the Act and CITES.

EFFECTIVE DATE: December 28, 1993.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 420–C, Arlington, Virginia 22203, telephone (703) 358–2095.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538(f)) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (the Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and

reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations contained in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Section 24.12(e) of the regulations contains a list of USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened under the Act and/or not listed under CITES. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those ports.) Plants that are listed as endangered or threatened in 50 CFR 17.12 or are listed in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the USDA ports listed in § 24.12(a) of the regulations.

After consultations with the USDA, the United States Fish and Wildlife Service (the Service) determined that the USDA's Orlando, Florida, port of entry possesses adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, the Service determined that the location of the Orlando facility coincides with established patterns of plant trade. Accordingly, in a July 9, 1993, **Federal Register** notice (58 FR 36925), the Service proposed that the USDA port at Orlando, Florida, be added to the lists of USDA ports in 50 CFR 24.12, paragraphs (a) and (e).

Comments Submitted

The Service's July 9, 1993, notice invited the submission of written comments regarding the proposal for a 60-day comment period ending on September 7, 1993. No comments were received by that date.

Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary of the Interior confers designated port status on any port. Accordingly, the Service's July 9, 1993, notice invited public hearing requests, which were required to be received by the Service on or before August 23, 1993. No such requests were received.

Therefore, based on the rationale set forth in the proposed rule, the Service is adopting the provisions of the proposal as a final rule without change.

Effective Date

The effect of this rule is to grant an exemption from 16 U.S.C. 1538(f), which generally prohibits importation of wildlife and plants except at such ports as may be designated. Accordingly, it may be given immediate effect under 5 U.S.C. 553(d)(1), which permits a rule that "grants or recognizes an exemption or relieves a restriction" to be given immediate effect.

Executive Order 12866 and Regulatory Flexibility Act

This rule was not subject to OMB review under Executive Order 12866. The addition of Orlando, Florida, as a designated port will facilitate the importation, exportation, and reexportation of plants listed as threatened or endangered under the Act or listed under CITES, as well as other terrestrial plants. The Service believes the addition of this port will have a postive, albeit limited, economic impact.

The volume of traffic currently handled by the designated ports in Florida indicates that the port will be utilized for the importation, exportation, or reexportation of plants. The USDA has informed the Service that it estimates that 20 or more commercial exporters/importers, many of them small entities, will use this facility on a regular basis. The USDA also projects that commercial importers based in the northern Florida area will realize at least a small savings in transportation costs as a result of the opening of the Orlando facility. The primary impact, however, will be the increased convenience of having an additional port in Florida through which plants may be imported, exported, or reexported.

Under these circumstances, the Service has determined that this action will not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Office of the Solicitor has determined that the requirements of Executive Order 12778 have been satisfied.

National Environmental Policy Act

The Service has determined that this final rule adding a designated port under authority of the Endangered Species Act of 1973 for the importation, exportation, and reexportation of plants is not a major Federal action which will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 50 CFR Part 24

Import, Export, Endangered and threatened plants, Treaties (Agriculture).

Accordingly, we are amending 50 CFR part 24 as follows:

PART 24—IMPORTATION AND EXPORTATION OF PLANTS

1. The authority citation for part 24 continues to read as follows:

Authority: Secs. 9(f)(1), 11(f), Pub. L. 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

§ 24.12 [Amended]

2. Section 24.12(a) is amended by adding "Orlando, Florida" immediately under "Miami, Florida".

3. Section 24.12(e) is amended by adding "Orlando, Florida" immediately under "Miami, Florida".

Dated: November 16, 1993.

Bruce Blanchard,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 93–31568 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 920783–3285; I.D. 062992E]

Designated Critical Habitat; Snake River Sockeye Salmon, Snake River Spring/Summer Chinook Salmon, and Snake River Fall Chinook Salmon

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

ACTION: Final rule.

SUMMARY: NMFS is designating critical habitat for the Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and Snake River fall chinook salmon pursuant to the Endangered Species Act (ESA). The designated habitat for Snake River sockeye salmon consists of river reaches of the Columbia, Snake, and Salmon Rivers, Alturas Lake Creek, Valley Creek, and Stanley, Redfish, Yellow Belly, Pettit, and Alturas Lakes (including their inlet and outlet creeks). The designated habitat for Snake River spring/summer chinook salmon consists of river reaches of the Columbia, Snake, and Salmon Rivers, and all tributaries of the Snake and Salmon rivers (except the Clearwater River) presently or historically accessible to Snake River spring/summer chinook salmon (except reaches above impassable natural falls and Hells Canyon Dam). The designated habitat for Snake River fall chinook salmon consists of river reaches of the Columbia, Snake, and Salmon Rivers, and all tributaries of the Snake and Salmon Rivers presently or historically accessible to Snake River fall chinook salmon (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams). Maps are available on request (see **ADDRESSES**). The critical habitat designation identifies those physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection. The economic and other impacts resulting from this critical habitat designation, over and above those arising from the listing of the species under the ESA, are expected to be minimal. The designation of critical habitat provides explicit notice to Federal agencies and the public that these areas and features are vital to the conservation of the species. In addition, the designation assists Federal agencies in carrying out their responsibility to ensure that agency actions will not result in destruction or adverse modification of critical habitat.

EFFECTIVE DATE: January 27, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1994.

ADDRESSES: Requests for maps should be addressed to NMFS, Endangered Species Branch, Environmental and Technical Services Division, 911 NE. 11th Avenue, room 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffen, NMFS, Endangered Species Branch, Environmental and Technical Services Division, 911 NE. 11th Avenue, room 620, Portland, OR 97232, telephone (503) 230–5430, or Marta Nammack, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

NMFS published its determination to list the Snake River sockeye salmon as endangered on November 20, 1991 (56 FR 58619), and Snake River spring/summer chinook salmon and fall chinook salmon as threatened on April 22, 1992 (57 FR 14653), under the ESA (16 U.S.C. 1531 *et seq.*). Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. At the time of the proposed listing determinations, critical habitat was not determinable because information necessary to perform the required analyses was not available.

NMFS published a **Federal Register** notice (October 15, 1991, 56 FR 51684) requesting biological and economic information related to designation of critical habitat for Snake River sockeye salmon, Snake River spring/summer chinook salmon, and Snake River fall chinook salmon. NMFS also convened a Biological Technical Committee and an Economic Technical Committee, comprised of interested experts throughout the Pacific Northwest, to assure that available information on which to base any critical habitat determination is both accurate and complete. NMFS has considered all available scientific and economic information in making this determination.

On December 2, 1992 (57 FR 57051), NMFS published a proposed rule to designate critical habitat for Snake River sockeye salmon, Snake River spring/summer chinook salmon, and Snake River fall chinook salmon. The preamble to the proposed rule describes the procedures and criteria used to designate critical habitat. On February 5, 1993 (58 FR 7206), NMFS published a notice extending the 60-day comment period by an additional 30 days. Washington Sea Grant completed an economic impact assessment for NMFS that focused on identifying the economic consequences (costs and benefits) of implementing alternative management strategies for the listed species ("Economic Effects of Management Measures Within the Range of Potential Critical Habitat for Snake River Endangered and Threatened Salmon Species", Huppert et al., 1992). In addition, NMFS prepared an environmental assessment (EA), pursuant to the National Environmental Policy Act (NEPA), to evaluate both the environmental and economic impacts of the proposed critical habitat designations.

NMFS is designating critical habitat for the Snake River sockeye salmon, Snake River spring/summer chinook salmon, and Snake River fall chinook salmon as described in the proposed rule with modifications and clarifications suggested through the public review process.

Essential Habitat of Snake River Sockeye Salmon, Spring/Summer Chinook Salmon, and Fall Chinook Salmon

Essential Snake River salmon habitat consists of four components: (1) Spawning and juvenile rearing areas; (2) juvenile migration corridors; (3) areas for growth and development to adulthood; and (4) adult migration corridors. The Pacific Ocean areas used by listed salmon for growth and development to adulthood are not well understood, and essential areas and features have not been identified. Snake River sockeye salmon spawning and rearing is currently limited to Redfish Lake. Other historical nursery areas that are essential to the conservation of the species include Alturas, Pettit, Stanley, and Yellow Belly Lakes (including their inlet creeks). Essential features of these areas include adequate: (1) Spawning gravel; (2) water quality; (3) water quantity; (4) water temperature; (5) food; (6) riparian vegetation; and (7) access. These fishes' juvenile migration corridors include these lakes' inlet and outlet creeks, Alturas Lake Creek, that portion of Valley Creek between Stanley Lake Creek and the Salmon River, the main fork of the Salmon River, the Snake River, and the Columbia River to the Pacific Ocean. Essential features of the juvenile migration corridors include adequate: (1) Substrate (2) water quality; (3) water quantity; (4) water temperature; (5) water velocity; (6) cover/shelter; (7) food; (8) riparian vegetation; (9) space; and (10) safe passage conditions. The adult migration corridors are the same areas included in juvenile migration corridors. Essential features would include those in the juvenile migration corridors, excluding adequate food.

Snake River spring/summer chinook salmon spawning and rearing is currently sparsely distributed

throughout the Grande Ronde, Imnaha, Salmon, and Tucannon subbasins, and Asotin, Granite, and Sheep Creeks. However, this critical habitat designation includes all river reaches presently or historically accessible to this species (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams). Essential features of spawning and juvenile rearing areas include adequate: (1) Spawning gravel; (2) water quality; (3) water quantity; (4) water temperature; (5) cover/shelter; (6) food; (7) riparian vegetation; and (8) space. These fishes' migration corridors are the spawning and juvenile rearing areas, plus the Snake River, and the Columbia River to the Pacific Ocean. Essential features of the juvenile and adult migration corridors are the same as those listed for Snake River sockeye salmon.

Snake River fall chinook salmon spawning and rearing is currently limited to the Snake River below Hells Canyon Dam, and within the Clearwater, Hells Canyon, Imnaha, Lower Grande Ronde, Lower North Fork Clearwater, Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, and Palouse hydrologic units. However, this critical habitat designation includes all river reaches presently or historically accessible to this species (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams). Essential features of spawning and juvenile rearing areas are the same as for Snake River Spring/summer chinook salmon. Juvenile and adult migration corridors are the same areas as spawning and juvenile rearing areas, plus the Columbia River to its mouth at the Pacific Ocean. Essential features of the juvenile and adult migration corridors are the same as those listed for Snake River sockeye salmon.

Need for Special Management Considerations or Protection

In order to assure that the essential areas and features are maintained or restored, special management may be needed. Activities that may require special management considerations for listed Snake River salmon spawning and juvenile rearing areas include, but are not limited to: (1) Artificial propagation; (2) land management; (3) timber harvest; (4) water polluting activities; (5) livestock grazing; (6) habitat restoration; (7) irrigation withdrawal; (8) mining; and (9) road construction. For juvenile and adult migration corridors, special management considerations also include: (10) Migration barriers; (11) hydroelectric power system operation; (12) water storage; (13) dredge and fill operations; (14) predator control; and (15) barge transportation of materials. Not all of these activities are necessarily of current concern; however, they indicate the potential type of activities that will require consultation in the future. For listed Snake River salmon in the ocean environment, no special management considerations of the ocean habitat have been identified.

Special considerations and protection for these and other habitat features will be evaluated during the section 7 consultation process and in the development and implementation of a recovery plan for listed Snake River salmon. If adequate protection cannot be provided through consultation or through the recovery planning process, separate management actions with binding requirements may be considered.

Activities That May Affect the Essential Habitat

A wide range of activities may affect the essential habitat requirements of listed Snake River salmon. These activities include pollutant discharge and water management actions of Federal agencies (i.e., Bonneville Power Administration (BPA), U.S. Army Corps of Engineers (ACE), U.S. Bureau of Reclamation (BOR), and the U.S. Environmental Protection Agency (EPA)) and related or similar actions of other Federally regulated projects in the Columbia River system (e.g., Federal Energy Regulatory Commission (FERC) regulation of the Hells Canyon complex); water regulation in the Snake River Basin by the BOR; livestock grazing allocations in the Snake River Basin by the U.S. Forest Service (FS) and U.S. Bureau of Land Management (BLM); timber harvest and related activities in the Snake River Basin conducted by the FS and BLM; agricultural activities funded or carried out by the DASCS; research/monitoring by FWS, BPA, and NMFS; and planting anadromous salmonids and other fishes in the Columbia River Basin by the FWS as well as the States of Oregon, Washington, and Idaho, and Indian Tribes. Other actions of concern include dredge and fill activities, and bank stabilization activities authorized and/or conducted by ACE throughout the Columbia River Basin.

The Federal agencies that most likely will be affected by this critical habitat designation include the BPA, FERC, NMFS, ACE, BLM, EPA, FWS, and the FS. This designation will provide clear notification to these agencies, private entities, and the public of critical habitat designated for listed Snake River salmon and the boundaries of the habitat and protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed Snake River salmon and their critical habitat, and in determining when consultation with NMFS would be appropriate.

Expected Impacts of Designating Critical Habitat

NMFS prepared an EA that describes the environmental and economic impacts of alternative critical habitat designations. The EA is based on the best available information, considering comments received in response to the Federal Register notice soliciting biological and economic information on critical habitat (October 15, 1991, 56 FR 51684). The environmental benefit provided by designating critical habitat is the clear notification to Federal agencies and the public of the existence and importance of critical habitat. This critical habitat designation identifies areas in the Columbia River Basin determined to be essential to the conservation of listed Snake River salmon and that may be in need of special management considerations or protection. Designation of critical habitat will have little direct impact on the water, air, or land or on the cultural or historical resources of the Columbia River Basin. The University of Washington conducted a study under a grant from NMFS to project the economic costs and benefits resulting from specific management measures within areas potentially qualifying as critical habitat. This report provides information useful for the purposes of recovery planning, as well as critical habitat designation. Assistance in the development of this report was solicited from the public (October 15, 1991, 56 FR 51684) and from an Economic Technical committee comprised of expert entities throughout the Pacific Northwest. The resulting report presented to NMFS (Huppert et al., 1992) provided a broad scope of potential management measures and projected economic effects ranging between $5.6 and 249 million annually, from which NMFS could partition the incremental costs attributable to a critical habitat proposal.

The economic costs to be considered in a critical habitat designation are the incremental costs of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see Consideration of Economic, Environmental and Other Factors section of this preamble). NMFS has

determined that there are no incremental net costs for areas within these species' current distribution. However, incremental costs do result from special management activities in areas outside the current distribution of the listed species that have been determined to be essential to the conservation of the species. For Snake River sockeye salmon, only those impacts from special management activities in Alturas, Pettit, Stanley, and Yellow Belly Lakes and their inlet and outlet creeks (areas previously within the range of the species) are directly attributable to a critical habitat designation. Critical habitat designation of these areas may result in an estimated, one-time nationwide economic impact of $1.0 to 1.5 million, and estimated annual impacts ranging from $66,618 to $183,625 (Fluharty et al., 1992). These estimated economic impacts may result from activities such as: Treating and buffering (one-time cost) sockeye salmon nursery lakes; providing access for juvenile and adult sockeye salmon to and from the nursery lakes; and eliminating potential competition and predation due to planted put-take salmonids. It should be noted that these costs will not be incurred immediately, and, since activities may not need to be conducted in all lakes simultaneously, the costs may be spread out over time. Plans for the timing of the needed habitat improvements will be developed through the recovery planning process, considering such factors as the current condition of the habitat, the time necessary for habitat improvements, and the plans for outplanting of smolts from the captive broodstock program or other sources.

A beneficial economic and social impact may also be realized from designating these areas as critical habitat from the establishment of a Tribal ceremonial and subsistence fishery upon the recovery of the Snake River sockeye salmon. Moreover, it is estimated that a beneficial economic impact ranging from approximately $6,000 to $305,000 per year may be realized from an increase in non-consumptive uses (i.e., viewing sockeye salmon spawning) upon the recovery of the Snake River sockeye salmon in the Stanley Basin (Fluharty et al., 1992).

For Snake River spring/summer and fall chinook salmon, no incremental costs are expected as a result of critical habitat designation because the critical habitat designation only includes habitat where these species currently exist.

Final Critical Habitat; Essential Features

The designated habitat for Snake River sockeye salmon includes: The Columbia River from the Pacific Ocean to its confluence with the Snake River; the Snake River from its confluence with the Columbia River to its confluence with the Salmon River; the Salmon River from its confluence with the Snake River to its confluence with Alturas Lake Creek; Stanley, Redfish, Yellow Belly, Pettit, and Alturas Lakes (including their inlet and outlet creeks); Alturas Lake Creek and that portion of Valley Creek between Stanley Lake Creek and the Salmon River; all river reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River sockeye salmon in the following hydrologic units: Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, and Upper Salmon.

The designated habitat for Snake River spring/summer chinook salmon includes: The Columbia River from the Pacific Ocean to its confluence with the Snake River; the Snake River from its confluence with the Columbia River to its confluence with Granite Creek; Asotin, Sheep, and Granite Creeks; all river reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Hells Canyon, Imnaha, Lemhi, Little Salmon, Lower Grande Ronde, Lower Middle Fork Salmon, Lower Salmon, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, Pahsimeroi, South Fork Salmon, Upper Middle Fork Salmon, Upper Grande Ronde, Upper Salmon, and Wallowa.

The designated habitat for Snake River fall chinook salmon includes: The Columbia River from the Pacific Ocean to its confluence with the Snake River; the Snake River from its confluence with the Columbia River to Hells Canyon Dam; the Palouse River from its confluence with the Snake River upstream to Palouse Falls; the Clearwater River from its confluence with the Snake River upstream to its confluence with Lolo Creek; the North Fork Clearwater River from its confluence with the Clearwater River upstream to Dworshak Dam; all river reaches presently or historically accessible to Snake River fall chinook salmon (except reaches above impassable natural falls) in the following hydrologic units: Clearwater, Hells Canyon, Imnaha, Lower Grande Ronde, Lower North Fork Clearwater, Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, and Palouse.

Critical habitat for all listed Snake River salmon includes the bottom and water of the waterways and the adjacent riparian zone. The riparian zone includes those areas within 300 feet (91.4 m) of the normal line of high water of a stream channel or from the shoreline of a standing body of water. Essential features of these areas include adequate: (1) Substrate (especially spawning gravel); (2) water quality; (3) water quantity; (4) water temperature; (5) water velocity; (6) cover/shelter; (7) food; (8) riparian vegetation; (9) space; and (10) migration conditions.

Although it is important, critical habitat does not include the open ocean habitat used by listed Snake River salmon because this area does not appear to be in need of special management consideration. Degradation of this portion of the species' habitat does not appear to be a significant factor in the decline of the species. In addition, existing laws appear adequate to protect these areas, and special management of this habitat is not considered necessary at this time. However, NMFS is presently organizing a workshop that will convene regional marine scientists and managers to submit and review all available information regarding marine habitat use by listed Snake River salmon, and the impact of current laws and activities on these species during marine residence. This workshop will allow NMFS to more accurately assess the need to amend the critical habitat designation to include specific oceanic or nearshore areas, and identify associated management issues and essential habitat features in these areas. If additional evidence supports the inclusion of marine areas, NMFS may revise designated critical habitat in accordance with 50 CFR 424.16. NMFS will continue to consult under section 7 of the ESA to address Federal actions that may affect the species or result in takings in the ocean, such as Federal management of ocean fishing.

Comments and Responses

State agencies, county governments, Federal agencies and other interested parties were notified and requested to comment on the proposed rule. Public hearings on the proposed rule were held at the following locations: January 11, 1993, in Portland, OR; January 12, 1993, in Richland, WA; January 13, 1993, in

Lewiston, ID; and January 14, 1993, in Boise, ID. Thirty-three individuals presented testimony at these hearings. During the 90-day comment period, NMFS received 112 written comments on the proposed rule from government agencies, non-government organizations and individuals. These comments are addressed below.

Geographic Extent of Critical Habitat

Comments: Many commenters recommended that the proposed geographic range of critical habitat for listed Snake River salmon be revised. Numerous commenters recommended that NMFS identify a portion of the ocean habitat and related special management considerations in the designation. Several recommended that critical habitat be extended to include entire watershed basins, not just riparian zones; several others requested that riparian zones be excluded from designation. Several commenters stated that all streams in Idaho should be excluded from critical habitat designation. Many expressed concern that the definitions of various stream descriptors (e.g., riparian zone, basin, subbasin, lower reaches) in the critical habitat designation were too vague. Several requested maps to more clearly identify critical habitat.

One commenter recommended removing reaches of Valley Creek upstream from its confluence with Stanley Lake Creek from designated critical habitat for Snake River sockeye salmon.

Many comments specifically addressed designated critical habitat for Snake River spring/summer chinook salmon. Many recommended that the Clearwater River be designated as critical habitat for Snake River spring/summer chinook salmon. Another suggested that NMFS should designate only currently occupied habitat in the main Salmon, Middle Fork Salmon, East Fork Salmon and Lemhi Rivers, and not all other river reaches. Two commenters noted that spring/summer chinook salmon habitat was erroneously extended to Sheep Creek and not Granite Creek. One commenter recommended the removal of Joseph Creek as critical habitat.

Several comments specifically addressed designated critical habitat for Snake River fall chinook salmon. Two commenters recommended that NMFS remove Asotin Creek as critical habitat for fall chinook salmon. One suggested that the North Fork of the Clearwater River to Dworshak Dam should be included as critical habitat for Snake River fall chinook salmon. Three commenters recommended the inclusion of the Palouse River Basin for fall chinook salmon. Three commenters requested that NMFS maintain the exclusion of critical habitat upstream of Orofino on the Clearwater River, while one requested extending critical habitat for Snake River fall chinook salmon up to Selway Falls on the Selway River, up the South Fork Clearwater River to Harpster, and up the Middle Fork of the Clearwater River into the lower reaches of the Lochsa River.

Response: Critical habitat is defined in section 3(5) of the ESA as the specific areas within the geographic area occupied by the species on which are found those physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. Based on commenters' concerns and new information received during the public comment period, NMFS has refined its designation of critical habitat for Snake River sockeye salmon, Snake River spring/summer chinook salmon, and Snake River fall chinook salmon. The following sections address these commenters' concerns and clarify NMFS' designation of critical habitat for listed Snake River salmon.

Estuarine and Marine Habitats

NMFS recognizes that the Columbia River estuary is an essential rearing area and migration corridor for listed Snake River salmon, and has maintained the designation of the estuary as critical habitat in this final rule. Although they are also important, NMFS believes that marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of the Columbia River) used by listed Snake River salmon do not presently warrant designation and do not appear to be in need of special management consideration or protection. Degradation of this portion of the species' habitat does not appear to have been a significant factor in the decline of the species. Specifically, existing laws appear adequate to protect these areas, and special management of this habitat is not considered necessary at this time. However, NMFS is presently organizing a workshop that will convene regional marine scientists and managers to submit and review all available information regarding marine habitat use by listed Snake River salmon, and the impact of current laws and activities on these species during marine residence. This workshop will allow NMFS to assess more accurately the need to amend the critical habitat designation to include specific oceanic or nearshore areas, and identify associated management issues and essential habitat features in these areas. If additional evidence supports the inclusion of marine areas, NMFS may revise designated critical habitat in accordance with 50 CFR 424.16. NMFS will, of course, continue to consult under section 7 of the ESA to address Federal actions that may affect the species or result in takings in the ocean, such as Federal management of ocean fishing.

Freshwater Habitats

NMFS has determined that it is possible to designate most river reaches and lakes critical to the conservation of listed Snake River salmon. However, in areas above the confluence of the Columbia and Snake Rivers, Snake River spring/summer chinook salmon inhabit a wide range of habitats, from large rivers to small perennial and intermittent streams. This use of diverse habitats coupled with the inadequacy of existing species distribution maps makes it extremely difficult to identify all specific river reaches required by this species. Furthermore, designating each specific river reach would not necessarily aid current conservation efforts for this species since there is the potential of excluding small, yet important, tributaries from the critical habitat designation. Therefore, it is presently not feasible to designate each particular river reach that could be considered as critical habitat for Snake River spring/summer chinook salmon. However, NMFS has determined that it is prudent to designate specific hydrologic units (i.e., Federally approved river basin boundaries) that include or contain river reaches presently or historically accessible to this species (except reaches upstream of impassable natural falls, and Dworshak and Hells Canyon Dams). These reaches are known to contain physical and biological features vital to the conservation of Snake River spring/summer chinook salmon (see Table 1 in the regulatory text).

Figure 1 identifies the general geographic extent of larger rivers, lakes, and streams within hydrologic units designated as critical habitat for Snake River sockeye, spring/summer chinook, and fall chinook salmon. Note that Figure 1 does not constitute the definition of critical habitat, but instead is provided as a general reference to guide Federal agencies and interested parties in locating the general boundaries of critical habitat for listed Snake River salmon. The complete text delineating critical habitat for each species can be found at 50 CFR 226.22. Below is a table that classifies the counties in Oregon, Washington, and

Idaho, within which at least some portion of the designated critical habitat (i.e., river reach or lake) or encompassing hydrologic unit is contained.

STATES/COUNTIES CONTAINING OR BORDERING RIVERS AND HYDROLOGIC UNITS [1] DESIGNATED AS CRITICAL HABITAT FOR ENDANGERED SNAKE RIVER SOCKEYE SALMON AND THREATENED SNAKE RIVER SPRING/SUMMER CHINOOK AND FALL CHINOOK SALMON

State	Counties	Species [2]
Oregon	Baker	2,3
	Clatsop	1,2,3
	Columbia	1,2,3
	Gillium	1,2,3
	Hood River	1,2,3
	Morrow	1,2,3
	Multnomah	1,2,3
	Sherman	1,2,3
	Umatilla	1,2,3
	Union	2
	Wallowa	1,2,3
	Wasco	1,2,3
Washington	Adams	3
	Asotin	1,2,3
	Benton	1,2,3
	Clark	1,2,3
	Columbia	1,2,3
	Cowlitz	1,2,3
	Franklin	1,2,3
	Garfield	1,2,3
	Klickitat	1,2,3
	Lincoln	3
	Pacific	1,2,3
	Skamania	1,2,3
	Spokane	3
	Wahkiakum	1,2,3
	Walla Walla	1,2,3
	Whitman	1,2,3
Idaho	Adams	2,3
	Benewah	3
	Blaine	1,2
	Clearwater	3
	Custer	1,2
	Idaho	1,2,3
	Latah	3
	Lemhi	1,2
	Lewis	1,2,3
	Nez Perce	1,2,3
	Shoshone	3
	Valley	1,2,3

[1] Note that species may not inhabit river reaches within the county, but hydrologic units containing critical habitat fall within or border the county.

[2] Species code: 1=Snake River sockeye salmon; 2=Snake River spring/summer chinook salmon; 3=Snake River fall chinook salmon.

NMFS acknowledges that many of the river reaches within hydrologic units designated as critical habitat are not presently inhabited by the listed species. However, the vast majority of streams above the confluence of the Columbia and Snake Rivers contribute essential elements such as food, gravel, large woody debris, and water quality. Hence, their inclusion as part of the critical habitat is in keeping with the ESA's purpose "* * * to provide a means whereby the ecosystems upon which endangered species or threatened species depend may be conserved * * *" (ESA section 2(b)). Until information is developed that allows more accurate and detailed characterization of stream reaches as critical or noncritical, NMFS chooses to adopt a more inclusive critical habitat designation incorporating river reaches in hydrologic units presently or historically accessible (except reaches upstream of impassable natural falls, and Dworshak and Hells Canyon Dams) to salmon.

Experience gained by NMFS through section 7 consultations has clearly demonstrated the importance of assessing potential impacts of actions within entire watersheds. It is well documented that human activities in areas outside the immediate stream channel can have a direct effect on physical and biological features essential to the conservation of listed Snake River salmon. For example, road building and timber harvest operations in upland areas can result in adverse modifications to salmon spawning and rearing areas via landslides, sedimentation, fuel spills, and loss of riparian vegetation that provides shade, cover, and other habitat functions.

It is important to point out that designating entire hydrologic units as critical habitat does not imply that all proposed actions in a given hydrologic unit would negatively impact critical habitat. Conversely, some actions outside the designated area may have the potential to destroy or adversely modify the habitat. Through section 7 consultations, actions or groups of actions would still be considered on a case-by-case basis to determine if habitat would be destroyed or adversely modified. For areas upstream of the confluence of the Columbia and Snake Rivers, NMFS believes that refining its proposed critical habitat in terms of river reaches in specific hydrologic units is necessary to ensure the conservation of listed Snake River salmon. However, NMFS is presently investigating the feasibility of using geographic information systems to identify specific river reaches in critical habitat designations. If freshwater habitat information can be developed at an acceptable spatial resolution, NMFS may publish a notice in the **Federal Register** announcing its intent to revise designated critical habitat in accordance with 50 CFR 424.16.

Also, NMFS wants to clarify that Columbia River tributaries (e.g., Umatilla River and Willamette River) below the confluence of the Columbia and Snake Rivers are not included in the critical habitat designation because they are not considered part of the listed species' present or historical range. However, all water, waterway bottoms, and adjacent riparian zones (see Riparian Zones section of this preamble for definition) of the mainstem Columbia River from its confluence with the Snake River to the Pacific Ocean are included in the critical habitat designation, due to their importance as components of the juvenile and adult migration corridor.

Lakes, rivers, and creeks in the historical nursery area of Snake River sockeye salmon are especially important due to their contribution of essential habitat features, such as food, water, and access to spawning areas and migration corridors. However, NMFS concurs with the views of one commenter and determined that all reaches of Valley Creek upstream of its confluence with Stanley Lake's outlet creek will not be included as critical habitat for Snake River sockeye salmon. Only that portion of Valley Creek between Stanley Creek and the Salmon River is considered critical to migrating adults and juvenile sockeye salmon.

NMFS acknowledges that many river reaches (including Joseph Creek) within designated hydrologic units are not presently inhabited by Snake River spring/summer chinook salmon, and that some areas are presently inaccessible (or were historically impassable) to salmon. However, in light of the continued decline in adult returns of Snake River spring/summer chinook salmon, restricting critical habitat to a portion of this species' historic range is not considered prudent. An exception was NMFS' decision not to designate the Clearwater River Basin as critical habitat for Snake River spring/summer chinook salmon. Because of dams and hatchery-included genetic changes, the spring and summer chinook salmon inhabiting the Clearwater River Basin are not considered part of the evolutionary significant unit comprising Snake River spring/summer chinook salmon listed under the ESA. Hence, river reaches in the Clearwater River Basin are not considered critical for the conservation of listed Snake River Spring/summer chinook salmon.

Based on information acquired since proposing critical habitat for Snake River fall chinook salmon, NMFS has made several modifications to critical habitat designations for this species.

After consulting with regional fisheries biologists, NMFS has determined that Asotin Creek does not contain important spawning or rearing habitat for Snake River fall chinook salmon, and is therefore not included in this species' critical habitat designation. However, these biologists noted that the Palouse River from its confluence with the Snake River up to Palouse Falls is important spawning habitat for this species. Similarly, a short segment of the North Fork Clearwater River from Dworshak Dam downstream to its confluence with the Clearwater River also contains suitable spawning areas and is now included as critical habitat for Snake River fall chinook salmon. Despite requests from several commenters, NMFS has not extended critical habitat for Snake River fall chinook salmon upstream from Lolo Creek because there is insufficient biological information to designate these areas. However NMFS will continue to monitor activities in the Clearwater River and other river basins to determine if they need to be included in the critical habitat designation, and will continue to consult under section 7 of the ESA to address Federal actions that may affect listed Snake River species or their designated freshwater habitats.

Riparian Zones

In the Columbia River Basin, critical habitat includes the water, waterway bottom, and the adjacent riparian zone. A 1992 report by the U.S. Fish and Wildlife Service (FWS) states that riparian streambanks are composed of natural, eroding substrates supporting vegetation that either overhangs or protrudes into the water and, consequently, provides shade and escape cover for salmonids and other wildlife. Furthermore, according to a 1993 report by the interagency Forest Ecosystem Management Assessment Team (FEMAT), riparian zones consist of "areas where the vegetation complex and microclimate conditions are products of the combined presence and influence of perennial and/or intermittent water, associated high water tables, and soils that exhibit some wetness characteristics." The FEMAT report contains a comprehensive review of riparian ecosystem components, and specifies that riparian zones for fishbearing streams should consist of "* * * the area on either side of the stream extending from the edges of the active stream channel to the top of the inner gorge, or to the outer edges of the 100-year floodplain, or to the outer edges of riparian vegetation, or to a distance equal to the height of two site-potential trees, or 300 feet slope distance (600 feet, including both sides of the stream channel), whichever is greatest."

Biophysical characteristics and processes that create riparian zones vary considerably throughout the range of listed Snake River salmon. However, riparian zones along the Columbia River and throughout the hydrologic units described above are considered essential for the conservation of the listed species because they provide important space, cover/shelter, and increase river productivity. Furthermore, healthy riparian zones help ensure that water quality parameters support physiological and behavioral requirements of the listed species.

Because adverse modification of riparian zones may impede the recovery of threatened and endangered salmon, the adjacent riparian zone is included in the critical habitat designation for listed Snake River salmon. NMFS recognizes that influences of riparian vegetation progressively decrease away from the water source (e.g., river), making it difficult to identify discrete boundaries for the riparian zones. As a reasonable benchmark, NMFS defines the "adjacent riparian zone" as those areas within a horizontal distance of 300 feet (91.4 m) from the normal line of high water of a stream channel or from the shoreline of a standing body of water. NMFS points out that this definition is adopted solely as a means by which agencies can evaluate the potential risk of proposed actions on designated critical habitat. The actual delineation of riparian zones at the site of a proposed action can be more accurately identified through section 7 consultations.

Seasonal Designation

Comments: Some commenters recommended that critical habitat be designated on a seasonal basis, suggesting that it could be based on the seasonal distribution of difficult species' life stages (e.g., spawning and rearing areas).

Response: A seasonal critical habitat designation for listed Snake River salmon is not appropriate because it would not be practical or beneficial for the conservation of the species. Due to the temporal differences in each species' life history strategy, either eggs, fry, juveniles, or adults are present almost year-round in the Columbia River Basin. Furthermore, actions with long-term impacts on habitat features could adversely affect the species even though taken when the species is not present. Therefore, impacts to critical habitat need to be evaluated on a year-round basis.

Economic Impacts—Incremental Approach

Comments: Many commenters believe that NMFS improperly minimized the economic impacts by separating the designation of critical habitat from the listing process (i.e., considering only the incremental economic effects of designating critical habitat beyond the effects associated with listing the species as threatened or endangered). These commenters are concerned that by separating the costs associated with the various regulatory actions (e.g., listing, critical habitat designation, section 7), NMFS underestimated the real economic consequences of protecting listed Snake River salmon as required by the ESA. Several commenters objected to NMFS' interpretation that the impact of critical habitat designation only duplicates the protection provided under section 7 of the ESA. Also, several commenters believe that using an incremental approach for critical habitat designation renders sections of the ESA meaningless and circumvents the intent of Congress.

Response: NMFS concludes that the economic impact of designating critical habitat will have only a small increase in impacts above those resulting from the listing. The law is unambiguous in both its prohibition of the consideration of economics in the listing process and its requirement to analyze the economic impact of designating critical habitat. These disparate requirements for each determination lead to an incremental analysis in which only the economic impacts resulting from the designation of the critical habitat are considered.

NMFS disagrees with the assertion that the incremental approach to economic analysis of critical habitat renders its designation meaningless. Critical habitat is important because it identifies habitat that is essential for the continued existence of a species and that may require special management measures. This facilitates and enhances Federal agencies' ability to comply with section 7 by ensuring that they are aware of the habitat that should be considered in analyzing the effects of their activities on listed species and habitats essential to support them. In addition to aiding Federal agencies in determining when consultations are required pursuant to section 7(a)(2), critical habitat can aid an agency in fulfilling its broader obligation under section 7(a)(1) to use its authority to carry out programs for the conservation of listed species.

Several commenters asserted that the incremental approach fails to take into account the substantial effect on non-

Federal interests that will be harmed by critical habitat designation to the extent they must receive Federal approvals or funds to conduct their activities. Most of the effect on non-Federal interests will be a result of the takings prohibition of section 9, or the no-jeopardy requirement of section 7, both of which are a function of the listing of the species, not designation of critical habitat. Whether or not critical habitat is designated, non-Federal interests must conduct their actions consistent with the requirements of the ESA. When a species is listed, non-Federal interests must comply with the prohibitions on takings under section 9 of the ESA or associated regulations. If the activity is funded, permitted or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which is also a result of the listing of a species, not the designation of critical habitat. Once critical habitat is designated, the agency must avoid actions that destroy or adversely modify that critical habitat. However, under 50 CFR 402.02 definitions, any action that destroys or adversely modifies critical habitat is also likely to jeopardize the continued existence of the species. Therefore, NMFS does not anticipate that the designation will result in significant additional requirements for non-Federal interests.

Economic Impact Analysis

Comments: Many commenters questioned the adequacy of the economic impact analysis used by NMFS (Huppert et al., 1992), stating that the analysis did not assess all potential impacts. Several commenters objected to NMFS' determination that the proposed designation would have only minimal economic impacts, especially on small communities and counties containing important salmon spawning and rearing habitat. There were several comments on the expected costs of the proposed designation. Several commenters recommended that results of an expanded economic assessment be published in the **Federal Register** and that the public comment period be extended by 180 days. Several commenters expressed concern that the analysis entirely ignored impacts on Columbia River navigation/port activities. Three commenters believed the economic analysis failed to evaluate the economic impacts on dredging activities in the lower Columbia River.

Response: Under section 4(b)(2) of the ESA, the Secretary is required to designate critical habitat on the basis of the best scientific data available and after taking into account the economic impact, and other relevant impacts, of specifying any particular area as critical habitat. An area may be excluded from a critical habitat designation if the overall benefits of exclusion outweigh the benefits of designation and the exclusion will not result in the extinction of the species.

NMFS has concluded, based on an assessment of the economic impacts of designating critical habitat for listed Snake River salmon, that the designation is not likely to have significant additional adverse impacts on Federal, state, or private actions beyond those that already occur as a result of listing a species under the ESA. Although many of the comments received on the economic impact of the proposed designation suggested that the designation will have major economic costs, these costs are attributable to the economic impacts resulting from the listing of the species and not from designating their critical habitat. Furthermore, the critical habitat designation directly affects Federal agency actions. This does not encompass private, state or local actions unless there is some Federal involvement.

Currently, Federal agencies active within the range of the listed Snake River salmon species are required to consult with NMFS regarding projects and activities they permit, fund, or otherwise carry out that may affect the species, since the species are listed under the ESA. Thus, even without this critical habitat designation, Federal agencies would be required to consult with NMFS, in most if not all situations, if listed Snake River salmon habitat might be adversely affected, since any action that is likely to affect these species' habitat would also be expected to affect the species. Economic impact attributable solely to critical habitat designation above listing may occur in areas that have been designated as critical habitat but that are outside the current distribution of listed Snake River salmon (See Expected Impacts of Critical Habitat Designation).

Although NMFS recognizes that the economic analysis may not be complete, it was broader than the impacts of a critical habitat designation. Therefore, it is not necessary to revise or update the economic report before final designation of critical habitat.

Impact of Critical Habitat Designation

Comment: Several commenters stated that designating critical habitat for listed Snake River salmon is a "major rule," because the economic impacts will be greater than $100 million, and recommended that NMFS conduct a regulatory impact analysis under E.O. 12291 and under the Regulatory Flexibility Act. Many commenters stated that NMFS' environmental assessment was inadequate and recommended that NMFS prepare an environmental impact statement (EIS) pursuant to NEPA on the critical habitat designation because designation is a major Federal action and will have a significant impact on the environment.

Response: E.O. 12291 has recently been revoked, so that it is no longer necessary to classify a rule as "major." Nevertheless, NMFS notes that the designation of critical habitat for listed Snake River salmon will have an annual effect on the economy of less than $100 million. Consequently, this rule is not "economically significant" as defined in section 3(f)(1) of E.O. 12866. Also, NMFS completed an EA pursuant to NEPA and concluded that this measure would not result in significant environmental impacts. Therefore, NMFS has determined that neither a regulatory impact analysis nor an EIS are necessary.

Public Notice of Proposed Rule

Comments: Several commenters voiced complaints about the location or notification of public hearings.

Response: Upon publishing notice of the proposed designation of critical habitat in the **FEDERAL REGISTER,** NMFS followed the appropriate notification procedures outlined in 50 CFR 424.16(c)(1). This notification included giving notice to state and Federal agencies, private individuals, and scientific organizations known to be affected by the proposed rule. NMFS also published a summary of the proposed regulation in several newspapers with general circulation in the Pacific Northwest. The sites chosen for public hearings were located in affected areas in Oregon, Washington, and Idaho to allow ample opportunity for public attendance. Furthermore, NMFS extended the public comment period an additional 30 days to allow additional comments to be incorporated into this final rule.

Current Regulatory Mechanisms and Activities Affecting the Essential Habitat

Comments: Several commenters recommended changes to the proposed rule under the sections "Need for Special Management Considerations or Protection" and Activities That May Affect the Essential Habitat." Many commenters stated that existing management plans were sufficient to protect habitat/listed species. Two commenters recommended that effects of fish monitoring activities and

research be included as special management considerations, and that NMFS be considered an agency affected by critical habitat designation. Several commenters stated that since the discharge of chemical pollutants is an activity that may affect critical habitat, the U.S. Environmental Protection Agency (EPA) should be identified as an affected Federal agency. One commenter noted that the U.S. Bureau of Reclamation (BOR) does not manage permitting for irrigation withdrawals in the Salmon River Basin.

Response: NMFS has considered existing regulatory mechanisms applicable to listed Snake River salmon and their critical habitat. A wide variety of Federal and state laws and programs have affected the abundance and survival of anadromous fish populations in the Columbia River Basin. However, they have not prevented the decline of listed Snake River salmon. Therefore, NMFS has determined that the inadequacy of existing regulatory mechanisms is a factor for listing these species as threatened or endangered.

NMFS considers the effects of scientific research/monitoring on listed Snake River salmon to be minor relative to other impacts. Furthermore, NMFS believes that the benefits derived from research/monitoring activities will promote the conservation of these species by reducing human induced mortalities associated with other activities.

Based on commenters' suggestions, NMFS and EPA have been included as Federal agencies whose activities may affect the designated critical habitat through their research/monitoring activities and regulation of pollutant discharges, respectively. In addition, NMFS acknowledges that the BOR does not regulate irrigation activities and diversions in the Salmon River Basin. However, the BOR controls large volumes of storage in the Snake River Basin, and influences the implementation of irrigation conservation measures by water users. The resulting flow regulation potentially impacts conditions in migration corridors and spawning areas of listed Snake River salmon below Hells Canyon Dam. NMFS also points out that agricultural activities funded or carried out by the U.S. Department of Agriculture Soil Conservation Service and Agricultural Stabilization and Conservation Service (DASCS) have potential effects on the critical habitat of listed Snake River salmon.

Primary Constituent Elements

Comments: Several commenters recommended that "primary constituent elements" be defined in more detail to help agencies determine when section 7 consultation is required.

Response: The primary constituent elements described under the "Need for Special Management Considerations or Protection" above and discussed in the proposed rule are provided to inform the public and to provide general guidance to Federal agencies. Detailed, quantitative descriptions of elements (e.g., nutrients, water flows and temperature, turbidity, streambank conditions, etc.) have not been included in the regulatory text because this discussion is intended to inform the public and to provide general guidance to Federal agencies. The diverse habitats and conditions that support populations of listed Snake River salmon make defining specific parameters of constituent elements extremely difficult. Furthermore, for some elements there is a lack of sufficiently detailed information to define the multitude of physicochemical conditions required to protect these species. Since it does not have the expertise to regulate criteria for all Federally permitted projects, NMFS requires Federal agencies to use their own expertise through the section 7 consultation process as a more effective method of describing potential impacts of their actions on constituent elements.

Classification

The General Counsel of the Department of Commerce has certified that this rule will not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. NMFS completed an assessment of the economic impacts of designating critical habitat. NMFS found that the regulatory effects of critical habitat designation largely duplicate the results of listing and consultations, so that the direct economic and other impacts resulting from critical habitat designation are minimal. Therefore, a regulatory flexibility analysis is not required.

NOAA Administrative Order 216–6 section 6.02c.3(h) provides that critical habitat designations under the ESA, generally, are excluded from the requirement to prepare an EA or an environmental impact statement. However, in order to evaluate more clearly the impacts of the proposed critical habitat designation, NMFS prepared an EA for this rule and has concluded that there will be no significant impact on the human environment. Copies of the EA are available on request (see **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: December 20, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. New § 226.22 is added to subpart C to read as follows:

§ 226.22 Snake River Sockeye Salmon (Oncorhynchus nerka), Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha), Snake River Fall Chinook Salmon (Oncorhynchus tshawytscha).

The following areas consisting of the water, waterway bottom, and adjacent riparian zone of specified lakes and river reaches in hydrologic units presently or historically accessible to listed Snake River salmon (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams). Adjacent riparian zones are defined as those areas within a horizontal distance of 300 feet (91.4 m) from the normal line of high water of a stream channel (600 feet or 182.8 m, when both sides of the stream channel are included) or from the shoreline of a standing body of water. Figure 5 identifies the general geographic extent of larger rivers, lakes, and streams within hydrologic units designated as critical habitat for Snake River sockeye, spring/summer chinook, and fall chinook salmon. Note that Figure 5 does not constitute the definition of critical habitat, but instead is provided as a general reference to guide Federal agencies and interested parties in locating the general boundaries of critical habitat for listed Snake River salmon. The complete text delineating critical habitat for each species follows. Hydrologic units (Table 3) are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "State Hydrologic Unit Maps," pages 1 to 22 and 17–1 to 17–13, Open-file Report 84–708, 1984, and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974, which are incorporated by reference. This incorporation by reference was

approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Endangered Species Branch, Environmental and Technical Services Division, 911 NE. 11th Avenue, room 620, Portland, OR 97232, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(a) *Snake River Sockeye Salmon (Oncorhynchus nerka).* The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to the confluence of the Salmon River; all Salmon River reaches from the confluence of the Snake River upstream to Alturas Lake Creek; Stanley, Redfish, Yellow Belly, Pettit, and Alturas Lakes (including their inlet and outlet creeks); Alturas Lake Creek, and that portion of Valley Creek between Stanley Lake Creek and the Salmon River. Critical habitat is comprised of all river lakes and reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River sockeye salmon in the following hydrologic units: Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, and Upper Salmon. Critical habitat borders on or passes through the following counties in Oregon: Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Blaine, Custer, Idaho, Lemhi, Lewis, Nez Perce.

(b) *Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha).* The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to Hells Canyon Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Hells Canyon, Imnaha, Lemhi, Little Salmon, Lower Grande Ronde, Lower Middle Fork Salmon, Lower Salmon, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, Pahsimeroi, South Fork Salmon, Upper Middle Fork Salmon, Upper Grande Ronde, Upper Salmon, Wallowa. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Blaine, Custer, Idaho, Lemhi, Lewis, Nez Perce, Valley.

(c) *Snake River Fall Chinook Salmon (Oncorhynchus tshawytscha).* The Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; the Snake River, all river reaches from the confluence of the Columbia River, upstream to Hells Canyon Dam; the Palouse River from its confluence with the Snake River upstream to Palouse Falls; the Clearwater River from its confluence with the Snake River upstream to its confluence with Lolo Creek; the North Fork Clearwater River from its confluence with the Clearwater River upstream to Dworshak Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) to Snake River fall chinook salmon in the following hydrologic units; Clearwater, Hells Canyon, Imnaha, Lower Grande Ronde, Lower North Fork Clearwater, Lower Salmon, Lower Snake, Lower Snake-Asotin, Lower Snake-Tucannon, and Palouse. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Wallowa, Wasco; the following counties in Washington: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Lincoln, Pacific, Skamania, Spokane, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Benewah, Clearwater, Idaho, Latah, Lewis, Nez Perce, Shoshone, Valley.

3. Table 3 and Figure 5 are added to part 226 to read as follows:

Table 3 to Part 226 [Added]

TABLE 3.—HYDROLOGIC UNITS [1] CONTAINING CRITICAL HABITAT FOR ENDANGERED SNAKE RIVER SOCKEYE SALMON AND THREATENED SNAKE RIVER SPRING/SUMMER AND FALL CHINOOK SALMON

Hydrologic unit name	Hydrologic unit number		
	Sockeye salmon	Spring/summer chinook salmon	Fall chinook salmon
Hells Canyon	.....	17060101	17060101
Imnaha	.....	17060102	17060102
Lower Snake—Asotin	17060103	17060103	17060103
Upper Grande Ronde	.....	17060104	.....
Wallowa	.....	17060105	.....
Lower Grande Ronde	.....	17060106	17060106
Lower Snake—Tucannon	17060107	17060107	17060107
Palouse	.....	.....	17060108

TABLE 3.—HYDROLOGIC UNITS [1] CONTAINING CRITICAL HABITAT FOR ENDANGERED SNAKE RIVER SOCKEYE SALMON AND THREATENED SNAKE RIVER SPRING/SUMMER AND FALL CHINOOK SALMON—Continued

Hydrologic unit name	Hydrologic unit number		
	Sockeye salmon	Spring/summer chinook salmon	Fall chinook salmon
Lower Snake	17060110	17060110	17060110
Upper Salmon	17060201	17060201	.....
Pahsimeroi	.....	17060202	.....
Middle Salmon—Panther	17060203	17060203	.....
Lemhi	.....	17060204	.....
Upper Middle Fork Salmon	.....	17060205	.....
Lower Middle Fork Salmon	.....	17060206	.....
Middle Salmon—Chamberlain	17060207	17060207	.....
South Fork Salmon	.....	17060208	.....
Lower Salmon	17060209	17060209	17060209
Little Salmon	.....	17060210	.....
Clearwater	.....	.....	17060306
Lower North Fork Clearwater	.....	.....	17060308

[1] Hydrologic units and names taken from DOI, USGS 1:500,000 scale hydrologic unit maps (available from USGS); State of Oregon, 1974; State of Washington, 1974; State of Idaho, 1974.

Figure 5 to Part 226—Designated Critical Habitat, Snake River Salmon

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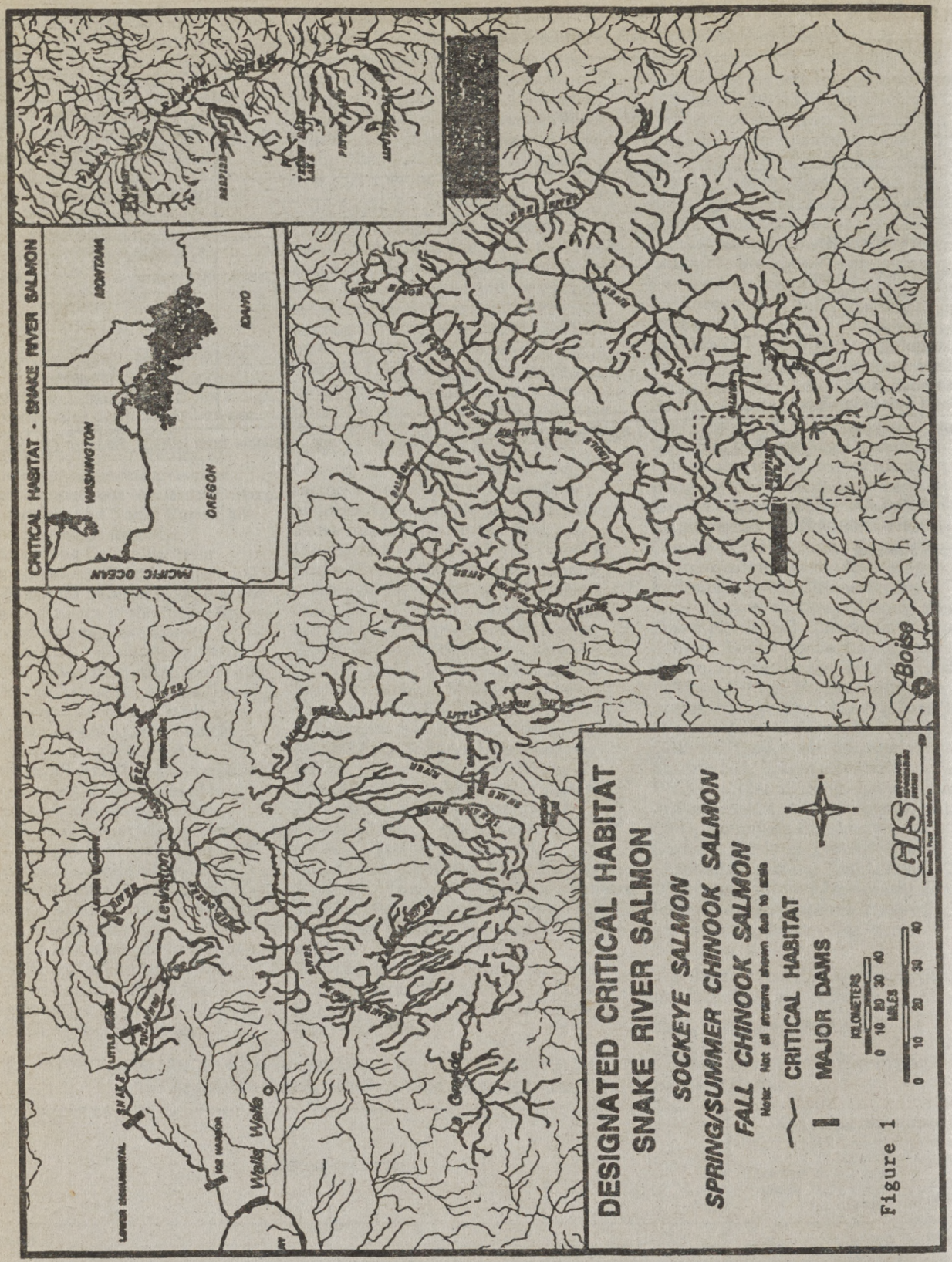

Figure 1

[FR Doc. 93–31432 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–22–C

50 CFR Part 625

[Docket No. 921230–3020; I.D. 122093B]

Summer Flounder Fishery

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

ACTION: Notification of commercial quota harvest.

SUMMARY: NMFS issues this notification to announce that the summer flounder commercial quota available to the State of Rhode Island has been harvested. Vessels issued a Federal fisheries permit for the summer flounder fishery may no longer land summer flounder in the State of Rhode Island for the remainder of calendar year 1993. Regulations governing the Fishery Management Plan for the Summer Flounder Fishery (FMP) require publication of this notice to advise the State of Rhode Island that its quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in the State.

EFFECTIVE DATE: December 22, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1993 calendar year is set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). The quota allocated to vessels landing summer flounder in Rhode Island is 1,936,851 pounds (878,549.8 kg).

Section 625.21(c) requires the Director, Northeast Region, NMFS (Regional Director), to monitor state commercial quotas based on dealer reports and other available information, and to determine the date when a state commercial quota will be harvested. The Regional Director is further required to publish a notice in the Federal Register advising the state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state.

The Regional Director has determined, based on dealer reports and other available information, that the Rhode Island commercial quota will be harvested by December 22, 1993. The regulations at 625.4(a)(3) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. Therefore, further landings in that state by Federally permitted vessels are prohibited for the remainder of the 1993 calendar year, effective 0001 hours December 22, 1993. Federally permitted dealers are advised that they may not purchase summer flounder from Federally permitted vessels that land in Rhode Island, for the remainder of the calendar year.

Classification

This action is required by 50 CFR part 625.

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

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: December 22, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–31696 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 649

[Docket No. 931232–3332; I.D. 101993A]

American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations implementing the American Lobster Fishery Management Plan (FMP) to postpone an increase in the minimum carapace length (CL), because a comprehensive FMP amendment was transmitted by the New England Fishery Management Council (Council). The existing minimum CL of 3¼ inches (8.26 cm) will remain in effect through May 17, 1994, for vessels with Federal lobster permits or with state lobster permits that have been endorsed for fishing in the exclusive economic zone (EEZ). The intention is to maintain a consistent minimum CL applicable to American lobsters taken from state waters and those taken in the EEZ during Secretarial review of an FMP amendment.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Millikin (Fishery Management Specialist, NMFS), 301/713–2341.

SUPPLEMENTARY INFORMATION: The American lobster fishery is managed under the FMP prepared by the Council and implementing regulations at 50 CFR part 649, pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations at § 649.20(b)(2) required that if, prior to December 26, 1993, the Council transmits to the Secretary a comprehensive amendment to the FMP that further addresses management strategies for American lobster throughout its range, with an emphasis on alleviating overfishing, the Director, Northeast Region, NMFS (Regional Director), shall change the date, by regulatory amendment, upon which the 3$^{9}/_{32}$ inch (8.33 cm) minimum CL becomes effective to the 146th day after the date on which the comprehensive FMP amendment was transmitted. This postponement will preserve, in the interim, the uniformity between the state and Federal minimum CLs for American lobster, one of the objectives of the FMP. Failure to postpone the minimum CL increase would create the following difficulties:

1. The failure to establish a size limit that is consistent in state and Federal waters would jeopardize the effective enforcement of the more restrictive Federal minimum size. Lobsters are landed in hundreds of small ports along more than 6,000 miles (9,600 km) of coastline in the Northeast. Most of the fishermen landing in these ports have Federal lobster permits and are subject to Federal lobster regulations. Enforcement of the Federal lobster regulations in many of these ports relies, out of necessity, on state enforcement agencies that enforce identical state regulations. If Federal size restrictions are inconsistent with state size restrictions, it would be unlikely that there would be effective enforcement of the more restrictive Federal CL standard.

2. Lobster fishermen and dealers would incur economic hardship. The Mitchell Amendment to the Magnuson Act prohibits the shipment, transport, sale, or purchase, in interstate or foreign commerce, of any whole live American lobster smaller than the Federal minimum size. If the scheduled increase in the Federal CL were allowed to occur, a significant percentage, estimated to be 5 to 7 percent of lobster landings, would meet the lower state CL restrictions, but not the increased Federal CL standard. In order to ensure that the smaller

lobsters are not sold in interstate or foreign commerce, lobster fishermen and dealers would be forced to incur, temporarily, the added burden and expense of setting up a system to separate lobsters differing in size by an almost imperceptible 1/32 inch (0.08 cm) (and in weight by less than 1 oz. (26.3 g)). This added burden and expense coupled with the inability to sell the smaller lobsters in interstate or foreign commerce would impose an unnecessary economic hardship on the U.S. lobster industry. The restriction on selling the smaller lobster in foreign commerce would be particularly harmful on the U.S. industry's ability to compete with Canada, whose industry is subject to a smaller CL standard in the sale of the highly desirable smaller lobsters.

3. Many vessels would have an incentive to give up their Federal permits and fish exclusively in state waters in order to be subject to less restrictive CL standards, thereby forcing more effort inshore where the resource already experiences excessively high exploitation rates.

Due to the short-term nature of this action, the Council has requested that the minimum CL increase be delayed while the Secretary reviews a comprehensive FMP amendment that proposes to alleviate overfishing and set a timeframe to accomplish a program for rebuilding the stock, but that does not incorporate the lobster minimum CL increases.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary for the conservation and management of the American lobster fishery and is consistent with the Magnuson Act and with other applicable law.

The AA, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), finds that there is good cause to implement this final rule without prior notice and opportunity for public comment, and that the effective date of this rule should not be delayed later than December 23, 1993. Prior public comment is unnecessary; delaying the increase in the minimum CL was subject to prior public comment in the development and implementation of Amendment 4 to the FMP. The affected members of the public had opportunity to discuss and comment on this measure at meetings held by the Council. Further, the effect of this rule is to continue an existing measure that does not implement any new restrictions on the affected public and to relieve a restriction that would otherwise occur on December 27, 1993.

Because neither the APA nor any other law requires that notice and opportunity for public comment be given for this rule, under sections 603 and 604 of the Regulatory Flexibility Act, a regulatory flexibility analysis need not be and was not prepared.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: December 21, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.20, paragraph (b) is revised to read as follows:

§ 649.20 Harvesting and landing requirements.

* * * * *

(b) *Carapace length.* All American lobsters landed on the dates set forth must have a minimum carapace length as follows:

Effective dates	Minimum carapace length
December 27, 1991, through May 17, 1994.	3 1/4 inches (8.26 cm).
May 18, 1994, through December 26, 1994.	3 9/32 inches (8.33 cm).
December 27, 1994, and beyond.	3 5/16 inches (8.41 cm).

* * * * *

[FR Doc. 93–31626 Filed 12–22–93; 3:20 pm]

BILLING CODE 3510–22–M

50 CFR Part 678

[Docket No. 920409–3337; I.D. 120293D]

RIN 0648–AG02

Atlantic Shark Fisheries

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues an interim final rule to implement commercial trip limits for permitted vessels for Atlantic large coastal sharks, as authorized by the Fishery Management Plan for Sharks of the Atlantic Ocean (FMP), in order to lower daily landings, to extend the open season, and to reduce the likelihood that the semiannual quota will be exceeded. In addition, NMFS is soliciting written comments on this and other issues of concern in this fishery.

DATES: Effective January 1, 1994. Comments on this interim final rule must be received on or before January 27, 1994.

ADDRESSES: Comments on the interim final rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly indicate "Atlantic Shark Comments" on the envelope. Comments may also be sent by FAX to 301–713–1035. Requests for copies of the Environmental Assessment/Regulatory Impact Review supporting this action may be sent to C. Michael Bailey at the same address.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347, FAX 301–713–1035, Michael E. Justen, 813–893–3161 or Kevin Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: The fishery for Atlantic sharks is managed under the FMP prepared by NMFS under authority of section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), and was implemented through a final/interim final rule published on April 26, 1993 (58 FR 21931). Comments and responses on the draft FMP and proposed rule were discussed in the preamble to that rule and are not repeated here.

In September 1993, 13 public scoping meetings were held to receive comments from fishery participants and other members of the public regarding measures to slow the fishery and extend the season, as well as other issues in the Atlantic shark fishery. In addition, NMFS solicited written comments as part of the scoping process.

The 1993 Atlantic Shark Fishery

A number of difficulties arose in the initial year of implementation of the FMP (1993). First, the January-June biannual large coastal species group subquota was exceeded shortly after implementation of the FMP, and that portion of the commercial fishery was closed on May 10, 1993. The fishery for large coastal sharks reopened on July 1, 1993, with an adjusted quota of 875 metric tons dressed weight (mt dw). Derby-style fishing, coupled with what some participants observed to be an

unusual abundance of sharks, led to a very intense and short fishing season for large coastal sharks, with the fishery closing within 1 month. Although fin prices remained strong throughout the brief season, the oversupply of shark carcasses led to reports of record low prices and poor quality. The closure was earlier than some expected, and a number of commercial fishermen and dealers indicated that they were adversely affected. The intense season also complicated the task of monitoring the large coastal quota and of closing the season with the required advance notice.

This interim final rule imposes a trip limit for large coastal sharks for permitted commercial fishing vessels, under the framework provisions of the FMP, which allow the Assistant Administrator for Fisheries, NOAA, (AA), in consultation with the Operations Team, if appropriate, to make adjustments in the management measures in order to achieve the objectives of the FMP. These adjustments may include changes in commercial trip limits.

This interim final rule allows all permitted vessels to harvest and possess up to and including 4,000 pounds (1,814 kg) of large coastal sharks per trip, with no trip limits on catch from the small coastal and pelagic species groups. Since fishermen are required under § 678.21(a)(2) to weigh the fins in conjunction with the carcasses at the vessel's first point of landing, due to the finning restrictions, this rule does not add to reporting or compliance costs. This rule also prohibits the transfer at sea of all sharks harvested.

Implementation of this trip limit for permitted vessels is intended to lower total daily landings, to extend the open season, reduce the possibility that the semiannual quota will be exceeded, and reduce the waste, economic disruption and safety problems associated with the derby-style fishery for the large coastal shark management unit. Trip limits can result in a lower daily supply and thus better quality and prices for fishermen throughout the season, particularly for shark meat. Derby-style fishing has been particularly acute in this fishery, with a 6-month fishing season reduced to less than 1 month. Because shark meat is marketed primarily in fresh form and through large volume supermarket specials advertised long in advance, the market gluts created by the derby-style fishery are particularly disruptive to the industry. A longer fishing season can also help avoid the overcapitalization in harvesting capacity, as well as off-loading and processing facilities associated with derby-style fishing. Extending the season allows a steady supply of high quality, fresh shark meat for the domestic market over a longer period of time, with benefits for U.S. consumers, as well as firms involved in shark handling and processing.

Comments and Responses

Agency responses to comments received during the scoping period are summarized below.

1. Commercial Trip Limits

Comment. One Fishery Management Council, 31 commercial shark fishing interests, two incidental commercial shark fishing interests, two recreational fishing interests, and 13 individuals provided written comments in support of commercial trip limits in order to lengthen the fishing season. Some commenters suggested that trip limits be uniform across all vessels (ranging from 500 to 10,000 pounds (227 to 4,536 kg)), while others proposed varying trip limit levels according to vessel hold capacity and/or whether the catch was directed or incidental.

Response. NMFS agrees with the commenters on the need for trip limits to slow the fishery. Given the administrative and technical difficulty of establishing trip limits according to vessel size and/or targeted species, NMFS is imposing uniform trip limits on the commercial shark fishery. The 4,000-lb trip limit represents a balance between a level low enough to extend the season, but not so low as to impose undue hardship on commercial shark fishing vessels.

Comment. Several statements made during the scoping hearings, as well as in written comments addressed possible negative effects of trip limits, including reduced profitability of larger, directed vessels fishing far offshore, highgrading, and discards. In addition, some commenters felt strongly that trip limits do not address the primary problem in the fishery, *i.e.*, rapid expansion in the number of permit holders.

Response. While NMFS agrees that trip limits could reduce profits for certain fishing vessels, notably the larger vessels engaged in a directed shark fishery at distances farther offshore, NMFS believes that only a limited number of vessels would be adversely affected. These negative effects will be offset by the benefits of an extended season, notably higher quality and prices, and reduced waste and economic disruption. NMFS also agrees that discards of large coastal sharks could increase due to highgrading or exceeding the trip limit in the final set. However, since the open season should be extended with trip limits, the number of discards due to a closure should decline. NMFS agrees that trip limits are only a short-term measure to address derby-style fishing problems. Future rulemakings will consider longer term measures.

2. Other Comments

Comment. NMFS received a number of other comments during the scoping process, including:

(1) Tiered permit system (*e.g.* directed, bycatch, and angler catch);

(2) Medium and long-term measures to address the rapid expansion in the number of permit holders (*e.g.* control date, moratorium, and individual quotas);

(3) Modifications in the quota level for large coastal sharks;

(4) Regional sub-quotas for large coastal sharks;

(5) Area/season closures for sharks (*e.g.*, nursery/pupping grounds);

(6) Modifications in the fin/carcass ratio; and

(7) Changes in the recreational fishery bag limit.

Response. This interim final rule addresses only the implementation of trip limits for large coastal sharks. Other issues raised in the scoping process may be addressed in future rulemakings.

Classification

The AA has determined that this rule is necessary for conservation and management of shark resources in the Atlantic Ocean and is consistent with the national standards and other provisions of the Magnuson Act, and other applicable law.

The AA finds that the trip limits specified in this interim final rule are necessary due to the need to address the acute problems in the shark fishery and to bring existing regulations into conformity with the objectives of the shark FMP. The AA also finds that the changes must be implemented prior to the start of the fishing year, pending more long-term regulations to address the derby-style fishing problems. Furthermore, the AA believes that the 13 scoping meetings held prior to the preparation of this interim final rule provided sufficient opportunity for the public to comment on measures to address derby-style fishing problems. Accordingly, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), the AA finds for good cause, namely the reasons above, that it is unnecessary and contrary to the public interest, to provide notice and opportunity to comment for this rule. For the same reasons, the AA, pursuant to section 553(d)(3) of the APA, finds that good cause exists not to

delay for 30 days the interim final rule's effective date.

Since notice and opportunity for comment for the interim final rule has been waived under section 553 of the APA, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final Regulatory Flexibility analysis needs to be prepared for this interim final rule.

List of Subjects in 50 CFR Part 678

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 21, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 678 is amended as follows:

PART 678—ATLANTIC SHARKS

1. The authority citation for part 678 continues to read as follows:

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

2. In § 678.2, a definition for *trip limit* is added, in alphabetical order, to read as follows:

§ 678.2 Definitions.

* * * * *

Trip limit means the total allowable take from a single trip as defined in this section.

* * * * *

3. In § 678.7, paragraph (p) is revised, and a new paragraph (x) is added to read as follows:

§ 678.7 Prohibitions.

* * * * *

(p) Transfer a shark at sea, as specified in §§ 678.21(c) and 678.22(e).

* * * * *

(x) Exceed the vessel trip limits, as specified in § 678.21(c).

4. In § 678.21, a new paragraph (c) is added to read as follows:

§ 678.21 Harvest limitations.

* * * * *

(c) *Vessel Trip limits.* (1) Vessels issued an Atlantic shark permit issued under § 678.4 may not land or possess more than 4,000 pounds (1,814 kg) dressed weight of shark from the large coastal species management unit, until a closure has been effected under § 678.24.

(2) A shark from any of the three management units may not be transferred at sea from a vessel issued an Atlantic shark permit issued under § 678.4 to any other vessel.

[FR Doc. 93–31591 Filed 12–22–93; 10:22 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 58, No. 247
Tuesday, December 28, 1993

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

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. 92–158–1]

Animal Welfare; Licensing and Records

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare regulations to require dealers, exhibitors, and operators of auction sales who apply for license renewal to certify that, to the best of their knowledge and belief, they are in compliance with the regulations before a renewal is issued. We are also proposing to require dealers and exhibitors to use certain forms to make, keep, and maintain the animal identification records required by the regulations. We believe these changes are necessary to help ensure that applicants for license renewal are in compliance with the regulations and that dealers and exhibitors keep accurate and complete records. These proposed amendments would promote compliance with the Animal Welfare Act.

DATES: Consideration will be given only to comments received on or before February 28, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–158–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independent Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Debra E. Beasley, Senior Staff Veterinarian, Animal Care, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations contained in 9 CFR part 2 (referred to below as "the regulations") pertain to the administrative and institutional responsibilities of regualted persons under the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act). We are proposing to amend the regulations concerning licensing and recordkeeping to modify one aspect of the license renewal process and to require the use of two forms for the maintenance of certain prescribed records.

License Renewal

The regulations in § 2.1(a)(1) require any person who operates or desires to operate as a dealer, exhibitor, or operator of an auction sale, except certain persons exempted under § 2.1(a)(3), to have a valid license. A person seeking a license or license renewal must apply on an application form that is provided by the Animal and Plant Health Inspection Service (APHIS), Regulatory Enforcement and Animal Care (REAC) sector supervisor for the State in which the person operates or seeks to operate. Along with the application form, the sector supervisor will send a copy of the applicable regulations and standards contained in 9 CFR parts 1, 2, and 3 to a person seeking a license or license renewal. The person seeking a license or license renewal must acknowledge, on the application form, that he or she has received a copy of the regulations and standards and agrees to comply with the regulations and standards. If the applicant meets all the applicable requirements of the regulations, a license will be issued.

After examining the licensing process, we believe that a greater degree of compliance with the regulations could be attained if we required persons seeking to renew a license to certify that, to the best of their knowledge and belief, they are in compliance with the regulations and standards.

Therefore, we are proposing to amend § 2.2 of the regulations to require that an applicant for license renewal certify that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to be in compliance upon issuance of a renewed license. We believe that this proposed change would promote compliance with the regulations and standards by encouraging licensees to make more frequent and thorough inspections of their facilities and operations.

Recordkeeping Requirements

The regulations in § 2.75(a)(1) require each dealer and exhibitor to make, keep, and maintain records concerning each dog or cat in his or her possession or under his or her control. The records must fully and correctly disclose information concerning the acquisition, disposition, transportation, identification, and previous ownership of each dog or cat. Although the regulations do not require dealers or exhibitors to use any particular method or form to make, keep, and maintain the prescribed records, § 2.75(a)(2) does state that Record of Dogs and Cats on Hand (VS Form 18–5) and Record of Disposition of Dogs and Cats (VS Form 18–6) may be used.

APHIS has found, however, that because there are no prescribed forms for recording the information required by § 2.75(a)(1), the degree to which individual dealers and exhibitors comply with the recordkeeping requirements varies. Records that contain incorrect or incomplete information may be of little or no use to an APHIS official searching for a specific dog or cat or trying to ascertain whether a dealer or exhibitor is in compliance with the regulations. Therefore, we are proposing to amend the regulations to require dealers and exhibitors to use Record of Dogs and Cats on Hand (VS Form 18–5) and Record of Disposition of Dogs and Cats (VS Form 18–6) to make, keep, and maintain the information required by § 2.75(a)(1).

This proposed change in the regulations would promote compliance with the Act by simplifying the recordkeeping process for dealers and exhibitors. By filling out the prescribed

forms, a dealer or exhibitor would have recorded all the information required by § 2.75(a)(1). Use of the forms would also aid APHIS in its enforcement of the regulations by standardizing the format in which animal identification records are kept, thus making the task of reviewing records or searching for specific information easier.

Miscellaneous

In addition to the proposed changes set forth above, we are also proposing to amend the regulations by providing APHIS form numbers alongside the Veterinary Services (VS) form numbers currently used in the regulations. Since the 1988 APHIS reorganization that established REAC as a separate unit, APHIS form numbers have been assigned to the VS forms used by REAC. When the existing stock of VS forms in depleted, only APHIS form numbers will be used. Until that occurs, however, we believe that both APHIS and VS form numbers should be set out in the regulations to help prevent any confusion. Therefore, we are proposing to add APHIS form numbers in front of the VS form numbers that appear in §§ 2.2, 2.5, 2.35, 2.38, 2.75, 2.78, and 2.102.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

We are proposing to amend the Animal Welfare regulations to require applicants for license renewal to certify that they are in compliance with the regulations before a renewal is issued. We are also proposing to require dealers and exhibitors to use certain forms to make, keep, and maintain the animal identification records required by the regulations. These actions are necessary to help ensure that applicants for license renewal are in compliance with the regulations and that dealers and exhibitors keep accurate and complete records. We do not expect there to be an economic impact on any entities, large or small, that would be affected by these proposed changes in the regulations.

Because all licensees are currently required to operate in compliance with the regulations, the proposed requirement for license renewal applicants to certify that they are in compliance with the regulations would have no effect in terms of increased operational costs or burdens. Similarly, the proposal to require the use of VS Form 18–5, "Record of Dogs and Cats on Hand," and VS Form 18–6, "Record of Disposition of Dogs and Cats," to make, keep, and maintain the required animal identification records would involve no new costs or burdens. Dealers and exhibitors are already required to keep the records, so they will not have to gather or record any new information in order to complete the forms. We would not require any existing records to be converted over to the new forms. Additionally, the forms would be provided by APHIS to the dealers and exhibitors free of charge.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection of recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, 9 CFR part 2 would be amended as follows:

PART 2—REGULATIONS

1. The authority citation for part 2 would continue to read as follows:

Authority: 7 U.S.C. 2131–2157; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 2.2 would be revised to read as follows:

§ 2.2 Acknowledgement of regulations and standards.

(a) *Appliction for initial license.* APHIS will supply a copy of the applicable regulations and standards to the applicant with each request for a license application. The applicant shall acknowledge receipt of the regulations and standards and agree to comply with them by signing the application form before a license will be issued.

(b) *Application for license renewal.* APHIS will supply a copy of the applicable regulations and standards to the applicant for license renewal with each request for a license renewal. The applicant for license renewal shall acknowledge receipt of the regulations and standards and shall certify that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards by signing the application form before a license will be renewed.

§ 2.5 [Amended]

3. In § 2.5, paragraph (b), the first sentence would be amended by adding the words "APHIS Form 7003/" immediately before the words "VS Form 18–3".

§ 2.35 [Amended]

4. In § 2.35, paragraph (d)(1) would be amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18–1" and by adding the words "APHIS Form 7005/" immediately before the words "VS Form 18–5".

5. In § 2.35, paragraph (d)(2) would be amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18–1" and by adding the words "APHIS Form 7006/" immediately before the words "VS Form 18–6".

§ 2.38 [Amended]

6. In § 2.38, paragraph (h)(3) would be amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18–1".

7. In § 2.38, paragraph (i)(3) the beginning of the second sentence would be amended by removing the words "Veterinary Services" and adding the words "APHIS Form 7009/VS" in their place.

8. Section 2.75 would be amended as follows:

a. Paragraph (a)(2) would be revised to read as set forth below.

b. In paragraph (a)(3), the words "APHIS Form 7001/" would be added immediately before the words "VS Form 18–1", and the words "paragraph (a)(1) of this section and" would be removed.

c. In paragraph (b)(2), the words"APHIS Form 7019/" would be added immediately before the words "VS Form 18–19", and the words "APHIS Form 7020/" would be added immediately before the words "VS Form 18–20".

As revised, § 2.75 (a)(2) would be read as follows:

§ 2.75 Records: Dealers and exhibitors.

(a) * * *.

(2) Each dealer and exhibitor shall use Record of Dogs and Cats on Hand (APHIS Form 7005/VS Form 18–5) and Record of Disposition of Dogs and Cats (APHIS Form 7006/VS Form 18–6) to make, keep, and maintain the information required by paragraph (a)(1) of this section.

* * * * *

§ 2.78 [Amended]

9. In § 2.78, paragraph (d) would be amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18–1".

§ 2.102 [Amended]

10. In § 2.102, paragraph (a)(3) the beginning of the second sentence would be amended by removing the words "Veterinary Services" and adding the words "APHIS Form 7009/VS" in their place.

Done in Washington, DC, this 21st day of December 1993.

Patricia Jensen,

Deputy Assist Secretary, Marketing and Inspection Services.

[FR Doc. 93–31679 12–27–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 51

[Docket No. 93–023–1]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis indemnity regulations to provide for the payment of indemnity to owners who have brucellosis exposed cattle or bison destroyed that were previously sold or traded from any herd that has subsequent to the sale or trade been found to be affected with brucellosis. This action appears necessary to give herd owners sufficient incentive to destroy their exposed animals in a timely manner. Prompt destruction of brucellosis-affected animals would assist in eradicating the disease in the United States.

DATES: Consideration will be given only to comments received on or before January 27, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–023–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. M. J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4918.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis, also called Bang's disease or undulant fever, is a serious infectious disease of cattle, bison, and other species, including humans, caused by bacteria of the genus *Brucella*. Brucellosis in cattle and bison is characterized by fever, sterility, slow breeding, abortion, and loss of milk production. To help prevent the spread of the disease, the regulations in 9 CFR part 51 (referred to below as the regulations) provide for payment of Federal indemnity to owners of certain animals destroyed because of brucellosis. The payment of indemnity is intended to provide owners with a financial incentive for promptly destroying animals affected with or exposed to brucellosis. Because the continued presence of brucellosis in a herd seriously threatens the health of animals in that herd and possibly other herds, the prompt destruction of brucellosis-affected cattle or bison is critical if brucellosis-eradication efforts in the United States are to succeed.

In accordance with § 51.3(a)(1) of the regulations, the Administrator of the Animal and Plant Health Inspection Service (APHIS) may authorize the payment of Federal indemnity by the United States Department of Agriculture (USDA) to any owner whose cattle or bison are destroyed as brucellosis reactors.

In accordance with § 51.3(a)(2)(i) of the regulations, the Administrator of APHIS may also authorize the payment of Federal indemnity by USDA to any owner whose herd of cattle or bison is destroyed because of brucellosis. The Administrator may authorize the payment of Federal indemnity by USDA for brucellosis exposed cattle or bison in the herd only when the Administrator determines that destruction of all cattle and bison in the herd will contribute to the brucellosis eradication program.

Currently the regulations do not provide for the payment of indemnity for destroying cattle and bison that were sold or traded from a herd prior to the time that herd was found to be affected with brucellosis. We are proposing to change the regulations to allow for payment of Federal indemnity to owners who have brucellosis exposed cattle or bison destroyed that were previously sold or traded from a herd that has subsequent to the sale or trade been found to be affected with brucellosis.

Under current practice, when a herd is found to be affected with brucellosis, animals sold or traded from the herd are traced to the new owners. Animals are traced if they were in a herd during a period in which epidemiological information and professional judgment show they could have become brucellosis affected. Epidemiological information such as test results, herd history, and related evidence would be

used to establish a probable date when the herd was first infected with brucellosis. Animals sold after that date would be considered to be exposed; those sold before that date would not.

The new owners are given two options. Within the next 30 days they must decide to either:

1. Destroy the brucellosis-exposed animals, an action for which, under present regulations, the owner cannot be offered any indemnity payment; or

2. Quarantine the exposed animals or the entire herd for up to 6 months or more while the animals in the herd are being tested by USDA for the presence of brucellosis.

Due to the lack of incentive to destroy the exposed animals or depopulate the herd, owners prefer to quarantine the exposed animals or, when the exposed animals in the herd cannot be isolated, the entire herd. Quarantining is a lengthy and expensive process for both an owner and the Federal government. The government has to pay to have the quarantined portion of the herd tested periodically, until the herd is found to be free of brucellosis. An owner may not sell or move any animals while they are under quarantine, except for slaughter. Sales to slaughter provide less revenue than sales for breeding purposes. If any of the quarantined animals test positive for brucellosis, owners have two choices. They can either:

1. Have the herd remain under quarantine while trying to eliminate the disease from the herd by destroying the infected animals, a process which could take months; or

2. Have the herd depopulated.

Both herd depopulation and quarantining brucellosis-exposed cattle or bison restrict owners from moving animals for profit or replacing older animals. The opportunity for the receipt of indemnity payments, which would be made at the rates currently in effect for exposed cattle and bison destroyed during depopulation, would encourage good herd-management practices.

The proposed amendments in this document would provide an economic incentive for the timely removal of brucellosis-exposed animals from any herd, thus minimizing the risk of those animals spreading brucellosis to a new herd.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866.

The proposed change in the regulation would allow for a per-head indemnity payment as cited in § 51.3(a)(2)(ii) if the owner chose to destroy the exposed animals within a specified amount of time. In all States except Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, the amount of Federal indemnity would not exceed $250 for any registered cattle, $250 for any nonregistered dairy cattle, $150 for any nonregistered cattle other than dairy cattle, and $150 for any bison. In Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, the amount of Federal indemnity would not exceed $250 for any cattle or bison. If an owner chose to accept the indemnity payment, the owner would stand to lose less money than through either depopulation or quarantine. If the owner chose to accept the indemnity payment, the Government would also save money through eliminating the need for quarantining the entire herd and performing numerous retests. At the same time, there would be less risk of spreading brucellosis to the rest of the animals in the owner's herd and to adjacent herds.

APHIS experts estimate that there are about 50 owners nationwide (owning approximately 100 to 150 animals total, all of which are used for breeding purposes), who may be affected by these changes in the regulations. All of the farmers can be considered "small" entities (annual gross receipts of $0.5 million or less, according to Small Business Administration size standards).

While an owner still would stand to lose money by destroying exposed animals because the amount of the indemnity would not fully compensate an owner for the loss of an animal, the amount would likely be minimal in comparison to the potential loss if the entire herd were to become infected.

In summary, by allowing for an indemnity payment as specified in § 51.3(a)(2)(ii) for each animal that was part of a herd prior to the time that herd was found affected with brucellosis, the risk of spreading brucellosis in the new herd could be minimized. Payment of the specified indemnity per head would give owners an economic incentive to destroy an exposed animal that was part of a herd prior to the time that herd was found affected with brucellosis. The indemnity payment would provide an economic benefit to owners by minimizing their financial losses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suite in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 51 would be amended as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 51.3, paragraph (a) would be amended by adding a new paragraph (a)(4), to read as set forth below:

§ 51.3 Payment to owners for animals destroyed.

(a) * * *

(4) *Cattle or bison from a brucellosis-affected herd.* The Administrator may authorize the payment [3] of Federal indemnity by the United States Department of Agriculture to any owner who has brucellosis exposed cattle or bison destroyed that were previously sold or traded from any herd that has

subsequent to the sale or trade been found to be affected with brucellosis. Epidemiological information such as test results, herd history, and related evidence would be used to establish a probable date when the herd was first infected with brucellosis. Animals sold after that date would be considered to be exposed; those sold before that date would not. In all States except Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, the amount of Federal indemnity shall not exceed $250 for any registered cattle, $250 for any nonregistered dairy cattle, $150 for any nonregistered cattle other than dairy cattle, and $150 for any bison. In Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States, the amount of Federal indemnity shall not exceed $250 for any cattle or bison. Indemnity payments shall be made only for brucellosis exposed cattle or brucellosis exposed bison and only when the Administrator determines that the destruction of such cattle or bison will contribute to the brucellosis eradication program. Prior to payment of indemnity, proof of destruction [4] shall be furnished to the veterinarian in charge.

* * * * *

Done in Washington, DC, this 21st day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31678 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0823]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for comments.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend its risk-based and leverage capital guidelines for State member banks and bank holding companies to include in Tier 1 capital the net unrealized changes in the value of securities available for sale for purposes of calculating the risk-based and leverage ratios. The proposal is in response to the recently adopted Financial Accounting Standards Board (FASB) Statement Number 115, *Accounting for Certain Investments in Debt and Equity Securities*, which establishes "net unrealized holding gains and losses on securities available for sale" as a new component of common stockholders' equity. Although the Board's capital guidelines indicate that common stockholders' equity is included in Tier 1 capital, they do not specifically address this new equity account. This proposed rule addresses the treatment of the new account.

DATES: All comments regarding the proposed changes must be submitted on or before January 21, 1994.

ADDRESSES: Comments should refer to Docket No. R-0823 and may be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551, or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room MP-500, Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202/728-5883), Arleen E. Lustig, Supervisory Financial Analyst (202/452-2987), and John M. Frech, Supervisory Financial Analyst (202/452-2275), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The risk-based capital guidelines adopted by the Federal Reserve Board[1] set forth a definition of Tier 1 capital that includes common stockholders' equity. The Board's risk-based capital guidelines for State member banks and bank holding companies further state that common stockholders' equity includes (1) common stock, (2) related surplus, and (3) retained earnings, including capital reserves and adjustments for the cumulative effect of foreign currency translation, net of treasury stock. On May 31, 1993, FASB issued a new accounting standard, FASB Statement Number 115 (FASB 115), *Accounting for Certain Investments in Debt and Equity Securities*, which, in essence, adds a new element to common stockholders' equity by including net unrealized gains and losses on certain securities. The Federal banking agencies have agreed to adopt FASB 115 for regulatory reporting purposes.[2] The adoption of this new accounting standard for regulatory reporting has raised the question whether the Board should include the new component of common stockholders' equity in Tier 1 capital for purposes of calculating risk-based and leverage capital ratios.

FASB 115

Under current Generally Accepted Accounting Principles (GAAP), there are three categories of securities, each of which is subject to a different accounting treatment: (1) "securities held for investment," (2) "trading securities," and (3) "securities held for sale." Under FASB 115, securities held by banking organizations will be divided among three categories: (1) securities held to maturity, a new category that replaces the securities held-for-investment category; (2) the trading securities category, which remains unchanged; and (3) securities available for sale, a new category that replaces the securities held-for-sale category.

Under FASB 115, trading securities continue to be defined as those securities that an institution buys and holds principally for the purpose of selling in the near term. As before, these securities are to be reported at fair value (*i.e.*, generally at market value), with net unrealized changes in their value reported directly in the income statement as part of an institution's earnings.

Traditionally, securities held for investment have been recorded at amortized cost. Under FASB 115, this treatment will continue to be applied to securities held to maturity. However, FASB 115 states that a banking organization may include a security in the held-to-maturity category only if management has expressed "the positive intent and ability to hold the security to maturity."

[1] The Board's guidelines implement, for State member banks and bank holding companies, the international bank capital standards as set forth in the Basle Accord. The Basle Accord is a risk-based capital framework that was proposed by the Basle Committee on Banking Regulations and Supervisory Practices and endorsed by the central bank governors of the Group of Ten (G-10) countries in July 1988. The Committee is comprised of representatives of the central banks and supervisory authorities from the G-10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] All banking organizations should adopt the new FASB 115 accounting standard, both for GAAP and regulatory reporting purposes, as of January 1, 1994, or the beginning of their first fiscal year thereafter, if later. Early adoption of this standard is also permitted to the extent allowable under FASB 115.

Under current GAAP, securities held for sale are carried at the lower of cost or market value. Unrealized losses on such securities are reported through earnings and reduce Tier 1 capital. Securities meeting the definition of the new available-for-sale category, (*i.e.*, securities that the institution does not have both a positive intent and ability to hold to maturity, yet does not intend to trade actively as part of its trading account), will be reported at fair value. However, changes in the fair value of securities available for sale will not be included in the income statement, but will be reported, net of tax effects, directly in a separate, newly-established component of common stockholders' equity. Consequently, any unrealized appreciation or depreciation in the value of securities in the available-for-sale category will have no impact on the reported earnings of an institution, but will affect its capital position.

The available-for-sale category is likely to include more securities than are included in the current held-for-sale account. This is because institutions previously could include in the held-for-investment category securities that banking organizations intended to hold for long-term investment purposes, but not necessarily to maturity. Many such securities are now likely to be held in the available-for-sale category, and the new standard describes specific circumstances under which a debt security should be reported in the available-for-sale or trading accounts rather than in the held-to-maturity category. For example, securities that would be sold in response to changes in market interest rates or prepayment rates, or to provide liquidity to meet deposit withdrawal or increased loan demand, would have to be included in the available-for-sale or trading account; they would not be eligible for the held-to-maturity category.

FASB 115 does acknowledge that there may be events that are "isolated, nonrecurring, and unusual" in nature that could not have been reasonably anticipated by management and, thus, would permit the sale or transfer of a held-to-maturity security without necessarily calling into question the institution's intent to hold to maturity other securities carried in this category. FASB 115 notes that such unforeseen events might include certain changes in industry capital requirements, certain changes in tax laws, and evidence of a significant deterioration in the issuer's creditworthiness that would appear to permit sales or transfers without tainting other securities in the held-to-maturity category.

Proposal

The Board is proposing to amend the capital adequacy guidelines for State member banks and bank holding companies to include in Tier 1 capital the new component of common stockholders' equity created by FASB 115. Under this proposed amendment, the net amount of unrealized gains and losses, adjusted for income taxes, from securities held in the available-for-sale account would be included in Tier 1 capital for purposes of calculating both the leverage and risk-based capital ratios.

The Board believes that this proposal is consistent with the intent of section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which stipulates, consistent with the long-standing policy of the banking agencies, that regulatory accounting standards be no less stringent than GAAP and result in financial reports that accurately reflect the capital of depository institutions. In this regard, the effect on institutions of including net gains and losses on securities available for sale in Tier 1 can perhaps best be evaluated in an economic environment in which banking organizations generally have experienced losses on their securities holdings, rather than gains as is the situation for most institutions at the present time.

The Board also believes that if unrealized gains and losses on securities available for sale were excluded from Tier 1 capital, an incentive could be created for banking organizations to sell their securities that have appreciated to increase Tier 1 capital, while continuing to hold securities that have depreciated without incurring a reduction in Tier 1 capital. An organization engaging in such a practice potentially could overstate its capital and, accordingly, could be subject to examiner criticism.

The rationale put forward by FASB for requiring the marking to market of securities available for sale is that it provides a more realistic and conservative presentation of the value of these securities than would recording them at historical cost. The premise of valuing securities at historical cost is based on the expectation that the securities will be held to maturity, at which time the institution would realize the par value of the securities. Since securities available for sale, like trading securities, are not intended to be held to maturity, valuing them at historical cost would not be as appropriate as marking them to market. Therefore, including the unrealized losses, as well as the unrealized gains, on securities available for sale in Tier 1 capital, is viewed overall as more conservative than not recognizing these changes in value by continuing to carry these securities on a historical cost basis.

The Board notes that in view of the agencies' adoption of FASB 115 for regulatory reporting purposes, additional regulatory burden would be avoided by including the new equity account in capital. Furthermore, if net unrealized changes in the fair value of securities available for sale are included in capital, the asset base used in the calculation of capital ratios would not have to be adjusted to eliminate changes in the fair value of these securities.

It also should be noted that including unrealized changes in the value of securities available for sale in Tier 1 capital, as proposed, would affect the calculation of capital for purposes of a number of laws and regulations that are based, in part, on the institution's capital levels. Such laws and regulations include prompt corrective action (12 CFR, part 208, subpart B), brokered deposit restrictions (12 CFR 337.6), and the risk-related insurance premium system (12 CFR part 327).

Consistency With the Basle Accord

The Basle capital treatment for changes in the value of assets that are marked to market is well-established in the case of the unrealized changes in the value of trading securities, which are included in Tier 1, and in the cases of the on-balance sheet revaluation reserves of bank premises and the off-balance sheet revaluation reserves of equity securities, both of which are included in Tier 2. The Board believes that including the unrealized changes in the value of securities available for sale in Tier 1 is consistent with international capital standards, as set forth in the Basle Accord.

The principle of marking-to-market securities in the trading account and including the net unrealized changes in value in Tier 1 capital is applied in many countries and has been considered consistent with the Accord since its adoption in 1988. The on-balance sheet revaluation of bank premises is practiced in some countries that have experienced periods of high rates of inflation. Accordingly, accounting standards in many of these countries require all companies, including banks, to revalue their premises on the balance sheet formally and periodically. The Basle Accord includes the associated revaluation reserve in Tier 2 capital. Banking organizations in the U.S. are not permitted to record their bank premises at market value under U.S. accounting

standards and, thus, revaluation reserves associated with bank premises are not an issue for U.S. banking organizations.

The Basle Accord also includes in Tier 2 capital securities revaluation reserves that arise from a off-balance sheet addition to capital of hidden values and that pertain to "those banks whose balance sheets traditionally include very substantial amounts of equities held in their portfolio at historical cost." Many believe that Tier 2 capital treatment is appropriate for equity and premises revaluation reserves and was adopted for these reserves in part to reflect concerns about a banking organization's ability to recognize the indicated market price for securities or other assets for which there are not highly liquid markets.

The Board believes that its proposed Tier 1 capital treatment for unrealized changes in the value of securities available for sale can be viewed as an extension of the capital treatment currently applied to trading securities. Moreover, the Board also notes that, like other elements of Tier 1 capital under the Basle Accord, the net unrealized gains and losses on these securities is separately disclosed as part of common stockholders' equity on an institution's financial statements on an after-tax basis. However, the Board recognizes the importance of maintaining the consistent application of the Basle capital standards and invites comment on this issue.

Request for Public Comment

The Board invites comments on all aspects of this proposed change. In particular, the Board seeks the comments from interested parties on the following:

(1) The extent to which FASB 115 may permit an institution to sell securities from the held-to-maturity account without calling into question the institution's intent or ability to continue to hold other securities reported in that account.

(2) Examples of isolated, nonrecurring, and unusual events involving demands for liquidity that would permit the sale or transfer of held-to-maturity securities.

(3) Alternatives to including net unrealized changes in the value of securities available for sale in Tier 1 capital by:

(a) Excluding all such changes from capital, which would have the same effect as valuing these securities on a historical cost basis;

(b) Including only losses in Tier 1 capital, while not recognizing any gains for capital purposes, which would have the effect of valuing securities available for sale on lower of cost or market basis -- the same treatment that currently pertains to securities held for sale;

(c) Including both the gains and losses in Tier 2 capital; and

(d) Including losses in Tier 1 capital, while including gains in Tier 2 capital.

(4) The extent to which the above alternatives may create an incentive for banking organizations to sell securities that have appreciated to realize the gains in Tier 1 capital, while holding securities that have depreciated to avoid reductions in Tier 1 capital.

(5) The manner for maintaining an Allocated Transfer Risk Reserve (ATRR) for certain foreign debt securities (e.g. "Brady Bonds") held as securities available for sale.

In seeking comments, the Board notes that its decision to propose adoption of FASB 115 for regulatory capital purposes should not be viewed as an endorsement of a wider application of market value accounting. The Board has long had concerns that market valuations of many assets are highly subjective and that market value accounting could produce undesirable volatility in earnings. The Board believes that these concerns are mitigated in the case of FASB 115 because the standard applies only to certain investment securities having a readily discernable fair value and because unrealized changes in the fair value of securities available for sale are reflected directly in capital without affecting reported earnings.

Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe adoption of this proposal would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR parts 208 and 225 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. 36, 248(a) and (c), 321-338, 461, 481-486, 601, and 611, 1814, 1823(j), 1831o, 1831p-1, 3906-3909, 3310, 3331-3351; 15 U.S.C. 78b, 78o-4(c)(5), 78q, 78q-1, 78w, 781(b), 781(i), and 1781(q).

2. Appendix A to part 208 is amended by revising section II.A.1.a, to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

* * * * *

A. * * *

1. * * *

a. *Common stockholders' equity.* Common stockholders' equity includes: common stock; related surplus; net unrealized holding gains and losses on securities available for sale; and retained earnings, including capital reserves and adjustments for the cumulative effect of foreign currency translation, net of any treasury stock.

* * * * *

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, 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. Appendix A to part 225 is amended by revising section II.A.1.a, to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. Definition of Qualifying Capital for the Risk-Based Capitol Ratio

* * * * *

A. * * *

1. * * *

a. *Common stockholders' equity.* Common stockholders' equity includes: common stock; related surplus; net unrealized holding gains and losses on securities available for sale; and retained earnings, including capital reserves and adjustments for the cumulative effect of foreign currency translation, net of any treasury stock.

* * * * *

Board of Governors of the Federal Reserve System, December 17, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-31339 Filed 12-27-93; 8:45 am]

BILLING CODE 6210-01-F

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12 CFR Part 210

[Regulation J; Docket No. R-0821]

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed amendments to subpart A of its Regulation J, governing collection of checks and other items by Federal Reserve Banks. The proposed amendments, in general, conform the warranties and various other provisions of Regulation J to recent amendments to Regulation CC or to the Uniform Commercial Code.

DATES: Comments must be submitted on or before January 31, 1994.

ADDRESSES: Comments, which should refer to Docket No. R-0821, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP-500 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, D C 20551.

SUPPLEMENTARY INFORMATION: Subpart A of the Board's Regulation J (12 CFR part 210) governs the collection of checks and other items by Federal Reserve Banks. Regulation J sets out the warranties made by institutions that send items for collection through the Federal Reserve as well as warranties made by Reserve Banks.[1] Regulation J also covers liability for breach of warranty, presentment of and settlement for cash items and returned checks, and other related issues.

In October 1992, the Board published amendments to its Regulation CC (12 CFR part 229) that require paying banks to make same-day settlement for certain checks presented by private-sector banks, effective January 3, 1994. As part of these amendments, the Board revised the Regulation CC warranties to require private-sector collecting, returning, and presenting banks to warrant the accuracy of cash letter totals and check encoding. Revised Regulation CC also gives the paying bank a right to set off adjustments owed to the paying bank by the presenting bank against settlement amounts owed by the paying bank to the presenting bank. The proposed changes to Regulation J would clarify that the Reserve Banks and institutions that send items to Reserve Banks also make the Regulation CC warranties, although with some variation. For example, the Regulation J proposal would provide that paying banks may not set off other claims against settlement for checks presented by a Reserve Bank.

The National Conference of Commissioners on Uniform State Laws and the American Law Institute approved new versions of Articles 3 and 4 of the Uniform Commercial Code (U.C.C.) in 1990. Articles 3 and 4 govern negotiable instruments and bank deposits and collections, respectively. (All U.C.C. references in this docket are to the 1990 version.) The proposed amendments would conform certain Regulation J provisions to the new U.C.C., as well as clarify the interaction of Regulation J, Regulation CC, and the U.C.C.

The Board has established procedures for assessing the competitive impact of changes that have a substantial effect on payments system participants.[2] Under these procedures, the Board assesses whether the proposed regulatory changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences. The proposed Regulation J amendments are largely technical, clarifying, or conform Regulation J to the rules applicable to private-sector banks under Regulation CC and the U.C.C. The Board believes that the proposals would not have a direct and material adverse effect on the ability of others to compete effectively with the Federal Reserve Banks.

Section-by-section analysis

Section 210.2(g)

The Board proposes to amend the terminology of the definition of "item" in keeping with the definition of "item" in U.C.C. 4-104(a)(9). Under the proposal, "item" would expressly include promises or orders, such as certain bonds or other investment securities, that are handled through the bank collection system.

Section 210.2(p)

The Board proposes to add a definition of "Uniform Commercial Code" that conforms to the definition in Regulation CC (12 CFR 229.2(ii)).

Section 210.3(a)

The Board proposes to amend this section to set forth more accurately the scope of the Federal Reserve Banks' operating circulars, which include provisions for service terms and adjustments. The proposed amendment would specify that the operating circulars may include provisions for adjustments of amounts, waiver of expenses, and payment of interest by as-of adjustment.

Both private-sector banks and Reserve Banks may vary the terms of subpart C of Regulation CC by agreement among parties that specifically assent (12 CFR 229.37). Section 4-103 of the U.C.C. allows variation of the U.C.C.'s provisions by agreement. Reserve Bank operating circulars and private-sector clearing house rules constitute "agreements" under U.C.C. 4-103(b) whether or not specifically assented to by all interested parties. Although individual bank agreements cannot bind third parties absent specific consent, groups of banks may do so through clearing house rules. Thus, the ability of Reserve Banks to bind third parties through their operating circulars would not appear to have a direct and material adverse effect on the ability of private-sector banks to compete effectively with the Reserve Banks.

Section 210.3(f)

The Board proposes to add a new paragraph to § 210.3 to clarify that Regulation J supersedes the U.C.C., other state laws, and Regulation CC to the extent of any inconsistency. This

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[1] As used in this docket, *sender* means any institution that sends a check to a Reserve Bank for collection, and *bank* includes all depository institutions, such as commercial banks, savings institutions, and credit unions.

[2] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System" (55 FR 11648, March 29, 1990).

provision parallels § 229.41 of Regulation CC, which provides that Regulation CC supersedes the U.C.C. and other state law to the extent of the inconsistency. The competitive effect of this provision depends on the effect of each separate Regulation J provision, as discussed under the appropriate section in this analysis.

Section 210.5(a)

The Board proposes to amend § 210.5(a) to conform the warranties made by banks that send items to Reserve Banks to the transfer and presentment warranties in U.C.C. 4-207 and 4-208. A sender would warrant that it was (or acted on behalf of a person who was) entitled to enforce the item. The U.C.C. substituted the concept of "person entitled to enforce" for "person with good title" in recognition that the right to enforce an instrument is not limited to holders. In addition, the proposal would require the sender to warrant that the item was not altered, dropping the adverb "materially." The U.C.C. formerly incorporated the concept of a "material" alteration as one that changed the contract of the parties in any respect. The revised U.C.C. refers to such a change simply as an alteration. Finally, the proposal would clarify that the sender also makes the warranties set forth in Regulation CC and that the Regulation J warranties may not be disclaimed and are made regardless of whether the sender's indorsement appears on the item.

Sections 210.5(d) and 210.12(i)

The Board proposes to add new paragraph (d) to § 210.5 and new paragraph (i) to § 210.12 to give a Reserve Bank a security interest in a sender's or prior collecting or returning bank's assets held by the Reserve Bank. The security interest would attach when a warranty is breached or other obligation is incurred. The proposed provisions are based on similar provisions in subpart B of Regulation J, which gives a Reserve Bank a security interest in the assets of a sender of a payment order to secure overdrafts and other obligations (§ 210.28(b)(3) and (4)). The Board believes that private-sector banks in the check collection and return process could exercise similar set-off rights against assets of banks that breach warranties or incur other obligations. Thus, the Board does not believe this amendment would have a direct and material adverse effect on the ability of private-sector banks to compete effectively with Reserve Banks.

Section 210.6(b)

The Board proposes to amend § 210.6(b) to conform the Reserve Bank warranties to the transfer and presentment warranties in U.C.C. 4-207 and 4-208. (See discussion of § 210.5(a).) The proposal would also clarify that the Reserve Banks make the warranties set out in § 229.34 of Regulation CC.

Section 210.6(c)

Section 210.6(c) currently provides a 2-year statute of limitations for claims against Reserve Banks for lack of good faith or failure to exercise ordinary care. The Board proposes to amend this section to clarify that the Regulation CC limitation period of one year would apply to any claims against a Reserve Bank for breach of a Regulation CC warranty (*see* 12 CFR 229.34 and 229.38(g)). This amendment would clarify that claims against Reserve Banks for breaches of Regulation CC warranties are subject to the same time limitations as those against private-sector banks.

Section 210.9(a)(5)

Section 210.9(a)(5) provides that paying banks must settle for checks presented by Reserve Banks by "autocharge" (*i.e.* a debit to an account at a Reserve Bank), cash, or other means agreed to by the Reserve Bank. The Board proposes to amend this section to clarify that a Reserve Bank may, in its discretion, elect to obtain settlement by autocharging the account of the paying bank for the amount of a cash letter. Virtually all Reserve Bank presentments are settled via autocharge. This amendment restates the autocharge provisions that currently are set out in the Reserve Banks' uniform cash item operating circular.

The Board also proposes to amend this section to provide that paying banks that receive presentment from Reserve Banks may not set off other claims against the amount of settlement owed to the Reserve Bank. Paying banks may set off against private-sector presenting banks under § 229.34(c)(4) of Regulation CC. The Regulation CC set-off provision was designed to protect paying banks under the same-day settlement rule, which requires paying banks to accept presentment from and settle with all presenting banks, some of which may be in poor financial condition. If a paying bank overpays a cash letter in reliance on a cash letter total or check encoding warranted by the presenting bank, it could face the risk that the presenting bank would be unable to settle for adjustments. Protection against insolvency risk would not be necessary against a Reserve Bank. In addition, as banks generally settle with Reserve Banks via autocharge, set-off against a Reserve Bank would be impractical. Therefore, the Board does not believe this amendment would have a direct and material adverse effect on the ability of private-sector banks to compete effectively with Reserve Banks.

Section 210.12(a)

Section 210.12(a) currently provides that a paying bank that has settled for a check presented by a Reserve Bank may return the check in accordance with Regulation CC, the U.C.C., and the Reserve Bank's operating circular. The Board proposes to amend this section to clarify that the paying bank may also return a check prior to settlement in accordance with § 210.9(a) of Regulation J and the Reserve Bank's operating circular. This amendment would clarify that a paying bank would have the same return rights under Regulation J as under Regulation CC and the U.C.C.

Section 210.12(c)

Section 210.12(c) currently sets out the warranties and agreements made by a bank that sends a returned check to a Reserve Bank. The Board proposes to amend this section to clarify that, in addition to the warranties set forth in § 229.34 of Regulation CC, the sender also makes any applicable warranty under state law. For example, the proposed amendment would clarify that a depositary bank that settled for a returned check could recover the amount paid plus expenses and lost interest from a prior bank that breached a transfer warranty, in accordance with U.C.C. 4-208(d). In addition, similar to the proposed amendments to § 210.5(a), the revisions to this paragraph would clarify that the Regulation J warranties may not be disclaimed and are made regardless of whether the sender's indorsement appears on the item. These proposed amendments restate provisions that are already applicable to private-sector banks under Regulation CC and the U.C.C.

Section 210.12(d)

The Board proposes to add a new paragraph (d) to § 210.12 to clarify that when a Reserve Bank transfers and receives settlement for a returned check, it makes the warranties set out in § 229.34 of Regulation CC. In addition, the new paragraph would parallel proposed § 210.6(b) (governing Reserve Bank warranties for cash items) by providing a limitation of the Reserve Bank's liabilities, other than those allowed for in Regulation J, to the Reserve Bank's own lack of good faith

or failure to exercise ordinary care. (The proposed amendments would redesignate current §§ 210.12(d) through (g) as §§ 210.12(e) through (h).)

Section 210.12(e) (current 210.12(d)) and section 210.5(b)

The U.C.C. (section 3-119) and Regulation CC (§ 229.34(e)) provide that a bank that receives a tender of defense may in turn tender defense to a prior bank in the collection or return chain. Unless the prior bank comes in and defends, it is bound by the determination of fact common to the current litigation and any subsequent litigation.

Section 210.5(b) of Regulation J provides that, when a Reserve Bank tenders defense to a sender as a result of a tender to it, the Reserve Bank need not be a defendant in the suit in order to recover from the sender any losses that it incurs because of the judgment, so long as the judgment addresses the fact issue of breach of warranty. The Board adopted this provision in 1986 in order to reduce litigation and provide a more efficient way of handling forged indorsement cases (51 FR 21740, June 16, 1986). Due to an oversight, when the Board amended § 210.12 to provide a similar rule for returned checks, the language did not match that of § 210.5(b) and could have been interpreted to apply only when a Reserve Bank is a defendant (53 FR 21983, June 13, 1988). The Board is proposing to amend § 210.12(e) to conform it to § 210.5(b). (The proposed amendments would redesignate current § 210.12(d) as § 210.12(e) and add a new paragraph (d) as discussed above.) The Board is also correcting a typographical error in § 210.5(b).

Section 210.12(h) (current 210.12(g))

This section currently provides that a depositary bank must settle for returned checks received from a Reserve Bank in the same manner as it settles for cash items presented by the Reserve Bank. The Board proposes to amend this section to clarify that settlement for returned checks also must be made by the same *time* as settlement for cash items, as provided in § 210.9(a).

Section 210.13(a)

Section 210.13(a) currently authorizes a Reserve Bank that does not receive payment for an item to charge back the account of the sender, paying bank, or returning bank from which the item was received. The Board proposes to amend this section to clarify that a Reserve Bank also may charge the account of a prior collecting bank through which the item was received. This proposed amendment is consistent with § 229.35(b) of Regulation CC, which allows a bank that handles a check or returned check to recover from any prior indorser in the event that the bank does not receive payment for the check from a subsequent bank in the collection or return chain. In the event of such a recovery by a Reserve Bank, current § 229.13(a) provides that no bank or person in the forward collection or return chain would have an interest in any funds in the Reserve Bank's possession of the bank that failed to pay. The proposed amendment would clarify that, when a Reserve Bank charges back an item, this limitation of interest applies only when a bank or person seeks payment of the amount of the item out of funds or property held by the Reserve Bank.

Section 210.13(b)

Section 210.13(b) currently provides that a Reserve Bank will not debit an institution's reserve account for drafts or other orders on the account after receiving notice that the institution has been closed. The Board proposes to amend this section to clarify that Reserve Banks will not charge an account as authorized by § 210.9(a)(5) after receiving notice the institution is closed. The amendment also clarifies that this section applies only to charges to reserve accounts to settle for items (including returned checks) and does not affect the Reserve Bank's security interest under proposed §§ 210.5(d) and 210.12(i).

Section 210.14

Section 210.14 currently describes those circumstances under which the time limits for acting on an item may be extended, such as interruption of communication facilities, suspension of payments by a bank, and other emergency conditions. The Board proposes to amend this section to clarify that computer and equipment failure would constitute emergency conditions. This amendment is consistent with the emergency provisions in § 229.38(e) of Regulation CC and U.C.C. 4-109(b).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary material above. The proposed rules require no additional reporting or recordkeeping requirements, and the overlap with other federal rules (*i.e.*, Regulation CC) is discussed above.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all depository institutions that receive items from or send items to Federal Reserve Banks, regardless of size. The proposed amendments generally clarify rights and duties of banks and do not impose any substantial economic burden on small entities.

List of Subjects in 12 CFR Part 210

Banks, banking, Check collection.

For the reasons set out in the preamble, 12 CFR part 210 is proposed to be amended as follows:

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE (REGULATION J)

1. The authority citation for part 210 is revised to read as follows:

Authority: 12 U.S.C. 248(i), (j), and (o), 342, 360, 464, and 4001-4010.

2. In § 210.2, paragraph (g) introductory text is revised and a new paragraph (p) is added immediately before the concluding text to read as follows:

§ 210.2 Definitions.

* * * * *

(g) *Item* means an instrument or a promise or order to pay money, whether negotiable or not, that is:

* * * * *

(p) *Uniform Commercial Code* means the Uniform Commercial Code as adopted in a state.

* * * * *

3. In § 210.3, the last sentence of paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 210.3 General provisions.

(a) * * * The circulars may, among other things, classify cash items and noncash items, require separate sorts and letters, provide different closing times for the receipt of different classes or types of items, set forth terms of services, and establish procedures for adjustments on a Reserve Bank's books, including amounts, waiver of expenses, and payment of interest by as-of adjustment.

* * * * *

(f) *Relation to other law.* The provisions of this subpart supersede any inconsistent provisions of the Uniform Commercial Code, of any other state law, or of part 229 of this title, but only to the extent of the inconsistency.

4. In § 210.5, paragraph (a) introductory text and paragraph (a)(2) are revised, in paragraph (b)(3) the phrase "judgment or decree of the tender of defense" is revised to read "judgment or decree or the tender of defense", and a new paragraph (d) is added to read as follows:

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) *Sender's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the item bears an indorsement of the sender. By sending an item to a Reserve Bank, the sender:

* * * * *

(2) Warrants to each Reserve Bank handling the item that:

(i) The sender is a person entitled to enforce the item or authorized to obtain payment of the item on behalf of a person entitled to enforce the item; and

(ii) The item has not been altered; but this paragraph (a)(2) does not limit any warranty by a sender or other prior party arising under state law or under subpart C of part 229 of this title; and

* * * * *

(d) *Security interest.* To secure any obligation due or to become due to a Reserve Bank by a sender or prior collecting bank under this subpart or subpart C of part 229 of this title, the sender and prior collecting bank, by sending an item directly or indirectly to the Reserve Bank, grant to the Reserve Bank a security interest in all of the sender's or prior collecting bank's assets in the possession of, or held for the account of, the Reserve Bank. The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. The Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

5. In § 210.6, paragraphs (b)(1) and (b)(2) are revised, a new first sentence is added to paragraph (b) concluding text, and a new last sentence is added to paragraph (c) to read as follows:

§ 210.6 Status, warranties, and liability of Reserve Bank.

* * * * *

(b) * * *

(1) That the Reserve Bank is a person entitled to enforce the item or is authorized to obtain payment of the item on behalf of a person who is either:

(i) Entitled to enforce the item; or

(ii) Authorized to obtain payment on behalf of a person entitled to enforce the item; and

(2) That the item has not been altered. The Reserve Bank also makes the warranties set forth in § 229.34(c) of this title, subject to the terms of part 229 of this title. * * *

(c) * * * This paragraph does not lengthen the time limit for claims under § 229.38(g) of this title (which include claims for breach of warranty under § 229.34 of this title).

6. In § 210.9, paragraph (a)(5) is revised to read as follows:

§ 210.9 Settlement and payment.

(a) * * *

(5) Settlement with a Reserve Bank under paragraphs (a)(1) through (4) of this section shall be made by debit to an account on the Reserve Bank's books, cash, or other form of settlement to which the Reserve Bank agrees, except that the Reserve Bank may, in its discretion, obtain settlement by charging the paying bank's reserve or clearing account. A paying bank may not set off against the amount of a settlement under this section the amount of a claim with respect to another cash item, cash letter, or other claim under § 229.34(c) of this title or other law.

* * * * *

7. In § 210.12, a new sentence is added after the first sentence of paragraph (a), paragraph (c) introductory text and paragraph (c)(2) are revised, paragraphs (d) through (g) are redesignated as paragraphs (e) through (h), respectively, new paragraphs (d) and (i) are added, and newly-designated paragraph (e) concluding text and newly-designated paragraph (h) are revised to read as follows:

§ 210.12 Return of cash items and handling of returned checks.

(a) * * * A paying bank that receives a cash item directly or indirectly from a Reserve Bank also may return the item prior to settlement, in accordance with § 210.9(a) and its Reserve Bank's operating circular.* * *

* * * * *

(c) *Paying bank's and returning bank's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the returned check bears an indorsement of the paying bank or returning bank. By sending a returned check to a Reserve Bank, the paying bank or returning bank—

* * * * *

(2) Makes the warranties set forth in § 229.34 of this title (but this paragraph does not limit any warranty by a paying or returning bank arising under state law); and

* * * * *

(d) *Warranties by Reserve Bank.* By sending a returned check and receiving settlement or other consideration for it, a Reserve Bank makes the returning bank warranties as set forth in § 229.34 of this title, subject to the terms of part 229 of this title. The Reserve Bank shall not have or assume any other liability to the transferee returning bank, to any subsequent returning bank, to the depositary bank, to the owner of the check, or to any other person, except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care as provided in subpart C of part 229 of this title.

(e) * * *

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree or the tender of defense, together with interest thereon.

* * * * *

(h) *Settlement.* A subsequent returning bank or depositary bank shall settle for returned checks in the same manner and by the same time as for cash items presented for payment under this subpart.

(i) *Security interest.* To secure any obligation due or to become due to a Reserve Bank by a paying bank, returning bank, or prior returning bank under this subpart or subpart C of part 229 of this title, the paying bank, returning bank, and prior returning bank, by sending a returned check directly or indirectly to the Reserve Bank, grant to the Reserve Bank a security interest in all of the paying bank's, returning bank's, and prior returning bank's assets in the possession of, or held for the account of, the Reserve Bank. The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. The Reserve Bank may take any action authorized by law to recover the amount of an obligation, including,

but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

8. Section 210.13 is revised to read as follows:

§ 210.13 Unpaid items.

(a) *Right of recovery.* If a Reserve Bank does not receive payment in actually and finally collected funds for an item, the Reserve Bank shall recover by charge-back or otherwise the amount of the item from the sender, prior collecting bank, paying bank, or returning bank from or through which it was received, whether or not the item itself can be sent back. In the event of recovery from such a party, no party, including the owner or holder of the item, shall, for the purpose of obtaining payment of the amount of the item, have any interest in any reserve balance or other funds or property in the Reserve Bank's possession of the bank that failed to make payment in actually and finally collected funds.

(b) *Suspension or closing of bank.* A Reserve Bank shall not pay or act on a draft, authorization to charge (including a charge authorized by § 210.9(a)(5)), or other order on a reserve balance or other funds in its possession for the purpose of settling for items under § 210.9 or § 210.12 after it receives notice of suspension or closing of the bank making the settlement for that bank's own or another's account.

9. Section 210.14 is revised to read as follows:

§ 210.14 Extension of time limits.

If a bank (including a Reserve Bank) or nonbank payor is delayed in acting on an item beyond applicable time limits because of interruption of communication or computer facilities, suspension of payments by a bank or nonbank payor, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

By order of the Board of Governors of the Federal Reserve System, December 14, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-30939 Filed 12-27-93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–72]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of installed third and fourth stage low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. This action would continue to require inspections, and removal, if necessary, of blade sets, but would also require, as a terminating action to the inspections: Installation of improved LPT containment hardware, installation of an improved No. 6 bearing scavenge pump bracket bushing, and modification of third and fourth stage LPT vanes with a reduced platform leading edge dimension. This proposal is prompted by reports of additional uncontained engine failures since publication of the current AD, and the availability of improved LPT containment hardware. The actions specified by the proposed AD are intended to prevent damage to the aircraft resulting from engine debris following an LPT blade or shaft failure.

DATES: Comments must be received by February 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–72, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–72." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–72, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On May 4, 1992, the Federal Aviation Administration (FAA) issued AD 92–10–05, Amendment 39–8239 (57 FR 23050, June 1, 1992), applicable to Pratt & Whitney (PW) JT8D–15A, –17A, and –17AR engines, to require initial and repetitive inspections of the third and fourth stage low pressure turbine (LPT) blade sets for excessively worn blade shroud crossnotches, and the removal of blade sets found with excessively worn blade crossnotches. That AD is not applicable, however, to PW JT8D–15A, –17A, and –17AR engines that contain

the third and fourth stage LPT containment hardware installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 1, dated February 20, 1992. That action was prompted by reports of ten uncontained third and fourth stage LPT blade fractures. Five were attributed to fractures of the third stage LPT blade and five to fractures of the fourth stage LPT blade. In one LPT blade fracture event, uncontained engine debris penetrated the airframe causing the failure of an aircraft hydraulic system. That condition, if not corrected, could result in damage to the aircraft resulting from engine debris following an LPT blade or shaft failure.

Since the issuance of that AD, the FAA has received additional reports of eight uncontained engine failures due to LPT blade failures in the last 18 months. Although none of these events involved containment hardware introduced by PW ASB No. 6039, the FAA has determined that some features of that hardware have proven to be inadequate in the event of an LPT shaft fracture. PW has developed a new containment hardware configuration that supplies improved containment capability of LPT blade failures due to LPT shaft fracture. The new hardware configuration has redesigned gang angle nut assemblies and stronger attaching bolts. In addition, it includes a thicker duct with a greater quantity of bolts. The new configuration also includes larger duct attaching plates with an improved bolt hole pattern and increased number of bolts used on the attaching plates.

In addition, the FAA has received reports of two uncontained engine failures following LPT overspeed caused by LPT shaft fracture. Investigation revealed that limited meshing of the LPT blades and vanes was insufficient to prevent the LPT overspeed. Interference of the No. 6 bearing scavenge pump drive gear with the scavenge pump bracket during an LPT shaft fracture can result in insufficient rearward movement of the LPT rotor and prevent complete blade and vane meshing. PW has developed a modification that installs bushings in the No. 6 bearing scavenge pump bracket mount holes. In the event of a LPT shaft fracture the force of the LPT rotor moving rearward will shear the bushing flanges and allow complete meshing of the LPT blades and vanes to occur, thus preventing an LPT overspeed.

Finally, PW has developed procedures for removing material from the inner platform leading edge on third and fourth stage LPT vane and vane cluster assemblies. Removing this material increases the clearance between vane inner platform leading edges and disk rims, which limits LPT rotor overspeed by allowing increased meshing of the LPT rotor blades and stator vane airfoils in the event of a LPT shaft rupture.

The FAA has reviewed and approved the technical contents of the following service documents: PW ASB No. A5913, Revision 6, dated October 15, 1993, that describes the third and fourth stage LPT blade set inspection procedures and replacement requirements; PW ASB No. A6110, Revision 1, dated October 15, 1993, that describes procedures for installation of improved LPT containment hardware; PW ASB No. A6131, dated August 24, 1993, that describes procedures for installation of an improved No. 6 bearing scavenge pump bracket bushing; and PW SB No. 5748, Revision 5, dated August 3, 1993, that describes procedures for removing material from the inner platform leading edge on third and fourth stage LPT vane and vane cluster assemblies, and remarking these modified vanes with new identification numbers.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–10–05, and continue to require repetitive inspections of installed third and fourth stage LPT blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. These inspections are not required, however, for PW JT8D–15A, –17A, and –17AR engines that contain the third and fourth stage LPT containment hardware installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions. The proposed AD would require, however, for all engines, installation of improved third stage LPT containment hardware at the next access to the third stage LPT air sealing ring, but not later than December 31, 1998; installation of the improved fourth stage LPT containment hardware at the next shop visit, but not later than December 31, 1998; installation of the improved No. 6 bearing scavenge pump bracket bushing at the next shop visit, but not later than December 31, 1998; and modification and remarking with a new identification number third and fourth stage LPT vanes with a reduced platform leading edge dimension at the next shop visit, but not later than December 31, 1998. The installation of improved containment hardware would serve as terminating action for the repetitive inspections. Based on the historical PW JT8D shop visit rate, the proposed five-year program with an end date of December 31, 1998, would provide a rate of fleet installation that minimizes the possibility of forced engine removals while addressing the safety issues involved. The actions would be required to be accomplished in accordance with the service documents described previously.

The FAA estimates that 944 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately an average of 4 work hours, based on fleet configuration mix, per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $7,235 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,037,520.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8239 (57 FR 23050, June 1, 1992) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 93–ANE–72. Supersedes AD 92–10–05, Amendment 39–8239.

Applicability: Pratt & Whitney (PW) Model JT8D–15A, –17A, and –17AR turbofan engines, installed on but not limited to Boeing 737 and 727 series aircraft, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aircraft resulting from engine debris following a low pressure turbine (LPT) blade or shaft failure, accomplish the following:

(a) For engines that do not contain PW honeycomb third stage outer airseal, Part Number (P/N) 801931, 802097, 797594, or 798279, or Parts Manufacturer Approval honeycomb third stage outer airseal P/N PI9336 or P/N M2433, and fan exhaust inner front duct segment assemblies that are installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 3, dated October 15, 1993, or earlier revisions, accomplish the following:

(1) Conduct initial and repetitive inspections on installed third and fourth stage LPT blade sets, and remove and replace with serviceable blade sets, as necessary, in accordance with the requirements of Part 2 of the Accomplishment Instructions of PW ASB No. A5913, Revision 6, dated October 15, 1993; or PW ASB No. 5913, Revision 5, dated August 10, 1992; or PW ASB No. 5913, Revision 4, dated February 20, 1992, as follows:

(i) Initially inspect the blade shroud crossnotches of the third stage LPT blade set when specified in paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this AD, whichever occurs later, as follows:

(A) Inspect within 3,000 cycles or 3,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672, or since the last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 500 cycles or 500 hours time in service, whichever occurs first, after the effective date of this AD.

(ii) Initially inspect the blade shroud crossnotches of the fourth stage LPT blade set when specified in paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD, whichever occurs later, as follows:

(A) Inspect within 3,000 cycles or 3,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672, or since the last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–13 of the PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 500 cycles or 500 hours time in service, whichever occurs first, after the effective date of this AD.

(iii) Thereafter, inspect the third and fourth stage LPT blade sets in accordance with the procedures and intervals specified in PW ASB No. A5913, Revision 6, dated October 15, 1993; or PW ASB No. 5913, Revision 5, dated August 10, 1992; or PW ASB No. 5913, Revision 4, dated February 20, 1992.

(2) At the next shop visit after the effective date of this AD, but not later than December 31, 1998, install the improved inner front fan exhaust duct and associated hardware in accordance with Part A of the Accomplishment Instructions of PW ASB No. A6110, Revision 1, dated October 15, 1993.

(3) At the next access to the third stage turbine air sealing ring after the effective date of this AD, but not later than December 31, 1998, install the improved third stage turbine air sealing ring and associated hardware in accordance with Part B of the Accomplishment Instructions of PW ASB No. A6110, Revision 1, dated October 15, 1993.

(4) At the next shop visit after the effective date of this AD, but not later than December 31, 1998, install the improved No. 6 bearing scavenge pump bracket bushing in accordance with the Accomplishment Instructions of PW ASB No. A6131, dated August 24, 1993.

(5) At the next shop visit after the effective date of this AD, but not later than December 31, 1998, remove material from the inner platform leading edge on third and fourth stage LPT vane and vane cluster assemblies, and reidentify these modified vanes in accordance with the Accomplishment Instructions of PW SB No. 5748, Revision 5, dated August 3, 1993.

(6) Accomplishment of the installations and modification required by paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this AD constitutes terminating action to the repetitive inspections required by paragraph (a)(1) of this AD.

(b) For engines that do contain PW honeycomb third stage outer airseal, P/N 801931, 802097, 797594, or 798279, or Parts Manufacturer Approval honeycomb third stage outer airseal P/N PI9336 or P/N M2433, and fan exhaust inner front duct segment assemblies that are installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions, perform the installations and modifications required by paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this AD at the times specified in those respective paragraphs.

(c) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails separation of pairs of mating engine flanges or the removal of a disk, hub, or spool.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

Issued in Burlington, Massachusetts, on December 20, 1993.

Jay J. Pardee,

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

[FR Doc. 93–31585 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–ANE–83]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of installed third and fourth stage low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. This action would continue to require inspections, and removal, if necessary, of blade sets, but would also require, as a terminating action to the inspections: installation of improved LPT containment hardware, installation of an improved No. 6 bearing scavenge pump bracket bushing, and modification of third and fourth stage LPT vanes with a reduced platform leading edge dimension. This proposal is prompted by reports of additional uncontained engine failures since publication of the current AD, and the availability of improved LPT containment hardware. The actions specified by the proposed AD are intended to prevent damage to the aircraft resulting from engine debris following an LPT blade or shaft failure.

DATES: Comments must be received by February 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief

Counsel, Attention: Rules Docket No. 93–ANE–83, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–83." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–83, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On May 24, 1993, the Federal Aviation Administration (FAA) issued AD 93–06–05, Amendment 39–8530 (58 FR 31902, June 1, 1993), applicable to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R engines, to require initial and repetitive inspections of the third and fourth stage low pressure turbine (LPT) blade sets for excessively worn blade shroud crossnotches, and the removal of blade sets found with excessively worn blade crossnotches. That AD is not applicable, however, to PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R engines that contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039, and either (a) PW honeycomb third stage outer airseal Part Number (P/N) 801931, 802097, 797594, or 798279; or (b) Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or (c) McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or (d) a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039; or (e) a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982.

That action was prompted by reports of ten uncontained third and fourth stage LPT blade fractures. Five were attributed to fractures of the third stage LPT blade and five to fractures of the fourth stage LPT blade. In one LPT blade fracture event, uncontained engine debris penetrated the airframe causing the failure of an aircraft hydraulic system. That condition, if not corrected, could result in damage to the aircraft resulting from engine debris following an LPT blade or shaft failure.

Since the issuance of that AD, the FAA has received additional reports of eight uncontained engine failures due to LPT blade failures in the last 18 months. Although none of these events involved containment hardware introduced by PW ASB No. 6039, the FAA has determined that some features of that hardware have proven to be inadequate in the event of LPT shaft fracture. PW has developed a new containment hardware configuration that supplies improved containment capability of LPT blade failures due to LPT shaft fracture. The new hardware configuration has redesigned gang angle nut assemblies and stronger attaching bolts. In addition, it includes a thicker duct with a greater quantity of bolts. The new configuration also includes larger duct attaching plates with an improved bolt hole pattern and increased number of bolts used on the attaching plates.

In addition, the FAA has received reports of two uncontained engine failures following LPT overspeed caused by LPT shaft fracture. Investigation revealed that limited meshing of the LPT blades and vanes was insufficient to prevent the LPT overspeed. Interference of the No. 6 bearing scavenge pump drive gear with the scavenge pump bracket during an LPT shaft fracture can result in insufficient rearward movement of the LPT rotor and prevent complete blade and vane meshing. PW has developed a modification that installs bushings in the No. 6 bearing scavenge pump bracket mount holes. In the event of an LPT shaft fracture the force of the LPT rotor moving rearward will shear the bushing flanges and allow complete meshing of the LPT blades and vanes to occur, thus preventing an LPT overspeed.

Finally, PW has developed procedures for removing material from the inner platform leading edge on third and fourth stage LPT vane and vane cluster assemblies. Removing this material increases the clearance between vane inner platform leading edges and disk rims, which limits LPT rotor overspeed by allowing increased meshing of the LPT rotor blades and stator vane airfoils in the event of an LPT shaft rupture.

The FAA has reviewed and approved the technical contents of the following service documents: PW ASB No. A5913, Revision 6, dated October 15, 1993, that describes the third and fourth stage LPT blade set inspection procedures and replacement requirements; PW ASB No. A6110, Revision 1, dated October 15, 1993, that describes procedures for installation of improved LPT containment hardware; PW ASB No. A6131, dated August 24, 1993, that describes procedures for installation of an improved No. 6 bearing scavenge pump bracket bushing; and PW SB No. 5748, Revision 5, dated August 3, 1993, that describes procedures for removing material from the inner platform leading edge on third and fourth stage LPT vane and vane cluster assemblies, and remarking these modified vanes with new identification numbers.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

supersede AD 93–06–05 and continue to require repetitive inspections of installed third and fourth stage LPT blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. These inspections are not required, however, for PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R engines that contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, and either (a) PW honeycomb third stage outer airseal P/N 801931, 802097, 797594, or 798279; or (b) Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or (c) McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or (d) a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039; or (e) a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982.

The proposed AD would also require, however, for all engines, installation of improved third stage LPT containment hardware at the next access to the third stage LPT air sealing ring, but not later than December 31, 1998; installation of the improved fourth stage LPT containment hardware at the next shop visit, but not later than December 31, 1998; installation of the improved No. 6 bearing scavenge pump bracket bushing at the next shop visit, but not later than December 31, 1998; and modification and remarking with a new identification number third and fourth stage LPT vanes with a reduced platform leading edge dimension at the next shop visit, but not later than December 31, 1998. The installation of improved containment hardware would serve as terminating action for the repetitive inspections. Based on the historical PW JT8D shop visit rate, the proposed five-year program with an end date of December 31, 1998, would provide a rate of fleet installation that minimizes the possibility of forced engine removals while addressing the safety issues involved. The actions would be required to be accomplished in accordance with the service documents described previously.

The FAA estimates that 6,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take an average of 4 work hours, based on fleet configuration mix, per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $7,235 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $44,730,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8530 (58 FR 31902, June 7, 1993) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 93–ANE–83. Supersedes AD 93–06–05, Amendment 39–8530.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R turbofan engines, installed on but not limited to Boeing 737 and 727 series aircraft, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aircraft resulting from engine debris following a low pressure turbine (LPT) blade or shaft failure, accomplish the following:

(a) For engines that do not contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, and either PW honeycomb third stage outer airseal Part Number (P/N) 801931, 802097, 797594, or 798279; or Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039; or a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982, accomplish the following:

(1) Conduct initial and repetitive inspections on installed third and fourth stage LPT blade sets, and remove and replace with serviceable blade sets, as necessary, in accordance with Part 1 of the Accomplishment Instructions of PW ASB No. A5913, Revision 6, dated October 15, 1993; or PW ASB No. 5913, Revision 5, dated August 10, 1992; or PW ASB No. 5913, Revision 4, dated February 20, 1992, as follows:

(i) Initially inspect the blade shroud crossnotches of the third stage LPT blade set when specified in paragraphs (a)(1)(i)(A) or (a)(1)(i)(B) of this AD, whichever occurs later. Engines that contain a third stage blade set that have third stage turbine blades that were installed per the requirements specified in PW Service Bulletin No. 5331, dated October 27, 1982, do not require the third stage blade set inspection.

(A) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 1,000 cycles or 1,000 hours time in service, whichever occurs first, after the effective date of this AD.

(ii) Initially inspect the blade shroud crossnotches of the fourth stage LPT blade set when specified in paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD, whichever occurs later. Engines that contain fan exhaust inner front duct segment assemblies that were installed per the requirements of PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, do not require the fourth stage blade set inspection.

(A) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified Section 72–

53–13 of PW JT8D Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 1,000 cycles or 1,000 hours time in service, whichever occurs first, after the effective date of this AD.

(iii) Thereafter, inspect the third and fourth stage LPT blade sets in accordance with the procedures and intervals specified in PW ASB No. A5913, Revision 6, dated October 15, 1993; or PW ASB No. 5913, Revision 5, dated August 10, 1992; or PW ASB No. 5913, Revision 4, dated February 20, 1992.

(2) At the next shop visit after the effective date of this AD, but not later than December 31, 1998, install the improved inner front fan exhaust duct and associated hardware in accordance with Part A of the Accomplishment Instructions of PW ASB No. A6110, Revision 1, dated October 15, 1993.

(3) At the next access to the third stage turbine air sealing ring after the effective date of this AD, but not later than December 31, 1998, install the improved third stage turbine air sealing ring and associated hardware in accordance with Part B of the Accomplishment Instructions of PW ASB No. A6110, Revision 1, dated October 15, 1993.

(4) At the next shop visit after the effective date of this AD, but not later than December 31, 1998, install the improved No. 6 bearing scavenge pump bracket bushing in accordance with the Accomplishment Instructions of PW ASB No. A6131, dated August 24, 1993.

(5) At the next shop visit after the effective date of this AD, but not later than December 31, 1998, remove material from the inner platform leading edge on third and fourth stage LPT vane and vane cluster assemblies, and reidentify these modified vane in accordance with the Accomplishment Instructions of PW SB No. 5748, Revision 5, dated August 3, 1993.

(6) Accomplishment of the installations and modification required by paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this AD constitutes terminating action to the repetitive inspections required by paragraph (a)(1) of this AD.

(b) For engines that do contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, and either PW honeycomb third stage outer airseal P/N 801931, 802097, 797594, or 798279; or Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039; or a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982, perform the installations and modifications required by paragraphs (a)(2), (a)(3), (a)(4). and (a)(5) of this AD, at the times specified in those respective paragraphs.

(c) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails separation of pairs of mating engine flanges or the removal of a disk, hub, or spool.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

Issued in Burlington, Massachusetts, on December 20, 1993.

Jay J. Pardee,

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

[FR Doc. 93–31586 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 91–CE–47–AD]

Airworthiness Directives: de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 88–13–11, which currently requires repetitively inspecting both wing main spar lower cap angles for corrosion, and repairing or replacing any corroded part. The proposed action would retain these inspection and possible repair or replacement requirements, but would eliminate the dual compliance time of both hours time-in-service (TIS) and calendar time. The Federal Aviation Administration (FAA) has determined that, since corrosion occurs regardless of whether the airplane is in service, the best compliance method for the proposed action is calendar time. The actions specified by the proposed AD are intended to prevent failure of the wing structure because of corroded wing main spar lower cap angles.

DATES: Comments must be received on or before March 11, 1994.

ADDRESSES: Submit comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–47–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–47–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 88–13–11, Amendment 39–5960 (53 FR 23755, June 24, 1988), currently

requires repetitively inspecting both wing main spar lower cap angles for corrosion on certain de Havilland DHC–6 series airplanes, and repairing or replacing any corroded part. The actions are accomplished in accordance with the Accomplishment Instructions section of de Havilland Service Bulletin (SB) No. 6/492, Revision A, dated October 23, 1987.

AD 88–13–11 has a compliance method that is based on both hours TIS and calendar time. Since corrosion can occur regardless of whether the airplane is in service, the FAA has determined that the best way to detect corrosion is through a compliance method based solely on calendar time.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to prevent failure of the wing structure because of corroded wing main spar lower cap angles.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC–6 series airplanes of the same type design, the proposed AD would supersede AD 88–13–11 with a new AD that would retain the requirement of repetitively inspecting both wing main spar lower cap angles for corrosion, but require these inspections with a compliance method based solely on calendar time. The proposed actions would be accomplished in accordance with the Accomplishment Instructions section of de Havilland SB No. 6/492, Revision A, dated October 23, 1987.

The FAA estimates that 169 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $74,360. The only difference between the proposed AD and AD 88–13–11, which would be superseded by the proposed action, is limiting the compliance method to only calendar time instead of both calendar time and hours TIS. Therefore, the proposed action would not impose any additional cost impact upon the public than that which is already required by AD 88–13–11.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 88–13–11, Amendment 39–5960 (53 FR 23755, June 24, 1988), and by adding the following new airworthiness directive:

De Havilland: Docket No. 91–CE–47–AD. Supersedes AD 88–13–11, Amendment 39–5960.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

Compliance: Required initially in accordance with whichever of the following is applicable, unless already accomplished, and thereafter at intervals not to exceed 60 calendar months:

- Upon the accumulation of 120 calendar months from the date of manufacture or within the next 3 calendar months after the effective date of this AD, whichever occurs later;
- Upon the accumulation of 120 calendar months after incorporating Wing Box Replacement Modification No. 6/1630 in accordance with de Havilland Service Bulletin (SB) No. 6/362, Revision 1, dated January 18, 1985, or within the next 3 calendar months after the effective date of this AD, whichever occurs later; or
- Upon the accumulation of 120 calendar months of original manufacture of wings if used wings have been installed on the airplane or within the next 3 calendar months after the effective date of this AD, whichever occurs later.

To prevent failure of the wing structure because of corroded wing main spar lower cap angles, accomplish the following:

(a) Visually inspect the wing main spar and lower spar cap extensions for corrosion using a high intensity light in accordance with paragraph A in the Accomplishment Instructions section of de Havilland SB No. 6/492, Revision A, dated October 23, 1987.

(b) If corrosion is found during the inspection required by paragraph (a) of this AD that exceeds the criteria specified in the Compliance section of de Havilland SB No. 6/492, Revision A, dated October 23, 1987, prior to further flight, accomplish the following:

(1) Remove all surface corrosion and replace the cap angles in accordance with the Accomplishment Instructions section of de Havilland SB No. 6/492, Revision A, dated October 23, 1987.

(2) Dye penetrant inspect all parts where corrosion was removed to ensure that the part is corrosion-free. Replace any parts that have corrosion damage and reprotect reworked areas utilizing information specified in de Havilland Technical Advisory Bulletin No. 626/1, dated November 1970.

(c) If any parts are reworked per the inspection result requirements of this AD, prior to further flight, accomplish the following:

(1) Submit the details of all reworked areas to the manufacturer through the New York Aircraft Certification Office at the address specified in paragraph (e) of this AD; and

(2) Incorporate any additional instructions provided by the New York Aircraft Certification Office as a condition for returning the airplane to service.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

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

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 88–13–11, Amendment 39–5960.

Issued in Kansas City, Missouri, on December 20, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–31587 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ASW–40]

Proposed Modification of Class E Airspace: Harrison, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Harrison, AR, to provide for continuous control of the airspace to the surface of the airport. Designated airspace from the surface of an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to increase the hours of operation of the controlled airspace to a continuous basis (24 hours).

DATES: Comments must be received on or before February 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–40, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–222–5590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "ADDRESSES." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–40." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 2601 Meacham Blvd, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Harrison, AR, to provide for continuous control of the airspace to the surface of the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone." Designated airspace from the surface, for an airport where there is no operating control tower, is now Class E airspace. The intended effect of this proposal is to modify the existing Class E airspace at Harrison, AR, to provide for a continuous operation (24 hours).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is no minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A,

Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002: Class E airspace areas designated as a surface area for an airport.

* * * * *

ASW AR_2 E2 Harrison, AR [Modify]

Boone County Airport, AR
(latitude 36°15'41"N., longitude 93°09'17"W.)
Boone County ILS Localizer
(latitude 36°16'09"N., longitude 93°09'19"W.)

That airspace within a 4.3-mile radius of Boone County Airport and within 1.4 miles each side of the Boone County ILS Localizer south course extending from the 4.3-mile radius to 5.3 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on December 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–3 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–7039, 34–23361, 35–25955, 39–2317, IC–19969, IA–1395; File No. S7–35–93]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Public comments are due by January 31, 1994.

ADDRESSES: Persons wishing to submit written views should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., room 6184, stop 6–9, Washington, DC 20549. All submissions should refer to File No. S7–35–93, and will be available for public inspection and copying at the Commission's Public Reference Room, room 1026, at the same address.

FOR FURTHER INFORMATION CONTACT: The name of the individual to contact concerning a particular rule is given at the end of each rule grouping.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA")[1] requires that each agency review every ten years each of its rules that has a significant economic impact upon a substantial number of small entities. The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of such small entities."[2] The RFA stipulates certain specific considerations that must be addressed in the review of each rule.[3] The rules listed below are scheduled for review by staff of the Commission during the next twelve months. The rules are grouped according to which Division or Office of the Commission has responsibility for, and will review, each rule.

The Commission's 1993 Regulatory Flexibility Act Schedule of Rule Reviews is as follows:

Rules and Forms To Be Reviewed by the Division of Corporation Finance

Title: Regulation C (general rules governing registration under the Securities Act)
Citation: 17 CFR 230.400–230.479; 230.490–496
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78*o*; 78w; 79t; 77sss; 80a–37

Title: Form S–20 (for registration of standardized options)
Citation: 17 CFR 239.20
Authority: 15 U.S.C. 77g; 77j; 77s; 78*l*; 78m; 78n; 78*o*

Title: Rule 3b-2 (definition of "officer")
Citation: 17 CFR 240.3b–2
Authority: 15 U.S.C. 77c; 77d; 77s; 77ttt; 78c; 78d; 78i; 78j; 78*l*; 78m; 78n; 78*o*; 78p; 78s; 78w; 78x; 79q; 79t; 80a–29; 80a–37

Title: Rule 3b–6 (liability for certain statements by issuers)
Citation: 17 CFR 240.3b–6
Authority: 15 U.S.C. 77c; 77d; 77f; 77g; 77h; 77s; 77ttt; 78c; 78d; 78i; 78j; 78*l*; 78m; 78n; 78*o*; 78p; 78s; 78w; 78x; 79q; 79t; 80a–29; 80a-37

Title: Rule 3b-7 (definition of "executive officer")
Citation: 17 CFR 240.3b-7
Authority: 15 U.S.C. 77c; 77d; 77s; 77ttt; 78c; 78d; 78i; 78j; 78*l*; 78m; 78n; 78*o*; 78p; 78s; 78w; 78x; 79q; 79t; 80a-29; 80a-37

Title: Regulation 12B (general registration and reporting rules under the Exchange Act)
Citation: 17 CFR 240.12b–1 through 240.12b–36
Authority: 15 U.S.C. 77c; 77d; 77s; 78c; 78d; 78i; 78j; 78*l*; 78m; 78n; 78*o*; 78p; 78s; 78w; 78x; 79q; 79t; 80a–29; 80a–37

Title: Rule 12g-1 (exemption from section 12(g) of the Exchange Act)
Citation: 17 CFR 240.12g-1
Authority: 15 U.S.C. 77c; 77d; 77s; 78c; 78d; 78i; 78j; 78*l*; 78m; 78n; 78*o*; 78p; 78s; 78w; 78x; 79q; 79t; 80a-29; 80a-37

Title: Rule 12g–2 (securities deemed to be registered pursuant to section 12(g)(1) upon termination of exemption pursuant to section 12(g)(2) (A) or (B))
Citation: 17 CFR 240.12g–2
Authority: 15 U.S.C. 77c; 77d; 77s; 78c; 78d; 78i; 78j; 78*l*; 78m; 78n; 78*o*; 78p; 78s; 78w; 78x; 79q; 79t; 80a–29; 80a–37

Title: Rule 12g–4 (certifications of termination of registration under section 12(g))
Citation: 17 CFR 240.12g–4
Authority: 15 U.S.C. 77c; 77d; 77s; 78c; 78d; 78i; 78j; 78*l*; 78m; 78n; 78*o*; 78p; 78s; 78w; 78x; 79q; 79t; 80a–29; 80a–37

Title: Rule 12h–1 (exemptions from registration under section 12(g) of the Exchange Act)
Citation: 17 CFR 240.12h–1
Authority: 15 U.S.C. 78c; 78*l*

Title: Rule 13a–1 (requirements of annual reports)
Citation: 17 CFR 240.13a–1
Authority: 15 U.S.C. 78*l*; 78m; 78*o*

Title: Rule 13a-2 (annual reports of predecessors)
Citation: 17 CFR 240.13a-2
Authority: 15 U.S.C. 77d; 77s; 78*l*; 78m; 78p; 78x

Title: Regulation 13D–G (reports filed by significant beneficial holders)
Citation: 17 CFR 240.13d-1 through 240.13d-102
Authority: 15 U.S.C. 78c; 78m; 78w

Title: Regulation 14D (tender offer rules and schedules)
Citation: 17 CFR 240.14d-1 through 240.14d-101
Authority: 15 U.S.C. 77g; 77j; 77s; 78c; 78j; 78m; 78n; 78w; 79t; 77ttt; 80a-37

Title: Rule 15d-1 (requirements of annual reports)

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[1] Pub. L. No. 96–354, 94 Stat. 1165 (September 19, 1980).

[2] 5 U.S.C. 610(a).

[3] These considerations are (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

Citation: 17 CFR 240.15d-1
Authority: 15 U.S.C. 78*l*; 78m; 78*o*

Title: Rule 15d-6 (suspension of duty to file reports)
Citation: 17 CFR 240.15d-6
Authority: 15 U.S.C. 78*l*; 78m; 78*o*; 78w

Title: Form 8–A (for registration of certain classes of securities pursuant to section 12(b) or (g) of the Exchange Act)
Citation: 17 CFR 249.208a
Authority: 15 U.S.C. 78m; 78*o*; 78w

Title: Form 8–B (for registration of securities of certain successor issuers pursuant to section 12(b) or (g) of the Exchange Act)
Citation: 17 CFR 249.208b
Authority: 15 U.S.C. 78m; 78*o*; 78w

Title: Form 18 (for foreign governments and political subdivisions thereof)
Citation: 17 CFR 249.218
Authority: 15 U.S.C. 78*l*; 78m; 78n; 78*o*; 78w

Title: Form 8–K (for current reports)
Citation: 17 CFR 249.308
Authority: 15 U.S.C. 78m; 78*o*; 78w

Title: Form 18–K (annual report for foreign governments and political subdivisions thereof)
Citation: 17 CFR 249.318
Authority: 15 U.S.C. 78m; 78*o*; 78w

Contact person: James R. Budge, Special Counsel, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, DC. 20549.

Rules and Forms To Be Reviewed by the Division of Investment Management

Title: Rule 0–1 (definition of terms)
Citation: 17 CFR 270.0–1
Authority: 15 U.S.C. 80a-1 *et seq.*; 80a-37; 80a-39

Title: Rule 0–2 (general requirements of papers and applications)
Citation: 17 CFR 270.0–2
Authority: 15 U.S.C. 77s; 78w; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80w–37; 80c–39; 80b–3; 80b–4; 80b–11; 80a37; 80c–89

Title: Rule 0–3 (amendments to registration statements and reports)
Citation: 17 CFR 270.0–3
Authority: 15 U.S.C. 80a-8; 80a-29

Title: Rule 0–4 (incorporation by reference)
Citation: 17 CFR 270.0–4
Authority: 15 U.S.C. 77s; 78m; 78o; 78w; 79t; 77eee; 77ggg; 77nnn; 77sss; 80a–38

Title: Rule 0–5 (procedure with respect to applications and other matters)
Citation: 17 CFR 270.0–5
Authority: 15 U.S.C. 80a-1 et seq.; 80a-37; 80a-39

Title: Rule 0–8 (payment of fees)
Citation: 17 CFR 270.0–8
Authority: 15 U.S.C. 77f.(b) and 77f.(c); 78ee

Title: Rule 2a-7 (use of the amortized cost valuation and penny-rounding pricing methods by certain money market funds)
Citation: 17 CFR 270.2a-7
Authority: 15 U.S.C. 80a–37; 80c–89; 80a-6c; 80a-22(c); 80a-37(a)

Title: Rule 8b–1 (scope of section 270.8b–1 to 270.8b–32)
Citation: 17 CFR 270.8b–1
Authority: 15 U.S.C. 80a-1 et seq.; 80a-37; 80a-39

Title: Rule 8b–2 (definitions)
Citation: 17 CFR 270.8b–2
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–3 (title of securities)
Citation: 17 CFR 270.8b–3
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–4 (interpretation of requirements)
Citation: 17 CFR 270.8b–4
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–5 (time of filing original registration statement)
Citation: 17 CFR 270.8b–5
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–6 (fee for registration)
Citation: 17 CFR 270.8b–6
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–10 (requirements as to proper form)
Citation: 17 CFR 270.8b–10
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–11 (number of copies; signatures; binding)
Citation: 17 CFR 270.8b–11
Authority: 15 U.S.C. 77s; 80a–8; 80a–37

Title: Rule 8b–12 (requirements as to paper, printing and language)
Citation: 17 CFR 270.8b–12
Authority: 15 U.S.C. 77s; 80a–8; 80a–37

Title: Rule 8b–13 (preparation of registration statement or report)
Citation: 17 CFR 270.8b–13
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–14 (riders; inserts)
Citation: 17 CFR 270.8b–14
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–15 (amendments)
Citation: 17 CFR 270.8b–15
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–20 (additional information)
Citation: 17 CFR 270.8b–20
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–21 (information unknown or not available)
Citation: 17 CFR 270.8b–21
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–22 (disclaimer of control)
Citation: 17 CFR 270.8b–22
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–23 (incorporation by reference)
Citation: 17 CFR 270.8b–23
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–24 (summaries or outlines of documents)
Citation: 17 CFR 270.8b–24
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–25 (extension of time for furnishing information)
Citation: 17 CFR 270.8b–25
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–30 (additional exhibits)
Citation: 17 CFR 270.8b–30
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–31 (omission of substantial identical documents)
Citation: 17 CFR 270.8b–31
Authority: 15 U.S.C. 80a–1 *et seq.*; 80a–37; 80a–39

Title: Rule 8b–32 (incorporation of exhibits by reference)
Citation: 17 CFR 270.8b–32
Authority: 15 U.S.C. 77s; 78m; 78*o*; 78w; 79t; 77eee; 77ggg; 77nnn; 77sss; 80a–38

Title: Rule 10f–3 (exemption of acquisition of securities during the existence of underwriting syndicate)
Citation: 17 CFR 270.10f–3
Authority: 15 U.S.C. 30(a); 80a–37

Title: Rule 11a-1 (definition of "exchange" for purposes of section 11 of the Investment Company Act of 1940)
Citation: 17 CFR 270.11a-1
Authority: 15 U.S.C. 80a-11

Title: Rule 12b-1 (distribution of shares by registered open-end management investment company)
Citation: 17 CFR 270.12b-1
Authority: 15 U.S.C. 80a-12(b); 80a-37(a)

Title: Rule 13a-1 (exemption for change of status by temporarily diversified company)
Citation: 17 CFR 270.13a-1
Authority: 15 U.S.C. 80a-1 *et seq.*

Title: Rule 17d-3 (exemption relating to certain joint enterprises or arrangements concerning payment for distribution of shares of a registered

open-end management investment company)
Citation: 17 CFR 270.17d-3
Authority: 15 U.S.C. 80a-17(d); 80a-38(a)

Title: Rule 17f-1 (custody of securities with members of national securities exchanges)
Citation: 17 CFR 270.17f-1
Authority: 15 U.S.C. 80a-1 *et seq.*; 80a-37; 80a-39

Title: Rule 17f-2 (custody of investments by registered management investment company)
Citation: 17 CFR 270.17f-2
Authority: 15 U.S.C. 80a-1 *et seq.*; 80a-37; 80a-39

Title: Rule 17f-3 (free cash accounts for investment companies with bank custodians)
Citation: 17 CFR 270.17f-3
Authority: 15 U.S.C. 80a-17(f)

Title: Rule 17f-4 (deposits of securities in securities depositories)
Citation: 17 CFR 270.17f-4
Authority: 15 U.S.C. 80a-17(f); 80a-37(a)

Title: Rule 19b-1 (frequency of distribution of capital gains)
Citation: 17 CFR 270.19b-1
Authority: 15 U.S.C. 80a-19(b)

Title: Rule 22c-1 (pricing of redeemable securities for distribution, redemption and repurchase)
Citation: 17 CFR 270.22c-1
Authority: 15 U.S.C. 80a-6(c); 80a-22(c); 80a-37(a)

Title: Rule 32a-1 (exemption of certain companies from affiliation provisions of section 32(a))
Citation: 17 CFR 270.32a-1
Authority: 15 U.S.C. 80a-1 *et seq.*

Title: Form N–1A (registration statement of open-end management investment companies)
Citation: 17 CFR 274.11a
Authority: 15 U.S.C. 77g; 77j; 77(s); 80a-8; 80a-29; 80a-37

Title: Form N–6F (notice of intent to elect to be subject to sections 55 through 65 of the Investment Company Act of 1940)
Citation: 17 CFR 274.15
Authority: 15 U.S.C. 80a-6(f); 80a-37(a); 80a-53; 80a-58

Title: Form N–54A (notification of election to be subject through 65 of the Investment Company Act of 1940 filed pursuant to section 54(a) of the Act)
Citation: 17 CFR 274.53
Authority: 15 U.S.C. 80a-6(f); 80a-37(a); 80a-53; 80a-58

Title: Form N–54C (notification of withdrawal of election to be subject to sections 55 through 65 of the Investment Company Act of 1940 filed pursuant to section 54(c) of the Act)
Citation: 17 CFR 274.54
Authority: 15 U.S.C. 80a-6(f); 80a-37(a); 80a-53; 80a-58

Title: Rule 203–1 (application for registration of investment adviser)
Citation: 17 CFR 275.203–1
Authority: 15 U.S.C. 80b-3

Title: Rule 204–1 (amendments to application for registration)
Citation: 17 CFR 275.204–1
Authority: 15 U.S.C. 78*o*(b)(1); 78w(a)

Title: Form ADV (application for registration of investment adviser and for amendments to such registration statement)
Citation: 17 CFR 279.1
Authority: 15 U.S.C. 80b-3

Title: Form ADV-S (annual report of registered advisers)
Citation: 17 CFR 279.3
Authority: 15 U.S.C. 78*o*(b)(1); 78w(a)

Title: Rule 110 (small entities for purposes of the Regulatory Flexibility Act)
Citation: 17 CFR 250.110
Authority: 15 U.S.C. 79a *et seq.*

Contact Person: Carolyn A. Miller, Senior Financial Analyst, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, (202) 272–2762.

Rules To Be Reviewed by the Division of Market Regulation

Title: Rule 3b-9 (definition of "bank" for purposes of Sections 3(a)(4) and (5) of the Exchange Act)
Citation: 17 CFR 240.3b-9
Authority: 15 U.S.C. 77c; 77d; 77s; 77ttt; 78b; 78c; 78d; 78i; 78j; 78*l*; 78m; 78n; 78*o*; 78p; 78s; 78w; 78x; 79q; 79t; 80a–29; 80a–37

Title: Definitions (rule pertaining to transfer agents)
Citation: 17 CFR 240.17Ad–9
Authority: 15 U.S.C. 78q–1(a)(2)

Title: Maintenance of Accurate Security Holder Files and Safeguarding of Funds and Securities by Registered Transfer Agents (rule pertaining to transfer agents)
Citation: 17 CFR 240.17Ad–10
Authority: 15 U.S.C. 78q–1(a)(2)

Title: Reports Regarding Aged Record Differences, Buy-Ins and Failure to Post Certificate Detail to Master Securityholder and Subsidiary Files (rule pertaining to transfer agents)
Citation: 17 CFR 240.17Ad–11
Authority: 15 U.S.C. 78q–1(a)(2)

Title: Safeguarding of Funds and Securities (rule pertaining to transfer agents)
Citation: 17 CFR 240.17Ad–12
Authority: 15 U.S.C. 78q–1(a)(2)

Title: Annual Study and Evaluation of Internal Accounting Control (rule pertaining to transfer agents)
Citation: 17 CFR 240.17Ad–13
Authority: 15 U.S.C. 78q–1(a)(2)

Contact Person: Andrew S. Margolin, Attorney, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, (202) 504–2418.

Rules To Be Reviewed by the Office of the Chief Accountant

Title: Article 3 of Regulation S–X (general instructions as to financial statements)
Citation: 17 CFR 210.3
Authority: 15 U.S.C. 77f; 77g; 77j; 77s(a); 77aa(25) to (26); 78*l*; 78m; 78*o*(d); 78w(a); 79e(b); 79n; 79t(a); 80a–8; 80a–29

Contact Person: Robert Burns, Chief Counsel, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, (202) 272–2130.

Dated: December 21, 1993.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–31567 Filed 12–27–93; 8:45 am]
BILLING CODE 8010–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Distribution of Property of Bankrupt Futures Commission Merchant That Had Participated in a Cross-Margining Program

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing an additional appendix to its bankruptcy rules that would govern the distribution of property where the debtor was a futures commission merchant (FCM) that holds cross-margin (XM) accounts as well as non-XM accounts. This proposed distributional framework is intended to assure that non-XM customers of such an FCM will not be adversely affected by a shortfall in the pool of XM funds.

DATES: Comments must be received by January 27, 1994.

ADDRESSES: Comments should be sent to Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC. 20581 and should refer to "Bankruptcy Appendix."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or John C. Lawton, Associate

Director, Division of Trading and Markets, at the above address. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background of XM Program

In XM programs, intermarket positions with offsetting risk characteristics are margined together as a single portfolio. These intermarket positions include stock index futures, options on stock index futures and stock index options, as well as foreign currency futures, options on foreign currency futures and foreign currency options. Because the related intermarket positions are essentially offsetting and therefore may effectively serve as margin collateral for one another, the margin requirement for the combined position may be lower than if each were margined separately.

Currently, there generally are two types of XM programs—proprietary and non-proprietary.[1] In proprietary programs, XM treatment is given to intermarket positions in proprietary (i.e., non-customer) accounts maintained by participating clearing members. With non-proprietary XM programs, XM treatment is given at the clearing organization level for intermarket positions maintained by clearing members for market professionals.

II. Current Bankruptcy Distribution in the Context of XM Programs

Under the various non-proprietary XM programs, the futures trades and securities positions of eligible market professionals are deemed to be customer property under section 4d(2) of the Commodity Exchange Act[2] and any customer net equity claim which a participating market professional has in respect of XM property held by a clearing firm in a non-proprietary XM account must be treated as a customer net equity claim under part 190 of the Commission's rules[3] and subchapter IV of chapter 7 of title 11 of the Bankruptcy Code (the commodity broker liquidation provisions).[4] In the case of an FCM bankruptcy, the commodity broker liquidation provisions of the Bankruptcy Code and part 190 of the Commission's rules provide for a pro rata distribution of assets among the section 4d(2) customers whose accounts are carried by such FCM. Thus, absent some provision to the contrary, if a participating clearing member defaulted due to losses in its non-proprietary XM account, non-XM customers could be forced to share in those losses.[5]

In order to avoid this possibility, Commission orders approving each of the current non-proprietary XM programs have required participating market professionals to execute agreements whereby they subordinate their XM-related claims to customer claims based on non-XM positions in the event of the clearing member's bankruptcy. The net equity claims of non-XM customers are thus accorded priority over the net equity claims of XM customers. The relevant Commission orders approving the various cross-margin programs and various subordination agreements, as prescribed by relevant exchange rules, among market professionals, their clearing members and the clearing organizations involved, establish the current bankruptcy distribution framework. In the case of the bankruptcy of a clearing member participating in a non-proprietary XM program, the trustee would marshal all of the assets that are available to satisfy customer claims as set forth in Commission Rule 190.08 (whether such funds derived from XM customers, non-XM customers or any other available source and irrespective of whether the shortfall in the segregated funds accounts were attributable to XM or non-XM customers). The trustee would determine if there were sufficient funds to satisfy in full the net equity claims of all non-XM customers cleared by the clearing member. If all such net equity claims of non-XM customers could be satisfied in full, the trustee would make the appropriate distributions and market professionals who participated in an XM program would receive any remaining funds to be shared on a pro rata basis. If there were not sufficient funds to satisfy non-XM net equity claims in full, the trustee would distribute to the non-XM customers only whatever funds were available on a pro rata basis and market professionals participating in the XM program would receive nothing.

The result of the market professionals' subordination required by the Commission orders is that the market professionals' XM-related assets would be included within the pool of customer funds available to meet the claims of the clearing member's non-XM customers.[6] Upon satisfaction of these "regular" customer claims, any excess customer property would be distributed to the various market professionals cleared by the defaulting member based upon their XM-related claims consistent with the pro rata distribution scheme of the Bankruptcy Code and part 190 of the Commission's rules. Thus, non-XM customers would never receive less than they would have received in the absence of an XM program.[7]

III. Proposed Bankruptcy Distribution in the Context of the XM Programs

When the Commission adopted its part 190 bankruptcy rules,[8] it included an appendix intended to facilitate a trustee's operation of the estate of a bankrupt commodity broker. This appendix includes a schedule of trustee's duties, forms concerning customer instructions for return of non-cash property and transfer of hedge

[1] The Commission has approved a number of proprietary XM programs between futures clearing organizations and the Options Clearing Corporation (OCC), a clearing organization for options listed on the American Stock Exchange, Chicago Board Options Exchange, New York Stock Exchange, Pacific Stock Exchange and Philadelphia Stock Exchange. To date, the Commission has approved proprietary XM programs between the OCC and the following futures clearing organizations: Intermarket Clearing Corporation (ICC) (June 1, 1988); Chicago Mercantile Exchange (CME) (September 26, 1989); Board of Trade Clearing Corporation (BOTCC) (October 31, 1991); Kansas City Board of Trade (KCBTCC) (February 25, 1992); and Comex Clearing Association (September 9, 1992). On June 2, 1993, the Commission also approved a trilateral proprietary XM program among the CME, ICC and OCC.

Similarly, the Commission has approved non-proprietary XM programs between OCC and the following futures clearing organizations: CME (November 26, 1991); ICC (November 26, 1991); BOTCC (July 21, 1993); and KCBTCC (July 21, 1993). The Commission also approved a trilateral non-proprietary XM program among CME, ICC and OCC on June 2, 1993.

[2] 7 U.S.C. 6d(2) (1988).

[3] 17 CFR part 190.

[4] Without some contrary provision, the assets of a securities broker-dealer who cleared the options trades of a cross-margining market professional would be distributed in the event of a bankruptcy pursuant to subchapter III of chapter 7 of the Bankruptcy Code, 11 U.S.C. 741–752 (1988), or the Securities Investors Protection Act (SIPA), 15 U.S.C. 78aaa *et seq.* (1988). For a securities broker-dealer to participate in a non-proprietary XM program, it must elect customer property treatment under part 190 of the Commission's rules in lieu of under SIPA, as further discussed below.

[5] 11 U.S.C 761–766 (1988). See, e.g., Commission Order, In the Matter of the Chicago Mercantile Exchange Proposal to Expand its Cross-Margining Program with the Options Clearing Corporation to Include the Cross-Exchange Net Margining of the Positions of Market Professionals at 9 (November 26, 1991), reprinted in 56 FR 61404, 61606 (December 3, 1991), and Commission Order, In the Matter of The Intermarket Clearing Corporation Proposal to Expand its Cross-Margining Program with the Options Clearing Corporation to Include the Cross-Exchange Net Margining of the Positions of Market Professionals at 9 (November 26, 1991), reprinted in 56 FR 61406, 61408 (December 3, 1991).

[6] Market professionals also would be included within this group of customers to the extent they had non-XM related customer claims.

[7] Where there is a shortfall in the amount of funds in segregation attributable to non-XM customers and there are remaining funds in segregation attributable to XM customers, non-XM customers could achieve a greater distribution than if there were no XM program and subordination agreement.

[8] 48 FR 8716 (March 1, 1983).

contracts, and a proof of claim form. The Commission is now proposing to add a new appendix to part 190 to provide further guidance to a trustee of a bankrupt FCM with respect to the appropriate distribution of property where the FCM had been a participant in an XM program that includes non-proprietary positions. As described above, such programs are now numerous and include non-proprietary positions in certain instances and where they do so, participating market professionals are required by Commission order, among other things, to execute agreements whereby they subordinate their XM-related claims to the claims of non-XM customers in the event of bankruptcy in all instances. The proposed new bankruptcy appendix is intended to continue the concept of subordination for purposes of assuring treatment of the securities as part of the commodity estate but to modify the method for distribution of property of a bankrupt FCM which had participated in an XM program that includes non-proprietary positions such that the subordination to futures customers in the event of bankruptcy is more limited. However, the Commission orders and the clearing organization rules will continue to require each market professional participating in an XM program to agree that all of his XM assets carried by his clearing member, including securities options, will not be deemed to be "customer property" under SIPA and will be treated pursuant to the commodity broker liquidation provisions of the Bankruptcy Code. Thus, the market professional would remain removed from the class of customers whose claims would be disposed of pursuant to SIPA[9] and, accordingly, the market professional's XM assets carried by a securities broker-dealer would continue to be considered as other than SIPA customer property, since such property is defined to include only cash or securities held for the account of a SIPA customer.[10]

The guiding principles of the proposed new appendix to part 190 are to assure that there is generally pro rata distribution to customers of the customer funds in the bankrupt FCM's commodity interest estate and that non-XM customers of such an FCM are not adversely affected by a shortfall in the pool of XM funds. The proposed new appendix would preserve the principle that non-XM customers would never receive less than they would have received in the absence of an XM program, but the distributional rule would be in lieu of requiring market professionals participating in XM programs to subordinate claims they may make for customer property in all instances. Under the proposal, a bankruptcy trustee handling the commodity interest estate of a bankrupt FCM with XM customer funds would first determine the respective shortfalls, if any, in the pools of XM customer and non-XM customer segregated funds. The trustee then would calculate the shortfall in each pool as a percentage of the segregation requirement for the pool. If there were no shortfall in either of the two pools; if there were an equal percentage shortfall in the two pools; if there were a shortfall in the non-XM pool only; or if the percentage of shortfall were greater in the non-XM pool than in the XM pool, the two pools of segregated funds would be combined and XM customers and non-XM customers would share pro rata in the combined pool.[11] However, if there were a shortfall in the XM pool only, or if the percentage of shortfall were greater in the XM pool than in the non-XM pool, the two pools of segregated funds would not be combined.[12] Rather, XM customers would share pro rata in the pool of XM segregated funds, while non-XM customers would share pro rata in the pool of non-XM segregated funds. To facilitate this distributional framework, subclasses of customer accounts, an XM account and a non-XM account, would be recognized.

As with the current distribution system for a bankrupt FCM with XM-related claims, the proposed appendix would ensure that non-XM customers would never receive less than they would have received in the absence of an XM program. Of course, without the specific subordination of XM customer claims to non-XM customer claims in all cases by market professionals participating in XM programs, non-XM customers would, depending upon the circumstances, receive either equivalent or less favorable distributions under the approach of the proposed appendix than they would under the Commission's current bankruptcy distribution for FCMs participating in an XM program. In those cases where there is no shortfall in the non-XM pool (see Examples 1 and 3), the distribution to non-XM customers would be the same under the proposal as it is currently. However, in those cases where there is a shortfall in the non-XM pool, the pro rata distribution across the combined XM and non-XM pools (see Examples 2, 5 and 6) or the separate treatment of the XM and non-XM pools and the XM and non-XM account subclasses (see Example 4) will generally mean a less favorable distribution to the non-XM customers than is currently required.[13] This is the result because there would no longer be a marshalling of all assets available from segregated funds, including those attributable to XM customers, to satisfy all claims from non-XM customers before any claim of an XM customer can be satisfied. The Commission believes these outcomes would be fair to all parties involved, consistent with general bankruptcy principles and eliminate the need for execution of a separate subordination agreement to comply with section 4d(2) of the Commodity Exchange Act once participating market professionals elect "commodity" customer treatment for the XM account.

If the proposed new appendix were adopted, the Commission would modify its orders relating to XM programs by deleting the provision requiring that a customer net equity claim of a participating market professional be subordinated to the customer net equity claims of "public customers" that do not relate to XM property and substitute a reference to the distributional rule set forth in the new appendix B. The Commission has consulted with the Securities and Exchange Commission (SEC) and the Securities Investor Protection Corporation and believes that this change will not adversely affect continued treatment of XM funds under the commodity broker, rather than the securities broker-dealer, liquidation provisions of the Bankruptcy Code. The Commission also understands that the Options Clearing Corporation will submit conforming rule changes to the

[9] Specifically, SIPA excludes a person from the definition of a SIPA customer "to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law * * * is subordinated to the claims of any or all creditors of the debtor * * *" 15 U.S.C. 78lll(2)(B)(1988).

[10] 15 U.S.C. 78lll(4); Securities Exchange Act Release No. 34–29991, 56 FR 61458 (December 3, 1991); Securities Exchange Act Release No. 34–30041, 56 FR 64824 (December 12, 1991). See also Memorandum Recommending Approval of the Chicago Mercantile Exchange's and the Intermarket Clearing Corporation's Proposals to Expand Their Respective Cross-Margining Programs with the Options Clearing Corporation to Include the Cross-Exchange Net Margining of the Positions of Certain Market Professionals at 68–69, reprinted in (1990–1992 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶25,190 at 38,504–38,505 (November 21, 1991).

[11] See Examples 1, 6, 2 and 5 of the proposed appendix B to part 190, Framework 1.

[12] See Examples 3 and 4 of the proposed appendix B to part 190, Framework 1.

[13] Of course, if there were no segregated funds available at all attributable to XM customers, which could be the case in extreme circumstances under Examples 4 or 6, there would also be no difference in the distribution to non-XM customers as a result of the proposed appendix.

SEC to eliminate the subordination to public customer requirement from its approval order.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These rules would affect distributees of a bankrupt FCM's estate where the FCM had participated in an XM program. Currently, market professionals with an XM account must subordinate their claims in a bankruptcy to those of non-XM customers in all instances, so the proposed rules which would eliminate the need for such subordination should not adversely impact such market professionals. Further, the proposed distributional framework is intended to assure that non-XM customers of such FCM will not be adversely affected by a shortfall in the pool of XM funds and thus there should not be a significant economic impact on such customers if these proposed rules are adopted. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any person or entity which believes that this proposed rule would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted this proposed rule and its associated information collection requirements of the Office of Management and Budget. While this proposed rule has no burden, the group of rules of which this is a part has the following burden:

Rules 190.06 and 190.10 (3038–0021):

Average Burden Hours Per Response	.35
Number of Respondents	802
Frequency of Response	[1]

[1] Occassionally.

Persons wishing to comment on the information which would be required by this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K St. NW., Washington, D.C. 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 190

Bankruptcy.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a, 2(a), 4c, 4d, 4g, 5e, 8a, 15, 19 and 20 thereof, 7 U.S.C. 1a, 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1988 & Supp. IV 1992), and in the Bankruptcy Code and, in particular, sections 362, 546, 548, 556 and 761–766 thereof, 11 U.S.C. 362, 546, 548, 556 and 761–766 (1988), hereby proposes to amend part 190 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 190—BANKRUPTCY

1. The authority citation for part 190 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23 and 24 and 11 U.S.C. 362, 546, 548, 556 and 761–766.

2. Section 190.08 is proposed to be amended by revising the introductory text to read as follows:

§ 190.08 Allocation of property and allowance of claims.

The property of the debtor's estate must be allocated among account classes and between customer classes as provided in this section, except for special distributions required under Appendix B to this part. The property so allocated will constitute a separate estate of the customer class and the account class to which it is allocated, and will be designated by reference to such customer class and account class.

* * * * *

3. Part 190 is proposed to be amended by redesignating appendix to part 190 as appendix A to part 190 and by adding appendix B to part 190 to read as follows:

Appendix B to Part 190—Special Bankruptcy Distributions

Framework 1—Special Distribution of Customer Funds When FCM Participated in Cross-Margining

The Commission has established the following distributional convention with respect to customer funds held by a futures commission merchant (FCM) that participated in a cross-margining (XM) program:

All customer funds held in respect of XM accounts, regardless of the product that customers holding such accounts are trading, are required by Commission order to be segregated separately from all other customer segregated funds. For purposes of this distributional rule, XM accounts will be deemed to be commodity interest accounts and securities held in XM accounts will be deemed to be received by the FCM to margin, guarantee or secure commodity interest contracts. The maintenance of property in an XM account will result in subordination of the claim for such property to certain non-XM customer claims and thereby will operate to cause such XM claim not to be treated as a customer claim for purposes of the Securities Investors Protection Act and the XM securities to be excluded from the securities estate. This creates subclasses of customer accounts, an XM account and a non-XM account (a person could hold each type of account), and results in two pools of customer segregated funds: An XM pool and a non-XM pool. In the event that there is a shortfall in the non-XM pool of customer class segregated funds and there is no shortfall in the XM pool of customer segregated funds, all customer net equity claims, whether or not they arise out of the XM subclass of accounts, will be combined and will be paid pro rata out of the total pool of available XM and non-XM customer funds. In the event that there is a shortfall in the XM pool of customer segregated funds and there is no shortfall in the non-XM pool of customer segregated funds, then customer net equity claims arising from the XM subclass of accounts shall be satisfied first from the XM pool of customer segregated funds, and customer net equity claims arising from the non-XM subclass of accounts shall be satisfied first from the non-XM customer segregated funds. Furthermore, in the event that there is a shortfall in both the non-XM and XM pools of customer segregated funds: (1) If the non-XM shortfall as a percentage of the segregation requirement in the non-XM pool is greater than or equal to the XM shortfall as a percentage of the segregation requirement in the XM pool, all customer net equity claims will be paid pro rata; and (2) if the XM shortfall as a percentage of the segregation requirement in the XM pool is greater than the non-XM shortfall as a percentage of the segregation requirement of the non-XM pool, non-XM customer net equity claims will be paid pro rata out of the available non-XM segregated funds, and XM customer net equity claims will be paid pro rata out of the available XM segregated funds. In this way, non-XM customers will never be adversely affected by an XM shortfall.

The following examples illustrate the operation of this convention. The examples assume that the FCM has two customers, one with exclusively XM accounts and one with exclusively non-XM accounts. However, the examples would apply equally if there were only one customer, with both an XM account and a non-XM account.

1. Sufficient Funds to Meet Non-XM and XM Customer Claims.

	Non-XM	XM	Total
Funds in Segregation	150	150	300
Segregation Requirement	150	150	300
Shortfall (dollars)	0	0	0
Shortfall (percent)	0	0	0
Distribution	150	150	300

There are adequate funds available and both the non-XM and the XM customer claims will be paid in full.

2. Shortfall in Non-XM Only.

	Non-XM	XM	Total
Funds in Segregation	100	150	250
Segregation Requirement	150	150	300
Shortfall (dollars)	50	0	.....
Shortfall (percent)	50/150=33.3	0	
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	125	125	.....
Distribution	125	125	250

Due to the non-XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Each customer will receive his pro rata share of the funds available, or 50% of the $250 available, or $125.

3. Shortfall in XM Only.

	Non-XM	XM	Total
Funds in Segregation	150	100	250
Segregation Requirement	150	150	300
Shortfall (dollars)	0	50	.....
Shortfall (percent)	0	50/150=33.3	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	125	125	.....
Distribution	150	100	250

Due to the XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Accordingly, the XM funds and non-XM funds are treated as separate pools, and the non-XM customer will be paid in full, receiving $150 while the XM customer will receive the remaining $100.

4. Shortfall in Both, With XM Shortfall Exceeding Non-XM Shortfall.

	Non-XM	XM	Total
Funds in Segregation	125	100	225
Segregation Requirement	150	150	300
Shortfall (dollars)	25	50	.....
Shortfall (percent)	25/150=16.7	50/150=33.3	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	112.50	112.50	.....
Distribution	125	100	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the XM shortfall exceeds the non-XM shortfall. The non-XM customer will receive the $125 available with respect to non-XM claims while the XM customer will receive the $100 available with respect to XM claims.

5. Shortfall in Both, With Non-XM Shortfall Exceeding XM Shortfall.

	Non-XM	XM	Total
Funds in Segregation	100	125	225
Segregation Requirement	150	150	300
Shortfall (dollars)	50	25	.....
Shortfall (percent)	50/150=33.3	25/150=16.7	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	112.50	112.50	.....
Distribution	112.50	112.50	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall exceeds the XM shortfall. Each customer will receive 50% of the $225 available, or $112.50.

6. Shortfall in Both, Non-XM Shortfall = XM Shortfall.

	Non-XM	XM	Total
Funds in Segregation	100	100	200
Segregation Requirement	150	150	300

	Non-XM	XM	Total
Shortfall (dollars)	50	50	.....
Shortfall (percent)	50/150=33.3	50/150=33.3	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	100	100	.....
Distribution	100	100	200

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall equals the XM shortfall. Each customer will receive 50% of the $200 available, or $100.

These examples illustrate the principle that pro rata distribution across both accounts is the preferable approach except when a shortfall in the XM account could harm non-XM customers. Thus, pro rata distribution occurs in Examples 1, 2, 5 and 6. Separate treatment of the XM and non-XM accounts occurs in Examples 3 and 4.

Issued in Washington, DC, on December 21, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230, 239, 270, and 274

[Release Nos. 33–7038; IC–19959; S7–34–93]

RIN 3235–AE17

Revisions to Rules Regulating Money Market Funds

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms.

SUMMARY: The Securities and Exchange Commission is proposing for public comment amendments to rules and forms under the Securities Act of 1933 and the Investment Company Act of 1940 that govern money market funds. The proposed amendments would tighten the risk-limiting conditions imposed on tax exempt money market funds by rule 2a–7 under the Investment Company Act of 1940; impose additional disclosure requirements on tax exempt funds; and make certain other changes to the Commission rules and forms applicable to all money market funds. The amendments are designed both to reduce the likelihood that a tax exempt fund will not be able to maintain a stable net asset value and to increase investor awareness of the risks of investment in a money market fund.

DATES: Comments must be received on or before April 6, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–34–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Berman, Deputy Office Chief, or Martha H. Platt, Senior Attorney, (202) 272–2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is proposing for comment amendments to rules and forms affecting money market funds ("funds"), including rule 2a–7 (17 CFR 270.2a–7) (the "rule") under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("1940 Act").[1] The proposed amendments primarily relate to funds that hold themselves out as distributing income that is exempt from regular federal income tax.

In addition to the amendments being proposed to rule 2a–7, amendments are being proposed to the following rules and forms: 17 CFR 210.12–12; 17 CFR 230.134; 17 CFR 270.2a41–1; 17 CFR 270.12d3–1; 17 CFR 270.17a–9; 17 CFR 270.31a–1; Form N–1A (17 CFR 239.15A and 274.11A); Form N–3 (17 CFR 239.17a and 274.11b); and Form N-SAR (17 CFR 274.101). The Commission is also publishing three new or revised staff guides to Forms N–1A and N–3 which do not appear in the Code of Federal Regulations.

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[1] Unless otherwise noted, all references to rule 2a–7, or to any paragraph of the rule, will be to the applicable paragraph of 17 CFR 270.2a–7 as currently in effect. When a paragraph is renumbered in the rule as it is proposed to be amended, citations will be both to rule 2a–7 "as proposed to be amended" and to the current rule.

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Executive Summary

In February 1991, the Commission amended the rules and forms governing money market funds. These amendments focussed primarily on taxable money market funds and required that such funds limit their investments in the securities of any one issuer (other than Government securities)[2] to five percent of fund assets (the "Five Percent Diversification Test"), and limit fund investment in "second tier securities" (as defined in the rule) to no more than five percent of fund assets, with investment in the second tier securities of any one issuer being limited to the greater of one percent of fund assets or one million dollars (the "Second Tier Security Tests").

The Commission is now proposing to amend rule 2a–7 to provide tax exempt fund investors with protections similar to those afforded taxable fund investors by the 1991 amendments. The proposed amendments take into account the different characteristics of "national" funds, which have as their primary objective distributing income exempt from federal taxation, and "single state" funds, which have as their primary objective distributing income exempt not only from federal taxation, but the income taxes of a specific state.

Diversification

The proposed amendments would require that national funds comply with the Five Percent Diversification Test. Single state funds would not be subject to the Five Percent Diversification Test, but would be required to provide additional prospectus disclosure to alert investors to the increased risks presented by these funds.

Credit Quality

To address the increased risks that may result from lack of diversification, the proposed amendments would require that single state funds invest only in "first tier securities" (as defined in the rule). National funds would be limited to investing five percent of fund assets in second tier securities that are "conduit securities" (as proposed to be defined in the rule) with investment in the conduit securities of any one issuer that are second tier securities being limited to one percent of fund assets.

Puts and Demand Features

A "put" permits security holders to demand repayment of a security within a specified period of time. A "demand feature" is a put that can be exercised on relatively short notice. A substantial portion of tax exempt fund portfolios are subject to puts and demand features. The proposed amendments would provide that a fund could not invest more than ten percent of its assets in securities subject to puts from, or directly issued by, the same institution. Currently, the rule imposes this put diversification limitation on seventy-five percent of a tax exempt fund's assets, and applies a five percent limitation to a "conditional put" from a single institution. In addition, the proposed amendments would:

(a) Limit the percentage of fund assets that may be subject to puts of a single institution that are second tier securities to five percent of fund assets;

(b) Require puts that are demand features to be rated by a nationally recognized statistical rating organization ("NRSRO"); and

(c) Specify the types of conditions that can apply to a conditional put.

Asset Backed Securities and "Synthetic" Securities

The rule amendments would accommodate rule 2a–7 to asset backed and synthetic securities—types of securities in which many money market funds currently invest. To provide an independent evaluation of the risks posed by these structures, funds would be limited to investing in asset backed and synthetic securities that have been rated by a NRSRO. In addition, the amendments would specify how the rule's diversification requirements and security maturity limitations would apply to these securities.

Continuing Credit Risk Analysis

The Commission is also proposing amendments to improve fund procedures for analyzing certain securities. A significant portion of tax exempt portfolios is comprised of instruments that are long-term, but are subject to demand features that shorten their maturity. The amendments would require credit risks to be reviewed on an ongoing basis to assure that the securities continue to present minimal credit risks. The amendments would require funds to establish written procedures designed to assure that they have access to sufficient financial and other pertinent information concerning the issuer of the underlying security to permit the fund to perform a credit analysis of the issuer in certain circumstances. If this information cannot be obtained in these circumstances, the fund would be required to dispose of the security.

Interest Rate Risk Analysis

Under rule 2a–7, the maturities of certain securities with adjustable interest rates may be determined by reference to the date on which the next interest rate adjustment occurs if the security can reasonably be expected to have a market value that approximates its par value upon readjustment of its interest rate. The Commission is proposing to amend rule 2a–7 to specify that the instrument must reasonably be expected to have a market value that approximates its par value after each interest rate adjustment over the life of the instrument or until the instrument's principal can be recovered through demand. The proposed amendments also would require that the fund periodically review whether the security can reasonably be expected to have a market value that approximates its par value upon readjustment of its interest rate. In addition, funds would be required to retain records documenting the credit analyses currently required by rule 2a–7 and the diversification analyses proposed to be required for asset backed securities.

Other Amendments to Rule 2a–7

The Commission is also proposing amendments that would address fund investment in repurchase agreements and whether an instrument is "U.S. dollar denominated" (as required by the rule), and would eliminate the requirement that a fund's board of directors approve or ratify the

[2] Under paragraph (a)(8) of rule 2a–7 (paragraph (a)(13) of rule 2a–7 as proposed to be amended), the term "Government security" means those securities issued or guaranteed by the United States or its instrumentalities—the definition of that term given in section 2(a)(16) of the 1940 Act (15 U.S.C. 80a–2(a)(16)). It does not include securities issued or guaranteed by state governments or instrumentalities.

acquisition of every security that is not rated by at least two NRSROs.

Disclosure

The Commission is proposing amendments to Form N–1A to require that a single state fund disclose in its prospectus risks related to the geographic concentration of its investments and lack of diversification. The Commission is also publishing for comment a draft Staff Guide that discusses certain disclosures that should be made by tax exempt funds.

Exemptive Rule

The Commission is proposing new rule 17a–9 under the 1940 Act to permit an affiliate of a fund to repurchase from the fund securities that are no longer eligible securities at the higher of their amortized cost value or market value, without having to seek prior Commission approval.

Recordkeeping

The Commission is proposing amendments to rule 31a–1 under the 1940 Act to require money market funds to maintain records identifying the provider of any put or guarantee with respect to a portfolio security, as well as other information necessary to identify, value, and account for each investment.

I. Background

A. Money Market Funds and Rule 2a–7

Money market funds are management investment companies registered under the 1940 Act that have as their investment objective generation of income and preservation of capital and liquidity through investment in short-term, high-quality securities. Currently, 932 money market funds have total assets of $578 billion.[3] Seventeen percent of money market fund assets ($101 billion) are held by 325 funds that have as their principal investment objective the distribution of income exempt from federal income taxes ("tax exempt funds").[4] Almost one third of the assets held by tax exempt funds ($31 billion) is held by 158 funds that seek to distribute income that is also exempt from the income taxes of a specific state or locality ("single state funds").[5] The balance is held by funds that do not limit their investments to securities exempt from the income taxes of a specific state ("national funds").

Unlike other investment companies, money market funds seek to maintain a stable share price, typically at $1.00 per share.[6] To do so, most funds use the amortized cost method of valuation ("amortized cost method")[7] and the penny-rounding method of pricing ("penny rounding method")[8] permitted by rule 2a–7. The 1940 Act and applicable rules generally require investment companies to calculate current net asset value per share by valuing portfolio instruments at market value or, if market quotations are not readily available, at fair value as determined in good faith by the board of directors.[9] Rule 2a–7 exempts money market funds from these provisions but contains conditions designed to minimize the deviation between a fund's stabilized share price and the market value of its portfolio.[10]

In February 1991, the Commission amended the rules and forms governing money market funds (the "1991 Amendments")[11] to respond to developments in the commercial paper market since rule 2a–7 was adopted in 1983.[12] Among other things, the 1991 Amendments permit funds to invest only in "eligible securities," defined generally as securities that are rated in one of the highest two short-term rating categories by the "requisite NRSROs,"[13] or comparable unrated securities. Taxable funds must further limit their investments in the securities of any one issuer (other than Government securities) to five percent of fund assets,[14] and limit fund investment in second tier securities[15] to no more than

[3] See IBC/Donoghue's Money Fund Report at 2, July 30, 1993 ("Money Fund Report").

[4] Id. Money market fund investments are held in over twenty-three million investor accounts, of which over 1.4 million accounts hold tax exempt funds. Investment Company Institute Mutual Fund Fact Book at 60–61 (33d ed. 1993). See Investment Company Act Rel. No. 17589 (July 17, 1990) (55 FR 30239 (July 25, 1990)) ("Release 17589") at nn. 3–7 and 15–20 and accompanying text for a summary of the development of money market funds, which were first introduced in the early 1970s.

[5] Money Fund Report, supra note 3, at 2. Single state funds are available for thirteen states: Arizona, California, Connecticut, Florida, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Virginia. Id.

[6] The stable $1.00 price has encouraged investors to view money market funds as an alternative to bank deposits and checking accounts, even though money market funds lack federal deposit insurance.

[7] Under the amortized cost method, portfolio securities are valued by reference to their acquisition cost as adjusted for amortization of premium or accretion of discount. Paragraph (a)(1) of rule 2a–7.

[8] Share price is determined under the penny rounding method by valuing securities at market value, fair value, or amortized cost and rounding the per share net asset value to the nearest cent on a share value of a dollar, as opposed to the nearest one tenth of one cent. Paragraph (a)(11) of rule 2a–7 (paragraph (a)(16) of rule 2a–7 as proposed to be amended). See also Investment Company Act Rel. No. 13380 (July 11, 1983) (48 FR 32555 (July 18, 1983)) ("Release 13380") (adopting rule 2a–7) at n.6, and Investment Company Act Rel. No. 12206 (Feb. 1, 1982) (47 FR 5428 (Feb. 5, 1982)) ("Release 12206") (proposing rule 2a–7) at n.5.

[9] See section 2(a)(41) of the 1940 Act (15 U.S.C. 80a–2(a)(41)), together with rules 2a–4 and 22c–1 thereunder (17 CFR 270.2a–4 and 270.22c–1).

[10] If shares are sold or redeemed based on a net asset value which has been either understated or overstated in comparison to the amount at which portfolio instruments could have been sold, the interests of either existing shareholders or new investors will be diluted. See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Sen. Comm. on Banking and Commerce, 76th Cong., 3rd Sess. 136–138, 288 (1940), and Release 17589, supra note 4, at n.7.

[11] Investment Company Act Rel. No. 18005 (Feb. 20, 1991) (56 FR 8113 (Feb. 27, 1991)) ("Release 18005"). The 1991 Amendments were proposed in Release 17589, supra note 4, and became effective on June 1, 1991.

[12] Before the 1991 Amendments, rule 2a–7 permitted funds to invest in "high quality" securities, that is, securities that had received at least the second highest rating from one NRSRO. See Release 13380, supra note 8, at n.34. In the summer of 1989 and the spring of 1990, several taxable funds held approximately $125 million in defaulted commercial paper issued by Mortgage and Realty Trust or Integrated Resources Inc.; in the fall of 1990 several funds held commercial paper issued by MNC Financial Corp. that was downgraded to below high quality, resulting in a significant decline in its market price. In all three cases, the commercial paper had the second highest rating from one NRSRO when purchased by the funds and thus was eligible for fund investment under rule 2a–7 as then in effect. Shareholders of funds that held these commercial paper issues were not adversely affected, however, because each fund's investment adviser purchased the paper from the funds at amortized cost or principal amount or otherwise agreed to indemnify the fund. See Release 17589, supra note 4, at n.18 and accompanying text.

[13] "Requisite NRSROs" are defined as: (1) any two NRSROs that have issued a rating with respect to an instrument or class of debt obligations of an issuer, or (2) if only one NRSRO has issued a rating with respect to such instrument or issuer at the time the fund purchases or rolls over the security, that NRSRO. Paragraph (a)(13) of rule 2a–7 (paragraph (a)(19) of rule 2a–7 as proposed to be amended).

The term NRSRO is defined in paragraph (a)(10) of rule 2a–7 (paragraph (a)(15) of rule 2a–7 as proposed to be amended) to have the same meaning as in the Commission's uniform net capital rule (17 CFR 240.15c3–1(c)(2)(vi)(E), (F) and (H)). The Commission's Division of Market Regulation responds to requests for NRSRO designation through no-action letters. Currently, the Division of Market Regulation has designated six NRSROs: Duff and Phelps, Inc. ("D&P"), Fitch Investors Services, Inc. ("Fitch"), Moody's Investors Service Inc. ("Moody's"), Standard & Poor's Corp. ("S&P"), and two specialized NRSRO's: IBCA Limited and its subsidiary, IBCA Inc. ("IBCA"), which is recognized as a NRSRO only with respect to its ratings of debt issued by banks, bank holding companies, United Kingdom building societies, broker-dealers and broker-dealers' parent companies, and bank-supported debt, and Thomson BankWatch, Inc. ("TBW"), which is recognized as a NRSRO only with respect to ratings for debt issued by banks, bank holding companies, non-bank banks, thrifts, broker-dealers, and broker-dealers' parent companies.

[14] Paragraph (c)(4)(i) of rule 2a–7. A limited exception is provided for certain securities held for not more than three business days.

[15] A "second tier security" is an eligible security that is not a "first tier security." Paragraph (a)(14) of rule 2a–7 (paragraph (a)(20) of rule 2a–7 as proposed to be amended). A first tier security is generally a security that is rated by the requisite

Continued

five percent of fund assets, with investment in the second tier securities of any one issuer being limited to the greater of one percent of fund assets or one million dollars.[16]

The Five Percent Diversification Test and the Second Tier Security Tests were not made applicable to tax exempt funds.[17] In proposing the 1991 Amendments, the Commission explained that it did not propose to subject tax exempt funds to these tests because doing so could require many of them to substantially restructure their portfolios and, perhaps, lose some of their tax advantages.[18] Since the adoption of the 1991 Amendments, the Commission has closely examined the characteristics of short-term tax exempt securities, the markets in which they trade, and tax exempt fund portfolios to determine what, if any, revisions to rule 2a–7 should be proposed to provide tax exempt fund investors with protections similar to those afforded taxable fund investors by the 1991 Amendments.[19]

B. Tax Exempt Funds

Tax exempt funds, like taxable funds, offer individual investors a means to participate in the short-term debt markets while achieving the benefits of diversification.[20] Both taxable and tax exempt funds maintain stable share prices and distribute dividends that reflect current short-term interest rates. Significant differences exist in the securities in which these two types of funds invest.

Taxable funds invest primarily in high quality commercial paper, short-term securities issued by the Federal government, and bank instruments, such as certificates of deposit. These securities, by their terms, mature one year or less from the time of issuance, and their purchase by funds is generally based on the credit quality of the issuers.

Tax exempt funds typically hold instruments that by their terms are long-term. A large percentage (approximately sixty percent of the assets held by single state funds, and seventy percent of the assets held by national funds) of the securities in tax exempt fund portfolios consists of variable rate demand notes and similar instruments ("VRDNs"). VRDNs are long-term securities that have interest rates that periodically adjust to reflect short-term rates and are subject to "demand features," generally provided by third parties.[21] The adjustable rates and demand features are designed to give these instruments the characteristics of short-term instruments in order to make them permissible investments under rule 2a–7's maturity limitations.[22] A demand feature may also enhance or, if unconditional, serve as a substitute for the credit of the underlying issuer, providing the basis for making the instruments eligible for fund investment under rule 2a–7's credit quality limitations.[23]

Largely because of the growth of tax exempt funds and the limited types of securities that distribute tax free income, the demand for short-term tax exempt securities has exceeded supply,[24] resulting in the creation by various financial institutions of derivative or "synthetic" short-term tax exempt instruments.[25] These instruments usually are subject to demand features designed to make them eligible for fund investment.

One consequence of the use of demand features is that tax exempt fund portfolios largely consist of securities guaranteed by banks and other financial institutions. While these securities pay tax free dividends because they are issued by state, municipal or other entities that may issue tax exempt securities, their credit quality largely depends on banks. Investors who believe that the designation "tax exempt" signifies that portfolio securities are issued by state or local governments that are unlikely to default on their obligations may not appreciate that the credit quality of portfolio securities (and the ability of a tax exempt fund to maintain a stable net asset value) is largely dependent on the financial health of foreign and domestic banks and other put providers.[26]

A significant portion of tax exempt fund portfolios is also dependent on the financial health of corporate issuers rather than state or local governments. At one time, general obligation notes issued by state and local governments were the most prevalent type of tax exempt security. Today, a significant percentage of tax exempt securities are so-called "conduit securities"—that is, tax exempt instruments issued by a

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NRSROs in the highest rating category for short-term debt obligations, and comparable unrated securities. Paragraph (a)(6) of rule 2a–7 (paragraph (a)(11) of rule 2a–7 as proposed to be amended).

[16] Paragraph (c)(4)(i)(B) of rule 2a–7. The 1991 Amendments also shortened the maximum dollar-weighted portfolio maturity that a fund may maintain from 120 to ninety days, and codified the actions that a fund must take in certain events, including defaults and rating downgrades. See paragraphs (c)(2) and (c)(5) of rule 2a–7. The 1991 Amendments also require that the cover page of fund prospectuses and certain fund advertisements and sales literature state prominently that investment in a fund is not guaranteed or insured by the U.S. Government and that there can be no assurance that a fund can maintain a stable net asset value per share. See Form N–1A, item 1(a)(vi); Form N–3, item 1(a)(ix); and rule 482(a)(7) under the Securities Act of 1933 ("1933 Act") (17 CFR 230.482(a)(7)).

[17] Tax exempt funds are subject to a diversification test with respect to puts, as they had been prior to the adoption of the 1991 Amendments. Paragraph (c)(4)(ii) of rule 2a–7 (paragraph (c)(4)(iii) of rule 2a–7 as proposed to be amended).

[18] Release 17589, *supra* note 4, at Section II.6. Single state funds were thought to present particular problems because they must concentrate their investments in debt securities issued by a single state (or by issuers located within that state), making diversification more difficult to achieve. *Id.* at n.73.

[19] In proposing the 1991 Amendments, the Commission requested comment on the appropriate regulation of tax exempt funds. Seventeen commenters responded, including thirteen fund complexes, one NRSRO, and three trade associations. These comment letters, as well as other letters concerning tax exempt funds and rule 2a–7 cited in this Release, have been placed in the "S7" public comment file applicable to this proposal and are available in the Commission's Public Reference Room in Washington, D.C.

[20] Money market securities are often sold in large denominations which makes direct investment impracticable for many individual investors.

[21] The demand feature permits the fund to demand payment of the principal amount of the instrument at relatively short intervals, usually seven days (but at least annually) and on no more than thirty days notice.

[22] See paragraphs (c)(2) and (d) of rule 2a–7.

[23] The credit quality of these instruments is determined largely by the quality of the providers of the demand features (generally banks or other financial institutions), rather than the quality of the underlying issuer. See paragraphs (c)(3)(i) and (c)(3)(ii) of rule 2a–7.

[24] See "Return of Supply Problems Imminent, Stein Roe Manager Says," Global Guaranty, May 24, 1993 (derivatives provide one solution but many present unacceptable tax risks); "Nuveen Money Market Manager Seeks Diamonds in the Rough," Global Guaranty, May 10, 1993 (VRDN and semi-annual put bond market is shrinking); "Vanguard's Huge Money Market Fund Turns to Derivatives," Global Guaranty, Apr. 5, 1993 (shrinking supply in some markets fuels creation of synthetics, desire for diversification in states with sufficient supply also creates demand); "Risks Associated With Derivatives for Tax-Exempt Money Funds," Moody's Special Comment, May 3, 1993 (managers of tax-exempt money market funds have had increasing difficulty over last few years in finding high quality securities that also meet liquidity needs).

[25] Synthetic instruments are typically created by placing long-term fixed rate bonds of a single issuer in a trust. The holder of the interest in the trust is paid interest at a variable rate that reflects short-term interest rates (and is always less than the fixed rate of the bonds). The balance of the coupon payments are allocated to the sponsor or to pay administrative expenses. These instruments have demand features which allow holders to demand their principal back at periodic intervals, generally from a third party such as a bank. *Id.*

Scarcity of supply has not been an issue for taxable funds since, in the absence of high quality corporate issuers, they can generally invest in U.S. government securities. Nonetheless, securities that can be characterized as "synthetics," such as asset backed securities, have been developed for taxable funds. See infra Section II.C.4.

[26] As discussed infra in Section III.B, the Commission is publishing a new staff guide that would require a fund to disclose in its prospectus that the credit quality of the fund's portfolio depends on the financial health of put providers if more than forty percent of the fund's portfolio is subject to puts.

statutory authority or special purpose entity that have as their ultimate obligor a corporation.[27] Conduit securities held by tax exempt funds are often subject to demand features.

The implications of the dependence of tax exempt funds on conduit securities subject to demand features was illustrated in July 1991, when New Jersey insurance regulators seized Mutual Benefit Life Insurance Company ("MBLI"). Until immediately before it was seized, MBLI's debt was rated in the highest short-term rating category by Standard & Poor's Corporation ("S&P"), and several tax exempt funds held conduit securities issued by various housing development projects subject to demand features and other credit enhancements provided by MBLI. When MBLI could not honor its put obligations, advisers to funds holding MBLI-backed securities took various actions to prevent shareholder losses that would have occurred had the funds been required to price their shares at less than $1.00 ("break a dollar").[28] The advisers either repurchased the MBLI-backed instruments from the funds at their amortized cost or obtained a replacement guarantor.

II. Proposed Revisions to Rule 2a-7

The proposed amendments to rule 2a-7 are designed to minimize the risk that tax exempt funds will not be able to maintain a stable price of $1.00. Because of the differences between taxable and tax exempt funds, the Commission is proposing to apply somewhat different risk-limiting conditions to tax exempt funds.

[27] These types of securities are generally issued to finance business development (industrial development bonds), the construction of health care facilities and nursing homes, and housing development.

[28] Without these actions, the amortized cost value of the affected funds' portfolios may have deviated by more than one half of one percent from market value, and the affected funds would have been required to sell and redeem shares at a price of less than $1.00. Under paragraphs (c)(6)(ii) (B) and (C) of rule 2a-7, if the value of the fund portfolio securities decline such that the market value per share is less than 99.5 cents, the fund board must promptly consider what action, if any, should be initiated by the board and, if the board believes that the extent of any deviation may have dilutive or unfair results, cause the fund to take appropriate action to eliminate or reduce the deviation. These actions may include reducing the fund's share price or net asset value to less than $1.00. In addition, once a demand feature is dishonored, in the absence of a suitable substitute demand feature, the remaining maturity of the instrument must be measured by reference to its final maturity. As a result, several funds would have violated the requirement that average weighted portfolio maturity not exceed ninety days. See paragraph (c)(2) of rule 2a-7 and Release 17589, *supra* note 4, at nn. 16–18 and accompanying text.

A. Proposed Issuer Diversification Conditions

To limit risk, mutual funds generally diversify their portfolios by spreading the risk of loss among a number of securities. This practice reduces the likelihood that a fund will suffer significant losses if the issuer of one of its portfolio securities has financial difficulties that affect the value of its securities because only a small portion of the portfolio will be affected. For this reason, rule 2a-7 requires taxable funds to limit investment in a single issuer to five percent of fund assets and investment in the second tier securities of a single issuer to one percent of fund assets.

Although the 1991 Amendments did not extend diversification requirements to tax exempt funds, many tax exempt funds elect to meet the diversification requirements of section 5(b)(1) of the 1940 Act.[29] Many single state funds, and some national funds, are not diversified under section 5(b)(1). These funds meet only the Internal Revenue Code's diversification requirements for "Regulated Investment Companies" ("RICs"), which require a RIC to be diversified as to fifty percent of its assets.[30] For these funds, a credit problem with respect to a single security could result in a significant decrease in the value of fund assets.

1. National Funds

The proposed amendments would extend the Five Percent Diversification Test to national funds.[31] National funds typically are diversified within the meaning of section 5(b)(1) and do not use the "twenty-five percent basket" (the portion of a diversified fund's assets that may be invested in a single issuer) to invest more than five percent of their assets in a single issuer. Comment is requested on the effect that the proposed requirement would have on the portfolios of national funds.[32]

2. Single State Funds

The Commission is not proposing to extend the Five Percent Diversification Test to single state funds. Single state funds invest generally in the securities of a single state (or other issuers within a single state) with the objective of distributing income that is free from both federal and state (and local) income tax. Because these investment policies limit the universe of issuers in whose securities they may invest, most single state funds invest more than five percent of their assets in a single issuer, and many are not diversified within the meaning of section 5(b)(1) of the 1940 Act.

Commenters stated that single state funds would have great difficulty in complying with a Five Percent Diversification Test. In many cases, they asserted, an insufficient number of high quality issuers exist within a particular state to permit a single state fund to meet a diversification requirement and to continue to meet its objective of distributing dividends exempt from federal and state income taxes. On the other hand, lack of diversification may present increased risks not characteristic of other types of money market funds.

[29] Section 5(b)(1) provides that a diversified investment company may not, with respect to seventy-five percent of its assets, invest more than five percent of its assets in instruments of any issuer, other than cash, cash items, Government securities (as defined in section 2(a)(16) of the 1940 Act (15 U.S.C. 80a-2(a)(16))) and securities of other investment companies. The remaining twenty-five percent of the fund's assets (the "twenty-five percent basket") may be invested in any manner. If an investment company invests more than five percent of its assets in any issuer, the entire investment is placed in the twenty-five percent basket, and then aggregated with other investments that are greater than five percent to determine whether the fund is in compliance with section 5(b)(1). The investment company may not invest more than twenty-five percent of its assets in a single issuer by splitting its investment into two lots between the twenty-five percent basket and the diversified portion of its portfolio. See Lybrand, Ross Bros. & Montgomery (Oct. 24, 1941) (pub. avail. Nov. 22, 1991). Section 5(b)(1) also prohibits diversified funds, with respect to seventy-five percent of their assets, from investing in securities that comprise more than ten percent of the outstanding voting securities of an issuer.

[30] At the close of each quarter of its taxable year the RIC must have invested: (1) At least fifty percent of its total assets in (A) cash and cash items, government securities and other RIC securities, and (B) other securities, limited for any issuer to not greater than five percent of the RIC's total assets; and (2) not more than twenty-five percent of its total assets in the securities of any one issuer (except government securities and the securities of other RICs) or in securities of two or more issuers that are controlled by the RIC and that are engaged in similar businesses. See section 851 of the Internal Revenue Code (26 U.S.C. 851). A fund must qualify as a RIC to receive pass-through tax treatment for income.

[31] A shareholder vote is not required under section 13(a)(1) of the 1940 Act (15 U.S.C. 80a-13) when a non-diversified fund becomes diversified within the meaning of section 5(b) of the 1940 Act.

[32] A sufficient amount of outstanding securities issued by a sufficient number of tax exempt issuers appears to be available to enable national funds to meet the proposed test. National funds have almost $70 billion in assets (see Money Fund Report, supra note 3); according to the Public Securities Association ("PSA"), total short- and long-term municipal issuance in 1992 alone was $278 billion, and there are an estimated 50,000 municipal issuers. While much of this issuance is probably not eligible for money market fund investment because of its maturity or credit quality, the Commission's recent examinations of a number of tax exempt funds revealed that most national funds already meet the Five Percent Diversification Test and that those that do not could do so with relatively modest adjustments to their portfolios.

Instead of extending the Five Percent Diversification Test to single state funds, the Commission is proposing to limit single state fund investments to first tier securities. A relatively small percentage of all single state funds' assets are currently invested in second tier securities,[33] but these lower quality investments represent the greatest credit-related risk to single state funds. Requiring that single state funds only invest in the highest quality securities minimizes the additional risks that may accompany lower levels of diversification.

The Commission is proposing two additional rule amendments to address the risks related to the relative lack of diversification in single state funds. First, single state funds would be subject to the put diversification provisions discussed below. Second, single state funds would be required to alert investors to the risks inherent in greater concentration in their prospectuses.[34] Because a significant percentage of single state fund portfolios are subject to unconditional demand features from banks and other financial institutions, put diversification will provide some assurance that the credit risks of single state fund portfolios will be diversified, although not to the same extent as other money market funds.

The Commission requests comment on whether requiring single state funds to restrict their investments to first tier securities is an adequate counterbalance to the risks presented by reduced diversification. Will the proposed credit quality conditions assure that single state funds provide the degree of safety expected by investors? As an alternative, should single state funds be required to meet the diversification requirements of section 5(b)(1) of the 1940 Act? As another alternative, should single state funds be required to meet the diversification standards set forth in the definition of a RIC, not only on a quarterly basis as required by the Internal Revenue Code but with respect to each security when it is purchased?[35]

Finally, are there alternative requirements that could be imposed on single state and national funds that would better satisfy the safety objectives of rule 2a-7? For example, tax exempt securities are often issued to finance specific types of projects (whether for a public or private purpose) such as transportation, higher education, or health care. Fund concentration in securities issued by a particular type of project creates risks because economic, business or political developments affecting one such project may likewise affect the other projects.[36] A change in the Federal formula for Medicare reimbursements, for example, may affect the financial condition of all health care projects. The Commission requests comment on whether rule 2a-7 should limit the extent to which tax exempt funds may concentrate their investments in securities related to the projects, facilities, or commercial enterprises of a particular industry to further insulate funds from investment risk. If such an approach is adopted, what level of concentration should be permitted? Should the concentration level for single state funds be more restrictive than the level for other tax exempt funds?

3. Pre-Refunded Bonds

A significant portion of tax exempt fund assets consist of pre-refunded bonds—that is, bonds the payment of which is funded and secured by escrowed Government securities.[37] The Commission is proposing to allow funds to "look through" such bonds to the escrowed securities. This treatment would be allowed only for securities that have been pre-refunded with escrowed Government securities when the escrow arrangements satisfy certain conditions designed to assure that the bankruptcy of the issuer of the pre-refunded bonds will not affect payments on the bonds from the escrow account.[38] In addition, a fund could invest no more than twenty-five percent of its assets in the pre-refunded bonds of the same issuer.[39] Because these securities would, in effect, be treated as Government securities, they would not be subject to any diversification limitation (other than the twenty-five percent limitation).

Comment is requested on whether any other measures should be taken to facilitate compliance with the Five Percent Diversification Test. For example, given their record of safety, should securities backed by the full faith and credit of state governments be treated as Government securities for purposes of the rule's diversification tests?[40]

4. Diversification Safe Harbor; Three-Day Safe Harbor

The diversification requirements of rule 2a-7 differ in some respects from those of section 5(b)(1) and the rules under that section. Although the rule 2a-7 requirements are more strict, circumstances may occur when a money market fund is in compliance with rule 2a-7, but not in compliance with section 5(b)(1).[41] Therefore, the Commission is proposing to add a provision to rule 2a-7 stating that money market funds complying with the rule's diversification requirements are deemed to be diversified under section 5(b)(1).[42]

Rule 2a-7 currently permits a fund to invest more than five percent of its assets in the First Tier Securities of a single issuer for up to three business days (the "three-day safe harbor") and does not contain any limitation on the percentage of fund assets that can be invested in accordance with this provision. Since the provision is primarily applicable to taxable funds, and since most taxable funds are diversified companies within the

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[33] Recent inspections conducted by the Division of Investment Management suggest that approximately 8.4 percent of single state fund assets is invested in second tier securities.

[34] See *infra* Section III.A.

[35] See *supra* note 30 and accompanying text. Under this approach, the fund would be diversified at the five percent level as to fifty percent of its assets and could invest not more than twenty-five percent of assets in a single issuer, other than government securities and securities of other RICs.

[36] See Investment Company Act Rel. No. 9785 (May 31, 1977) (42 FR 29130 (June 7, 1977)) ("Release 9785") (stating that tax-exempt funds must disclose concentration policy if twenty-five percent or more of the fund's assets are invested in securities that relate to similar type projects).

[37] As noted *supra* in note 2, under paragraph (a)(13) of rule 2a-7 as proposed to be amended, the term "Government security" means those securities issued or guaranteed by the United States or its instrumentalities—the definition of that term given in section 2(a)(16) of the 1940 Act.

[38] See paragraphs (a)(18) (definition of "refunded security") and (c)(4)(iv)(B) (acquisition of a refunded security deemed to be acquisition of Government security) of rule 2a-7 as proposed to be amended. This change codifies for both taxable and tax exempt money market funds the no-action position in T. Rowe Price Tax-Free Funds (pub. avail. June 24, 1993), regarding treatment of these securities for purposes of section 5(b)(1) of the 1940 Act. This is consistent with the rule's treatment of fully collateralized repurchase agreements. Paragraph (c)(4)(i) of rule 2a-7 (paragraph (c)(iv)(A) of rule 2a-7 as proposed to be amended).

[39] Paragraph (c)(4)(iv)(B) of rule 2a-7 as proposed to be amended. This twenty-five percent limitation was a condition specified in T. Rowe Price Tax-Free Funds, *supra* note 38.

[40] See *infra* note 47 and accompanying text.

[41] One difference that may cause this to occur is the timing of the measurement of diversification. Compliance with section 5(b)(1) is measured on a quarterly basis (rule 5b-1 (17 CFR 270.5b-1)), while compliance with rule 2a-7 is measured at the time the security is purchased (paragraph (c)(4)(i)). In addition, under section 5(b)(1), conditional puts from a single issuer are subject to a five percent limit (outside of the twenty-five percent basket), while under rule 2a-7 as proposed to be amended, they would be subject to a ten percent limit. Paragraph (c)(4)(iii) of rule 2a-7 as proposed to be amended.

[42] Paragraph (c)(4)(vi) of rule 2a-7 as proposed to be amended. This safe harbor would not be available to single state funds that are diversified investment companies under section 5(b)(1), because rule 2a-7, as proposed to be amended, would not impose diversification requirements on these funds other than with respect to puts. The safe harbor would be available to these funds to assure that compliance with rule 2a-7's put diversification requirements satisfies section 5(b)(1).

meaning of section 5(b)(1), a fund could not use this provision to invest more than twenty-five percent of its assets in the securities of a single issuer. To assure that the proposed diversification safe harbor does not have the effect of allowing a national or taxable fund to invest more than twenty-five percent of its assets in a single issuer at any time, the proposed amendments would limit to twenty-five percent the percentage of fund assets that may be invested under the safe harbor at any one time.[43]

B. Quality Limitations on Portfolio Securities

Rule 2a-7 requires both taxable and tax exempt funds to invest only in eligible securities: Those securities receiving at least the second highest rating from the requisite NRSROs or comparable unrated securities.[44] Taxable funds also must comply with the Second Tier Security Tests. The Commission is proposing to limit single state funds to first tier securities and to apply to national funds the Second Tier Security Tests only with respect to conduit securities.

1. Single State Funds

As discussed above, the Commission is not proposing to extend the diversification requirements imposed on other money market funds to single state funds.[45] A single state fund could therefore hold a substantial portion of its assets in the securities of one issuer. If such an issuer encountered financial difficulties or defaulted, there would be a substantial likelihood that the fund would have to break a dollar. To reduce the risk of this occurring, the Commission is proposing to limit single state funds to investing in first tier securities. The Commission requests comment on whether those single state funds that can meet the Five Percent Diversification Test (or alternative diversification standard) should be permitted to invest in second tier securities, subject to the limitations discussed below.

2. National Funds

While their securities are not risk-free, state and municipal governments have rarely experienced defaults.[46] Generally, state and local governments have resources (such as taxing powers) that are not available to corporate issuers.[47] Moreover, some market participants believe that credit problems involving major municipalities are detected further in advance than in the taxable market, with the result that a tax exempt fund can dispose of its investment before a crisis occurs. Therefore, the Commission is not proposing to extend the Second Tier Securities Tests except to conduit securities, as described below.

Unlike traditional state and municipal securities, conduit securities are issued to finance non-governmental "private purpose" projects, such as retirement homes, private hospitals, local housing projects, and industrial development projects with respect to which the ultimate obligor is not a governmental entity.[48] Conduit securities are not backed by the taxing authority of any state or municipality or a revenue source from any essential public facility. The credit risks of these securities are significantly higher than those of traditional state and municipal securities.[49] Because there does not appear to be any reason to treat conduit securities differently from the securities of comparable issuers that are offered to taxable funds, the Commission is proposing to apply the Second Tier Securities Tests to conduit securities.[50] The effect of this new provision would be to preclude a tax exempt fund from investing more than five percent of its assets in second tier conduit securities, with investment in the second tier conduit securities of any one issuer being limited to the greater of one percent of fund assets or one million dollars.[51]

A conduit security would be defined as a security issued through a state or territory of the United States, or any political subdivision or public instrumentality thereof, which is not (1) Payable from the revenues of such governmental unit; (2) unconditionally guaranteed by such governmental unit; (3) related to a project or facility owned and operated by such governmental unit; or (4) related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project owned and under the control of such governmental unit.[52] For purposes of the rule's diversification provisions, the issuer of a conduit security would be the ultimate obligor for payment of principal and interest, not the "shell" or special purpose entity through which the issuance is made.[53] Comment is requested on the scope of this definition and whether it is too broad or too narrow in view of the objective of subjecting securities of non-governmental issuers to the Second Tier Securities Tests. Commenters are

[43] Paragraphs (c)(4) (i) and (ii) of rule 2a-7 as proposed to be amended.

[44] See *supra* note 13 and accompanying text and paragraph (a)(5) of rule 2a-7 (paragraph (a)(9) of rule 2a-7 as proposed to be amended).

[45] See supra Section II.A.2. Single state funds would be required to dispose of portfolio securities that become second tier after acquisition unless the fund board concludes that holding a security is in the best interest of the fund. Paragraph (c)(5) of rule 2a-7 as proposed to be amended.

[46] The default rate for all municipal issues between 1986 and 1991 was 0.4 percent; Moody's Investors Service, Inc. found the default rate for corporate debt during the same period was almost two percent. See "Current Regulations Adequately Protect Muni Investors, PSA Tells MSRB; PSA Study Shows Low Incidence of Default Among Non-Rated Issues," Municipal Market Developments (PSA), Mar. 1993.

[47] Tax exempt notes are usually backed either by the general taxing power of a government or a reliable revenue source, such as the proceeds of a particular tax (in the case of tax anticipation notes) or of a bond issuance (in the case of bond anticipation notes). No state general obligation has defaulted since the late 1800s. See N. Cohen, Municipal Default Patterns—An Historical Study, Fall-Winter 1988 at 6 (Enhance Reinsurance Company 1988). However, risks to the timely payment of principal and interest can result from state budget and political dynamics. See "State of Confusion—California's Budget Crisis Is Over With * * * or Is It?" Barron's, Sept. 7, 1992, at 18–19.

[48] In addition, certain types of quasi-governmental entities, such as special tax districts, serve as conduits for the issuance of securities used to fund the construction of housing developments and associated infrastructure by private firms.

[49] For example, the default rate for unrated conduit securities related to health care facilities was 6.3 percent between 1986 and 1991. See Public Securities Assoc., An Examination of Non-Rated Municipal Defaults 1986–1991, Jan. 8, 1993, at 4. By contrast, the default rate for investment grade corporate issues is between one and two percent, according to the Bond Investors Association, and the default rate for municipal general obligations was zero between 1980 and 1991. See U.S. Securities and Exchange Commission Division of Market Regulation, Staff Report on the Municipal Securities Market, Sept. 1993, at App.B, n.4 and accompanying text.

[50] No more than five percent of a fund's assets could be subject to second tier puts from the same institution. Paragraph (c)(4)(iii) of rule 2a–7 as proposed to be amended. See infra notes 84–85 and accompanying text.

[51] Credit quality determinations for a conduit security would generally be made by reference to the underlying corporate or project issuer, unless the conduit security is subject to an unconditional demand feature. Similarly, unless the conduit security is itself rated, a fund would rely on the ratings of the corporate issuer to determine if the conduit security was a first or second tier security. Credit quality determinations with respect to conduit securities subject to demand features would be made by reference to the provider of the demand feature, and, in the case of a conditional demand feature, the long-term rating of the underlying corporate or project issuer. See infra note 67 and paragraphs (c)(3)(i) and (ii) of rule 2a–7 as proposed to be amended. In addition, for purposes of calculating compliance with the one percent limit on second tier securities of a single issuer, the issuer of the conduit security (that is, the corporation or project)—not the issuer of the credit enhancement—would be treated as the issuer. See paragraph (c)(4)(iv)(C) of rule 2a–7, as proposed to be amended.

[52] Paragraph (a)(7) of rule 2a–7 as proposed to be amended.

[53] Paragraph (c)(4)(iv)(C) of rule 2a–7 as proposed to be amended. The Commission has applied this approach in interpreting section 5(b)(1) of the 1940 Act. See Release 9785, supra note 36, at nn. 2–3 and accompanying text.

encouraged to submit alternative definitions, having particular regard to the objective of allowing portfolio managers readily to identify conduit securities without obtaining legal and other expert opinions. For example, should conduit securities be defined by reference to the provisions of the Internal Revenue Code governing "private activity bonds" (section 141 of the Internal Revenue Code)?

The Commission requests comment on whether tax exempt second tier securities that are not conduit securities present a level of risk that would warrant extending the Second Tier Security Tests to them.[54] Could modified forms of the Second Tier Security Tests be developed for all securities held by tax exempt funds and, if so, what would be the effect of these alternatives on investors, funds and issuers? For example, should the Second Tier Security Tests be applied to all securities other than those backed by the full faith and credit of a state? A relatively high percentage of tax exempt fund securities are rated by only one NRSRO and are rated generally by no more than two.[55] Does this suggest that split-rated securities held by tax exempt funds should be treated differently from those held by taxable funds and that the definition of the term "requisite NRSROs" should be modified for tax exempt funds?[56]

3. NRSRO Ratings Comparability

Rule 2a–7 relies on the pre-existing rating categories of the six NRSROs in defining securities eligible for fund investment.[57] That is, the rule categorizes NRSRO-rated securities based on the two highest short-term rating categories of the NRSROs, although the rule recognizes that certain NRSROs have developed sub-categories indicating relative standing.[58] The approach is designed to provide a "buffer" of one investment grade category between a second tier and a more speculative security, and thus better assure that funds have an opportunity to dispose of a downgraded security before the security becomes less than investment grade.

The short-term rating categories of the different NRSROs with respect to taxable securities appear to be roughly comparable in terms of the NRSROs' descriptions of the categories and the percentage of instruments that fall into each rating category.[59] While split-ratings do occur in the short-term taxable securities markets, it does not appear that this has occurred in a systematic way.[60]

Industry commenters have observed that the correlation among NRSRO tax exempt rating categories does not appear to have been as consistent as the correlation among taxable ratings.[61] The Commission requests comment on whether NRSRO ratings categories are comparable and if not, how the rule could be amended to address the lack of comparability. For example, should the rule adopt a variation of the "high quality" terminology of the original rule without attempting to define the generic rating levels that identify an eligible or first tier security? Should each sub-category be treated as a separate rating category? Should rule 2a–7 specify the ratings that are considered by the Commission to be first tier and those that are considered to be second tier? Commenters addressing these questions are urged to provide data illustrating the correlation (or lack of correlation) among the various NRSRO rating categories.

C. Puts and Demand Features

1. Background

A "put" is a right to sell a specified underlying security within a specified period of time and at a specified exercise price that may be sold, transferred, or assigned only with the underlying security.[62] A demand feature is a put that may be exercised at specified intervals not exceeding 397 calendar days and upon no more than 30 days' notice.[63] Demand features can serve three purposes: To shorten the maturity of a variable or floating rate security ("adjustable rate securities"),[64] to enhance the instrument's credit quality, and to provide a source of liquidity.[65]

Demand features may be conditional or unconditional.[66] Under rule 2a–7, a

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[54] While the historical data suggests that tax exempt securities have low levels of default, some observers expect an increase in municipal fiscal distress. See "Insured Issuance Soars to Record Level," Municipal Market Developments (PSA), Mar. 1993 (record levels of insured municipal issuance attributable in part to deteriorating fiscal condition of state and local governments).

[55] See Investment Company Act Rel. No. 18080 (Apr. 8, 1991) (56 FR 14901 (Apr. 12, 1991)).

[56] See Release 18005, supra note 11, at nn. 42–48 and accompanying text, discussing the approach taken in the 1991 Amendments to securities that have different ratings from different NRSROs ("split-rated securities"). The Investment Company Institute ("ICI") has recommended that split-rated tax exempt securities rated by two NRSROs be treated as having the higher of the two ratings (the treatment afforded under rule 2a–7 prior to the adoption of the 1991 Amendments). When more than two NRSROs rate a security, the rating of the majority of the NRSROs would determine its category. The ICI asked that this treatment of split-rated securities also apply to taxable money market funds to facilitate compliance with rule 2a–7. See Letter of Matthew Fink, Senior Vice President and General Counsel, Investment Company Institute, to Marianne Smythe, Director, Division of Investment Management (Mar. 25, 1991) ("ICI Letter") (available in S7 file; see supra note 19).

[57] See supra notes 12–13 and accompanying text.

[58] For example, S&P has developed a sub-category (A–1+) of its highest category (A–1) that is used to designate issuers with "extremely strong safety characteristics." Standard & Poor's Commercial Paper Guide (Nov. 1993).

[59] See appendix A to this Release.

[60] A split-rating may be the result of the failure of one NRSRO to perceive quality problems (or improvements) that another NRSRO has reflected in its ratings; it may also reflect differences among NRSROs as to the emphasis placed on different credit factors.

[61] Two commenters suggested that the S&P rating of SP–2 indicates lower credit quality than the second highest rating categories of the other NRSROs. See Letters to Jonathan G. Katz from Citibank, at 5 (Sept. 20, 1990) and the Government Finance Officers Association, at 6 (Sept. 24, 1990) and appendix B to this Release. NRSROs use several rating scales for tax-exempt instruments. Moody's assigns notes "MIG" ("Moody's Investment Grade") ratings, while S&P employs an "SP" rating scale, and Fitch uses an "F" scale. VRDNs are assigned "VMIG" ("Variable Moody's Investment Grade") ratings by Moody's, along a scale identical with the MIG scale, to reflect the strength of the unconditional put feature. VRDNs rated by Moody's often also carry a long-term rating. The long-term rating indicates the long-term strength of the put provider when the put is unconditional, and of the issuer of the underlying securities when the put is conditional. S&P also assigns VRDNs a short-term and a long-term rating. Unlike Moody's, however, it employs the commercial paper rating scale (A–1, A–2, etc.) to indicate the quality of the unconditional put. Fitch employs the F rating scale for VRDNs as well as for notes. Moody's and S&P employ commercial paper ratings with respect to tax-exempt commercial paper issuers; Fitch employs the same F scale used for notes and VRDNs.

[62] Paragraph (a)(17) of rule 2a–7 as proposed to be amended. The definition of "put" would be amended to specify that the put must enable the holder to receive the principal amount or amortized cost of the instrument, plus accrued interest. This would conform the definition to that of a "standby commitment" (paragraph (a)(16) of rule 2a–7 and paragraph (a)(23) of rule 2a–7 as proposed to be amended) and reflect the usual terms of these instruments.

[63] See paragraph (a)(4) of rule 2a–7 (paragraph (a)(8) of rule 2a–7 as proposed to be amended).

[64] Paragraphs (d)(3) and (4) of rule 2a–7. Initially, rule 2a–7 provided that only demand features that ran to the issuer of the security could be used to shorten maturities. See Release 13380, *supra* note 8, at n.9. This was changed by the amendments to rule 2a–7 adopted in 1986 in response to market developments.

Limiting the use of demand features to shorten maturity to adjustable rate securities is designed to assure that the market based value of the security will not deviate significantly from its amortized cost value between the exercise dates of the demand feature. Investment Company Act Rel. No. 14983 (Mar. 12, 1986) (51 FR 9773 (Mar. 21, 1986)) ("Release 14983") at n.9 and accompanying text.

[65] A money market fund is limited to investing no more than ten percent of its assets in illiquid securities. See Release 13380, *supra* note 8, at nn. 37–38 and accompanying text. See also Investment Company Institute (pub. avail. Dec. 9, 1992). The Commission has reiterated that fund boards of directors have particular responsibilities with regard to the acquisition and valuation of illiquid securities. See Release 14983, *supra* note 64, at n.22 and accompanying text.

[66] Both conditional and unconditional puts may operate as demand features to shorten maturities of

demand feature used as a substitute for the credit quality of the underlying security must be an "unconditional put," defined to include any guarantee, letter of credit ("LOC") or similar unconditional credit enhancement that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security.[67]

Rule 2a–7 permits funds to acquire "standby commitments," which are puts that entitle the holder to achieve same day settlement and to receive an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise.[68] Standby commitments are generally arrangements with broker-dealers that allow funds to put the security back to the broker at an agreed upon price, and were developed to provide tax exempt funds with liquidity.[69] A standby commitment cannot be used to enhance the credit quality or to shorten the maturity of the instrument unless it meets the requirements of a demand feature.[70]

The use of puts, demand features and standby commitments by tax exempt funds raises questions with respect to the nature and valuation of tax exempt fund portfolio securities and the conditions that should be placed on the use of these features under rule 2a–7. Money market fund portfolios are generally limited to highly liquid short-term debt securities[71] that are not expected to fluctuate significantly in value because of interest rate or credit quality changes (the primary justification for allowing money market funds to use the amortized cost and penny rounding methods). The widespread use of puts, demand features and standby commitments results in tax exempt fund portfolios composed primarily of long-term securities with characteristics similar to those of short-term debt securities. If a demand feature cannot be exercised, the fund will be holding a long-term and possibly illiquid lower rated security, the value of which (to the fund) may have declined significantly.[72]

The Commission is proposing several amendments to decrease the risks associated with the use of puts and demand features and to simplify the operation of rule 2a–7. These amendments also address new types of securities that use puts and demand features that have developed since the 1986 Amendments. The proposed amendments would apply to both taxable and tax exempt (including single state) funds.

The amendments would not modify the basic framework established by the 1986 Amendments, and comment is requested on whether this framework continues to reflect market practices or whether any other types of puts have developed that should be reflected in the rule. Given the effect that the loss of a put could have on a fund's portfolio, comment is requested on whether any additional requirements with respect to the use of puts, particularly conditional puts, should be adopted.

2. Diversification and Quality Standards for Put Providers

Rule 2a–7 imposes a general diversification requirement with respect to puts to ensure that the liquidity of a fund will not be impaired by heavy reliance upon one institution, or a handful of institutions, to support securities in the fund's portfolio.[73] The 1986 Amendments tracked the diversification requirements of section 5(b)(1) of the Act, and provided that a fund could not, with respect to seventy-five percent of its assets, have more than the specified percentage of its assets (five percent for conditional puts; ten percent for unconditional puts[74]) invested in securities subject to puts from, or directly issued by, the same institution.[75] The 1991 Amendments require that taxable funds meet these standards with respect to 100 percent of fund assets.[76] The Commission is proposing to make the limitations on conditional and unconditional puts uniform and to eliminate the twenty-five percent basket for tax exempt funds.

a. *Diversification requirements: conditional puts.* Although rule 2a–7 permits funds to invest in unconditional puts from a single institution guaranteeing up to ten percent of the fund's assets, the limit for conditional puts is five percent of the fund's assets.[77] There appears to be no reason to require a higher level of diversification for conditional puts than unconditional puts. A fund would, in fact, have greater exposure to a provider of an unconditional put that has substituted its credit for that of the issuer of the underlying security.

Under the proposed amendments, the ten percent limit would be applicable to all puts, whether conditional or unconditional. Thus, conditional and unconditional puts from a single issuer, as well as securities directly issued by the issuer of the put, would be aggregated for purposes of determining whether the ten percent limit has been reached.[78] Comment is requested on whether the percent of assets that may be subject to a put (whether conditional or unconditional) should be more or less than ten percent.

b. *Put diversification requirements: twenty-five percent basket.* The proposed amendments would eliminate the twenty-five percent basket for puts currently available to tax exempt funds. Permitting a fund to rely on one put

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adjustable rate securities. As discussed *infra* in Part II.C.3, the proposed amendments would limit the types of conditions to which exercise of a put could be subject. Paragraph (a)(6) of rule 2a–7 as proposed to be amended.

[67] Paragraph (a)(19) of rule 2a–7 (paragraph (a)(27) of rule 2a–7 as proposed to be amended). A demand feature that is conditional also may serve as the basis for determining whether a security is an eligible security and categorizing it as a first or second tier security; however, the long-term credit quality of the security subject to a conditional demand feature must also be analyzed. See paragraph (c)(3)(ii) of rule 2a–7.

[68] Paragraph (a)(16) of rule 2a–7 (paragraph (a)(23) of rule 2a–7 as proposed to be amended).

[69] Investment Company Act Rel. No. 14607 (July 1, 1985) (50 FR 27982 (July 9, 1985)) ("Release 14607") (proposing the 1986 Amendments) at Section B. The 1986 Amendments codified a series of exemptive orders that enabled money market funds to acquire standby commitments for municipal securities from broker dealers. Among other things, these orders permitted tax exempt funds to value these standby commitments at zero for purposes of computing share price.

[70] Paragraphs (d)(3) and (d)(5) of rule 2a–7 as proposed to be amended. Paragraph (a)(9)(iii)(A) of rule 2a–7 as proposed to be amended clarifies that where a standby commitment is used only for liquidity purposes, it may be considered an eligible security upon a finding that its issuer presents a minimal risk of default.

[71] The money market is generally considered to be the market for "short-term debt instruments—negotiable certificates of deposit, Eurodollar certificates of deposit, commercial paper * * * among others." Barron's Dictionary of Finance and Investment Terms (1987).

[72] The value of the security will decline either because it will be of lower credit quality or its interest rate will be lower than long-term rates, or a combination of these two factors. The security may also decline in value if it becomes illiquid.

[73] Release 14983, supra note 64, at Section A.2.

[74] See rule 5b–2 under the 1940 Act (17 CFR 270.5b–2). Rule 5b–2 provides that a guarantee is not deemed to be a security of the guarantor provided that the value of all securities held by an investment company guaranteed or issued by the guarantor does not exceed ten percent of its total assets.

[75] A fund may not, however, invest more than five percent of its assets in securities (other than puts) directly issued by that institution. Paragraph (c)(4)(i)(A) of rule 2a–7.

[76] Paragraph (c)(4)(ii) of rule 2a–7. Tax exempt funds can invest, within the twenty-five percent basket, more than ten percent of assets in instruments backed by unconditional puts from one institution and more than five percent of assets in instruments supported by conditional puts from a single institution.

[77] Paragraphs (c)(4) (ii) and (iii) of rule 2a–7.

[78] Paragraph (c)(4) (iii) of rule 2a–7 as proposed to be amended. Without aggregation, a fund's exposure to a single put provider could be as high as twenty percent. Rule 2a–7 does not currently require aggregation of securities subject to conditional and unconditional puts from the same institution. See T. Rowe Price Associates (pub. avail. June 2, 1993).

provider to provide credit support or liquidity with respect to as much as twenty-five percent of its assets could present considerable risks to a fund seeking to maintain a stable net asset value under rule 2a–7, and may be inconsistent with the safety expectations of investors. Tax exempt funds could invest no more than ten percent of fund assets in securities subject to puts from, or directly issued by, a single issuer. Elimination of the twenty-five percent undiversified put basket would be particularly important for single state funds, which are not and would not be required to be diversified with respect to underlying issuers.

Requiring put diversification as to 100 percent of fund assets could require funds to rely on a larger number of put providers than they do under the current rule.[79] Industry participants have suggested that because relatively few banks provide credit enhancement for most of the municipal market, increased diversification could cause funds to invest in securities subject to puts from weaker financial institutions. A review of fund portfolios suggests that while a small number of banks provide credit enhancement for one-third or more of the market, the remainder of the credit enhanced issues are supported by a wide assortment of put providers.[80] Comment is requested on whether the proposed requirement will cause tax exempt funds to rely on lower quality banks in order to satisfy this limitation, or whether it may cause funds to spread their put exposure more evenly among banks and/or encourage additional highly-rated banks to enter the market.

c. *Diversification requirements: multiple and layered puts and guarantees.* To reduce the cost of credit enhancement, some issuers arrange for two or more institutions to provide joint puts or guarantees covering all or a portion of the value of the securities guaranteed. In addition, funds have invested in securities subject to double layers of puts and guarantees that apply to the entirety of the principal amount. VRDN issuers may obtain bond insurance covering the payment of the principal and interest when due, and then purchase a bank LOC or conditional put at a less expensive rate than would otherwise apply. When the rating of a bank providing an LOC with respect to a VRDN declines, some funds have insisted that the first LOC be wrapped, i.e., that a second bank LOC be obtained that supports the first one. Multiple puts and guarantees are purchased because the underlying credit of the issuer, or first put provider or guarantor, is considered weak.

For purposes of rule 2a–7's put diversification provisions, the Commission is proposing to require that each such put provider or guarantor be deemed to have guaranteed the entire principal amount of the security, notwithstanding that the security is subject to puts from other institutions.[81] Comment is requested on whether other methods of accounting for a fund's exposure to layered guarantees would be more appropriate.[82]

d. *Quality limitations on put providers—(1) Providers of puts in excess of five percent of fund assets.* Permitting a money market fund to invest in puts from one institution covering more than five percent of its assets will expose the fund to the credit quality of that institution to a greater extent than rule 2a–7 otherwise generally allows under the Five Percent Diversification Test. The nature of the fund's exposure to institutions providing puts, however, is different from its exposure to the issuer of the underlying security. When an institution providing a put is downgraded by a NRSRO, in the absence of an adverse development with respect to the issuer of the underlying security, issuers or investors generally can either put the instrument back on short notice or persuade the issuer to obtain a substitute for the downgraded institution.[83] This consideration is reflected in rule 2a–7's lower level of put diversification.

Nevertheless, the Commission believes that it may be desirable to limit a fund's reliance on any single put provider that is rated below the highest rating category. The proposed amendments would require that when a fund invests more than five percent of its assets in securities supported by a put from a single put provider (whether conditional or unconditional), the put be provided by an institution that has received the highest rating with respect to its short-term debt obligations from the requisite NRSROs.[84]

Compliance with the five percent limit on second tier puts would be measured at the time the put was acquired by the fund. Because a security subject to a put may be in a fund portfolio for a relatively long time, the quality of the put could decline after its acquisition and a put that was first tier when acquired could become second tier (or unrated) with the passage of time. Therefore, the Commission is proposing to amend rule 2a–7 to require that when more than five percent of the fund's assets are subject to a demand feature from a single institution that is no longer first tier, the fund must reduce the amount of securities subject to the demand feature to no more than five percent of the fund's assets by exercising the demand feature at the next succeeding exercise date.[85]

The five percent limit on second tier puts from any single institution should not materially affect current fund investment practices since most institutions providing puts are first tier issuers. The Commission requests comment on the assumptions on which these proposed amendments are based, and how they would affect the management of tax exempt funds.

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[79] Under the current rule, if 100 percent of a fund's portfolio is subject to unconditional puts, a minimum of nine institutions would have to provide the puts (eight institutions at the ten percent level and one institution at the twenty percent level); in the case of conditional puts, the minimum is sixteen (fifteen institutions at the five percent level and one at the twenty-five percent level). Under the proposed amendments, a minimum of ten institutions would be required in either case. See paragraph (c)(4)(iii) of rule 2a–7 as proposed to be amended.

[80] Five banks (Industrial Bank of Japan Ltd., Sumitomo Bank Ltd., Credit Suisse, Sanwa Bank Ltd., and Dai Ichi Kangyo Bank Ltd.) wrote forty-three percent of all letters of credit ("LOCs") in the first half of 1993. See "Japanese Banks Lead LOC Enhancement Pack," Global Guaranty, July 26, 1993, at 1. Four banks (Canadian Imperial Bank of Commerce, Union Bank of Switzerland, Sumitomo Bank Ltd., and Mitsubishi Bank Ltd.) and the Student Loan Marketing Association wrote thirty-one percent of LOCs in 1992. See "Canadian Imperial Bank Led LOC Enhancement Pack in 1992," Global Guaranty, Feb. 1, 1993, at 6.

[81] Paragraph (c)(4)(iv)(D) of rule 2a–7 as proposed to be amended. The proposed amendments would clarify that this provision is applicable to all forms of puts and guarantees, including financial guarantee (bond) insurance.

[82] Occasionally, an institution will provide a fractional put or guarantee; that is, the institution will assume the risk of paying only a fraction of the losses on an instrument. In these circumstances, the put provider would be deemed to guarantee only the portion of the value of the instrument actually guaranteed. For example, if two banks issue puts on the same VRDN and each agrees to absorb fifty percent of the losses, each would be deemed to guarantee fifty percent. The Commission is proposing an exception to this approach with respect to "first loss guarantees" on asset backed securities. See *infra* Section II.C.4.e.

[83] Issuers of securities subject to puts are often required to obtain replacement puts if an institution providing a put is downgraded. In other instances, holders have persuaded issuers to obtain replacements to assure that the security remains eligible for money market fund investment under rule 2a–7.

[84] Paragraph (c)(4)(iii) of rule 2a–7 as proposed to be amended.

[85] Paragraph (c)(5)(i)(C) of rule 2a–7 as proposed to be amended. If the demand feature is no longer an eligible security, paragraph (c)(5)(ii) of rule 2a–7 would require the fund to obtain a new demand feature or dispose of the underlying security (unless the board of directors found that it would be in the best interest of the fund not to dispose of the security). See also *infra* Section II.D.1.b, concerning certain other actions a fund would be required to take in the event of the deterioration of the credit quality of the demand feature.

(2) *Unrated put providers.* Rule 2a–7 permits a fund to invest in securities subject to unrated puts so long as the fund's board, or its delegate, determines that the security is of comparable quality to a rated security.[86] In light of the potential exposure of a fund portfolio to an individual put provider under the current rule and the proposed amendments, however, the Commission believes that a NRSRO rating may provide protection by ensuring input into the quality determination by an outside source. In addition, funds may have limited ability to monitor the credit quality of some put providers, such as foreign banks. A NRSRO rating may facilitate a fund's ability to determine that a security subject to a put represents minimal credit risks.[87] Therefore, the proposed amendments would limit funds to investing in puts (other than standby commitments) that are rated, or provided by institutions that are rated, by NRSROs.[88] Comment is requested on whether this approach will provide an additional degree of protection to fund investors.[89]

(3) *Rating determinations; issuer demand features.* Rule 2a–7 permits a fund to substitute the NRSRO rating of an issuer of an unconditional demand feature for the rating of the underlying security.[90] In some cases, funds invest in a VRDN based upon the rating of the demand feature; in other cases the entire VRDN is rated. In the latter cases, the NRSRO examines not only the financial soundness of the demand feature provider, but also the terms of the VRDN to assure that the demand feature will permit the holder of the underlying security to realize on the demand feature in the event of the bankruptcy of the underlying issuer. Comment is requested on whether rule 2a–7 should require that all VRDNs have NRSRO ratings. Alternatively, in those instances in which a VRDN is rated, should funds be required to rely on the specific rating of the VRDN rather than the rating of the demand feature provider?[91] Under this approach, an instrument subject to a demand feature (*e.g.*, a VRDN) would be considered to be unrated unless a NRSRO has actually rated the entire instrument.

Demand features are sometimes provided by the issuer of the underlying security. The rule, as originally adopted, provided that only issuer-provided demand features could be used to shorten the maturity of a security. The Commission requests comment on whether issuer-provided demand features should continue to be used in this fashion. While issuer-provided demand features may be "readily exercisable in the event of a default of principal or interest on the underlying securities" as required by the rule, it is unlikely that the issuer will be in a position to honor the demand feature. One approach on which comment is requested would be to require issuer-provided demand features to be secured by a LOC or some other unconditional guarantee provided by a third party.

(4) *Non-bank put providers.* The Commission seeks comment on whether it should limit fund reliance on non-bank put providers. Although most VRDNs are backed by bank LOCs, some are backed by insurance companies, pension funds, utilities, or affiliates of the issuer.[92] Commenters have suggested that access to a central bank as a source of liquidity in a crisis assures that banks will be able to honor their put obligations.[93]

3. Conditional Puts

The inability of a fund to exercise a demand feature because of the occurrence of a condition precluding exercise would result in violation of the maturity limitations of rule 2a–7, the liquidity requirements of the 1940 Act, and a loss of value of the underlying security when, for example, a short-term security paying interest at short-term rates is transformed into a long-term security.[94] Rule 2a–7 does not currently restrict the types of conditions to which a demand feature may be subject. As one commenter pointed out, the occurrence of some conditions attached to demand features cannot be effectively monitored by funds.[95] In addition, some conditions may have "hair triggers"—that is, they could occur suddenly without any advance warning (such as a downgrade of a security's rating from AAA to AA)—or be based on subjective factors (such as a "material adverse change" in the financial condition or prospects of the issuer), effectively depriving a fund of sufficient warning that the demand feature may no longer be available.[96]

The Commission believes that it may not be appropriate under rule 2a–7 to use demand features to shorten the maturity or enhance the credit quality or liquidity of a security if a fund cannot effectively determine, from a source other than the issuer of the underlying security, whether a condition precluding exercise has occurred or is likely to occur. A fund must be able to monitor the continued availability of a demand feature and, in certain circumstances, take steps to sell the security or replace the demand feature if it appears that conditions that would limit the ability of the fund to exercise the demand feature are likely to occur.[97] Therefore, the Commission is proposing amendments that would limit the permissible conditions with respect to conditional puts to the following:

1. Default in the payment of principal or interest on the underlying security;

2. The bankruptcy, insolvency, or receivership of the issuer or a guarantor of the underlying security;

3. The downgrading of the underlying security or a guarantor by more than two full rating categories; and

4. In the case of a tax-exempt security, a determination by the Internal Revenue Service of taxability with respect to the interest on the security.[98]

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[86] Paragraphs (c)(3) and (a)(5)(iii) of rule 2a–7.

[87] A NRSRO rating cannot be the sole basis for making this determination. Paragraph (c)(3) of rule 2a–7 requires credit risk determinations to be based on factors pertaining to credit quality in addition to the NRSRO rating.

[88] A security that is itself unrated but that is subject to a demand feature that is rated would not be considered to be an unrated security. See paragraph (a)(29)(i)(B) of rule 2a–7 as proposed to be amended. This reflects the approach of many portfolio managers who generally rely on the credit quality and rating of the bank providing the demand feature to determine whether the VRDN is an eligible security. The proposed amendments remove from the definition of eligible security unrated securities that are subject to demand features. Paragraph (a)(9)(iii)(D) of rule 2a–7 as proposed to be amended. Thus, in order for a security subject to a demand feature to be eligible, either the security or the demand feature must be rated.

[89] As noted *infra* in Section II.C.4, the Commission is also adopting this approach for fund investment in certain other types of "structured" securities, including asset backed and synthetic securities.

[90] Paragraph (c)(3)(i) of rule 2a–7.

[91] Under paragraph (c)(3)(i) of rule 2a–7, a demand instrument that has an unconditional demand feature may be an eligible security or a first tier security based solely on the status of the unconditional demand feature. This determination may be based on the ratings of comparable debt securities of the issuer of the demand feature. See paragraphs (a)(5) and (a)(6) of rule 2a–7 (paragraphs (a)(9) and (a)(11) of rule 2a–7 as proposed to be amended).

[92] The use of alternative put providers has increased as LOCs have become more expensive, which is due in part to the revised capital requirements adopted for banks. See "Municipal Bond Insurance—The Economics of the Market," Municipal Finance Journal, Vol. 13 No. 2 (Summer 1992).

[93] A liquidity crisis appears to some extent to have been the cause of the MBLI default when a "run" on MBLI occurred after a newspaper article appeared. See "State Outlines Plan to Rescue Mutual Benefit," Wall Street Journal, July 17, 1991, at A3; "Seizure of Insurer Roils Bonds," Wall Street Journal, July 18, 1991, at A1.

[94] The fund could lose liquidity at the time when it is most necessary. A money market fund is limited to investing no more than ten percent of its assets in illiquid securities. See *supra* note 65.

[95] See ICI Letter, *supra* note 56.

[96] *Id.*

[97] See Nuveen Advisory Corp. (pub. avail. Sept. 4, 1990).

[98] Paragraph (a)(6) of rule 2a–7 as proposed to be amended.

Other than the fourth condition (which appears to be customary and can often be addressed through appropriate legal opinions), these conditions relate directly to credit quality and other factors that may be monitored if the fund or other third parties have continuing access to financial data concerning the issuer.[99] Comment is requested on whether any additional conditions should be permitted, whether any of these conditions are inappropriate, and whether different conditions are appropriate depending on whether the put is used for liquidity (standby commitments) or to shorten maturity (demand features).

4. Asset Backed and Synthetic Securities

In response to the shortage of short-term tax exempt securities, market participants have created highly structured "synthetic" tax exempt securities and asset backed securities ("ABSs") designed to meet the requirements of rule 2a–7. Both types of instruments generally rely on demand features and complex liquidity arrangements to meet the requirements of the rule. The Commission is proposing a number of amendments to rule 2a–7 to address these securities.

An ABS represents an interest in a pool of financial assets, such as credit card or automobile loan receivables. Typically, an ABS is sponsored by a bank or other financial institution to pool financial assets and convert them into capital market instruments, thereby enabling the sponsor to transform typically illiquid assets into cash and increase balance sheet liquidity.[100] Unlike a conventional debt security, an ABS is structured to assure that the issuer of the ABS will not be affected by the bankruptcy of the sponsor. This structure enables a NRSRO to provide the ABS with a rating that is often higher than that of the sponsor. In addition, the structure of the ABS affects the nature and amount of the credit enhancement. While these structural issues affect the risks associated with many types of securities, they are particularly important in evaluating ABSs.[101]

Synthetic securities are another form of ABSs that have been developed to address the shortage in the supply of short-term tax exempt securities.[102] While a variety of synthetic structures exist, all involve trusts or partnerships that in effect convert long-term fixed-rate bonds into variable or floating rate demand instruments. Typically, one or more long-term, high quality fixed rate bonds of a single state or municipal issuer (the "core securities") are deposited in a trust by a sponsor. Interests in the trust may be distributed through a public offering or private placement. Holders of interests in the trust receive interest at the current short-term market rate and the sponsor receives the difference (after administrative expenses) between the current market interest rate and the long-term rate paid by the core securities. An affiliate of the sponsor or a third party (usually a bank) issues a conditional demand feature permitting holders to recover principal at par within a specified period. Thus, the instruments satisfy rule 2a–7's maturity limitations. The puts are conditional to address tax-related concerns.[103]

Synthetic structures offer their sponsors the capacity to transform relatively standard, well-understood securities (*e.g.*, long-term municipal bonds) into conventional VRDNs as well as more complex instruments, such as interest-only and principal-only strips and inverse floaters, all of which have very different risk characteristics from those of the underlying security.[104] The structures by which the core securities are deposited, held, and divided into various interests, and the credit § enhancement and liquidity features built into these structures are extremely complex.[105] The proposed amendments would establish certain criteria for fund investment in synthetic securities and other ABSs and address issues concerning their treatment for diversification and maturity purposes.

a. *Definitional matters.* The proposed revisions would define an ABS as a fixed income security issued by a "special purpose entity," substantially all of the assets of which consist of "qualifying assets"—generally, financial assets that by their terms convert into cash in a fixed period of time.[106] The proposed definition would exclude issuers that are not typically considered to be direct issuers of ABSs, such as finance companies.[107] Comment is requested on whether the proposed definition could be refined to assure

[99] See *infra* Section II.D.1.

[100] For a detailed discussion of ABSs, *see* U.S. Securities and Exchange Commission Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, May 1992, at 1–103 and Investment Company Act Rel. No. 18736 (May 29, 1992) (57 FR 23980 (June 5, 1992) and Investment Company Act Rel. No. 19105 (Nov. 19, 1992) (57 FR 56248 (Nov. 27, 1992)) ("Release 19105") respectively proposing and adopting rule 3a–7 under the 1940 Act (17 CFR 270.3a–7), the rule excluding the issuers of certain ABSs from the definition of investment company.

[101] While the structure of ABSs vary, the ABSs that have been marketed to money market funds generally involve: (i) The trust, which issues the ABSs; (ii) the sponsor, which contributes the assets to the trust; (iii) the servicer, which is responsible for administering the assets in the pool; (iv) the trustee, which monitors the activities of the servicer; and (v) the bank, which provides some form of liquidity and/or credit enhancement to assure that the trust will have sufficient funds to meet interest and amortization payments in the event that cash flow from the underlying assets is insufficient to meet the payment schedule of the ABS.

[102] See "Taxable Money Funds Still Shifting into FRNs," Donoghue's Money Fund Report, Aug. 27, 1993 ("derivatives and structured financing products are the investments of choice these days as money managers struggle with paltry yields and thinner supply in traditional products"). To date, synthetic securities have generally been offered to money market funds through private placements.

[103] For distributions from the trust to be tax exempt, the owner of trust interests must be deemed the owner of the core securities for tax purposes. The conditions attached to the puts are designed to assure that investors in the trust bear some of the credit risks of the core securities, thus establishing some indicia of ownership. If the proposed amendments are adopted, any put conditions would have to meet the proposed limitations on conditional puts discussed *supra* in Part II.C.3. When analyzing the structure of a trust, the fund must ensure that it bears a substantial portion of the "benefits and burdens" associated with the long-term bonds and that it will have control (access) to the securities at some point. See "Risks Associated With Derivatives Held by Tax-Exempt Money Funds," Moody's Public Finance, June 15, 1993.

[104] See *infra* Section II.D.2.d for a discussion of the interest related risks presented by certain types of instruments that have been developed using these structures.

[105] The tax-free derivative market is changing and expanding constantly to meet demand for municipal issuance. For example, new derivative securities are being created that resemble existing structures but that also have multi-class features similar to those used in the mortgage-backed securities market. See "Firms Line Up to Create New Derivatives in Secondary Market as SEC Rules Change," Bond Buyer, Apr. 26, 1993. Industry participants have sought to address the tax and other uncertainties presented by these structures through legislative proposals that would permit creation of "tax-exempt municipal investment conduits," or "TEMICs." See "Bond Industry Officials Send TEMIC Proposal To Treasury, Congress," Bond Buyer, Sept. 14, 1993.

[106] Paragraph (a)(2) of rule 2a–7 as proposed to be amended. Qualifying assets would consist of "financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders." This definition is similar to the definition of "eligible assets" in rule 3a–7.

[107] Paragraph (a)(2) of rule 2a–7 as proposed to be amended would define a "special purpose entity" as a trust, corporation, partnership or other entity organized for the sole purpose of issuing fixed income securities, which securities entitle their holders to receive payments that depend primarily on the cash flow from qualifying assets. Typically, finance companies and similar enterprises are not organized for the sole purpose of owning qualifying assets and issuing ABSs and have some other purpose, such as providing financing for the sale of an affiliate's products. Registered investment companies would be explicitly excluded from the definition.

that securities other than ABSs will not be included in the rule.

b. *Quality determinations and NRSRO ratings.* The credit quality of a typical ABS depends both upon the structure of the security and the quality of the underlying assets. Determining that an ABS presents minimal credit risks requires an examination of the criteria used to select the underlying assets, the credit quality of the put providers,[108] and the conditions of the contractual relationships among the parties to the arrangement. When an ABS consists of a large pool of financial assets, such as credit card receivables or mortgages, it may not be susceptible to conventional means of credit risk analysis because credit quality is based not on a single issuer but on an actuarial analysis of a pool of financial assets.[109] The complexity of these arrangements has caused investors typically to rely on the ratings given an ABS by a NRSRO.

NRSROs have played a significant role in the development of ABSs by analyzing the structural integrity of ABSs and assuring that the underlying assets are properly valued and provide adequate asset coverage for the cash flows required to fund the ABS.[110] In rating ABSs, NRSROs consider the structure of the instruments and the quality of the underlying assets.[111]

The Commission is concerned that fund credit analysts may be unable to perform the thorough legal, structural and credit analyses required to determine whether a particular ABS involves inappropriate risks for money market funds. Therefore, the Commission is proposing that money market funds invest only in ABSs that have a short-term and, when the final maturity of the ABS exceeds 397 days, a long-term debt rating, from a NRSRO. In view of the role that NRSROs have played in the structured finance markets, the proposed rating requirements should not be burdensome.

Except for the requirement that it be rated by a NRSRO, an ABS would be treated as is any other debt security for purposes of the rule's credit quality conditions. As under the current rule, a fund would be required to make its own assessment that the security posed the minimal credit risks appropriate for a fund seeking to maintain a stable share price and a high level of liquidity.[112] Comment is requested on the proposed NRSRO rating requirement. Specifically, would a NRSRO rating assist funds in assuring that these securities are appropriate investments? Can NRSRO ratings measure the risks of the conditions usually attached to the puts? Would the requirement of an NRSRO rating inhibit or assist the development of a market for these instruments? Are there preferable alternatives to this approach? For example, should fund investment in ABSs be limited to a specified percentage (such as ten or fifteen percent) of fund assets?

c. *Maturity determinations.* Certain types of ABSs raise questions concerning rule 2a–7's maturity limitations. Some ABSs are structured as conventional debt securities, such as commercial paper or other fixed income obligations with fixed maturities. These securities are often characterized as "pay throughs" because the ABS has maturities and payment schedules different from those of the underlying assets. Others are characterized as "pass throughs" because the cash generated by the assets passes through directly to the ABS holders, who receive pro rata shares of the cash flows, net of fees. The ultimate maturity of these instruments depends upon the rate of repayment of the underlying assets.[113]

Pass-through ABSs held by money market funds generally are not scheduled to return a holder's principal for three to five years. They typically provide for periodic interest rate resets and for principal to be returned after some period (not exceeding thirteen months) after a demand for repayment is made.[114] The Commission is proposing to revise rule 2a–7 to clarify that the final maturity of these instruments is the date on which principal is scheduled to be returned to the holder (regardless of whether demand has been made),[115] and to provide that the maturity of an ABS subject to this type of demand provision be measured by reference to the date on which principal is scheduled to be repaid once demand is made.[116] As a result, before the election to begin principal payments is made, a pass-through ABS with a five year final maturity and a feature permitting a fund to obtain principal within thirteen months would be considered a thirteen month instrument at all times (*i.e.*, on a rolling basis).

Comment is requested on this approach and on whether any other maturity-based conditions should be adopted to further reduce the risks of investment in ABSs. For example, since pass throughs do not have scheduled maturities, should fund investment be limited to first tier securities to assure that funds would only invest in instruments with respect to which the likelihood that principal would amortize as scheduled is extremely high? Should the definition of qualifying assets be limited to short-term debt obligations to reflect the short-term liquidity needs of funds and to assure that the market value and pay-out schedule of the ABS would not be subject to fluctuations that characterize long-term assets, such as fixed rate mortgages?

d. *Diversification: general.* For purposes of the diversification provisions of rule 2a–7, the issuer of the ABS would be deemed to be the issuer of the qualifying assets unless the qualifying assets consist of the securities of more than ten issuers. When the ten issuer limit is exceeded, the sponsor of

[108] Each put must qualify as an eligible security, and, if the put is conditional, the security must have received a first or second tier long-term rating from the requisite NRSROs or, if it is unrated, be of comparable quality. See paragraph (c)(3)(ii) of rule 2a–7. In the case of a synthetic security, the core security generally will have the requisite rating.

[109] The complexity of credit risk analyses currently may be less of a concern for synthetic securities, the underlying assets of which generally consist of the securities of a single issuer. This concern may increase as synthetic securities funded by a significant number of securities continue to develop.

[110] Release 19105, supra note 100.

[111] "Asset-Backed CP's New Look," Fitch Research Structured Finance Special Report, May 10, 1993. In addition, both Moody's and S&P rate synthetic instruments. For a description of the process by which one NRSRO analyzes synthetics, see "Moody's Rating Criteria for Custodial Receipts," Moody's Perspective on Structured Finance, Apr. 15, 1991; "Understanding Custodial Receipts: Tender Option Bonds," Moody's Perspective on Structured Finance, Nov. 2, 1992.

[112] See Release 13380, supra note 8. In the case of synthetic securities, this assessment should include an analysis of current and historical interest rate trends (to determine whether short-term market rates will likely exceed the interest rate of the core security, which normally results in the dissolution of the trust and in the fund holding the long-term core securities) and whether the circumstances that could result in the termination of the put would occur prior to the time the put is next exercisable. See Nuveen Advisory Corp., supra note 97. If an analysis of these factors suggests that the synthetic security no longer presents minimal credit risks, the put must generally be exercised. See paragraph (c)(5)(ii) of rule 2a–7.

[113] Some ABSs (generally backed by credit card receivables) sold to money market funds appear to combine the characteristics of pay throughs and pass throughs: They are structured to allow the holder to make an election to receive principal payments earlier than scheduled, but the repayment obligation is conditioned on sufficient funds being generated by the underlying assets or being provided by liquidity and credit enhancers.

[114] These types of repayment elections currently do not qualify as demand features because the definition of demand feature requires repayment no more than 30 days after demand. Paragraph (a)(4) of rule 2a–7 (paragraph (a)(8) of rule 2a–7 as proposed to be amended).

[115] This proposal would supersede the interpretive position taken in Merrill Lynch, Pierce, Fenner & Smith (pub. avail. Mar. 6, 1987).

[116] Paragraph (a)(8) of rule 2a–7 as proposed to be amended.

the ABS would be considered its issuer.[117] In the case of the typical tax exempt synthetic security, the acquisition of a synthetic security would be deemed to be an acquisition of the core security. This approach would assure that no more than five percent of taxable and national fund assets are exposed to the issuer of the core security. Funds would be required to maintain information regarding the nature of the qualifying assets of the ABS, and if the number of issuers of securities that constitute the qualifying assets of the ABS is ten or less, a record setting forth the identities of the issuers, the percentage of the qualifying assets constituted by the securities of each and the overall exposure of the fund's portfolio to those issuers.[118]

In the case of a typical ABS whose qualifying assets may consist of receivables from thousands of obligors, the financial institution that sponsored the ABS would be deemed to be the issuer. Thus, if five percent of a taxable fund's assets were invested in an ABS sponsored by a particular bank, the fund could not invest any more of its assets in the securities of that bank.[119] This limitation is designed to assure that no more than five percent of a fund's assets would be exposed to the loan portfolio of a specific financial institution. This proposed approach assumes that the credit quality of the ABS reflects the asset origination practices of the sponsor and that, in many cases, the sponsor provides some form of credit enhancement to the trust.[120]

Comment is requested on the proposed approach. How should this limitation be applied to ABSs that have multiple sponsors? Should each sponsor be treated as an issuer based on its proportionate contribution to the trust? Should the trust be treated as the issuer if it is diversified as to depositors (*i.e.*, no single depositor contributed more than five or ten percent of the trust's assets)?

e. *Diversification: first loss guarantees.* Some ABSs are issued with guarantees as to first losses, in which, for example, one guarantor guarantees all losses up to ten percent of the assets of the pool. Because the loss coverage is usually a multiple of the likely losses to be experienced, the possibility of the losses exceeding the coverage is generally considered to be remote. As a result, a first loss guarantee exposes the guarantor to essentially the same risk as a guarantor of the entire value of the security.

The proposed amendments would treat a first loss guarantor as the guarantor of the entire security for purposes of the diversification requirements of rule 2a–7.[121] For example, the guarantor of the first $1,000,000 of losses on a $10,000,000 principal amount ABS would be deemed to have guaranteed $10,000,000 for purposes of rule 2a–7's put diversification provisions. Comment is requested on the proposed approach to limiting a fund's exposure to first loss guarantors. Comment is also requested on whether and, if so, how limits on second and third loss guarantors should be measured.

5. Puts and Fund Liquidity

Comment is requested on the use of conditional demand features and standby commitments as a source of liquidity for fund portfolios. Have these liquidity arrangements been successfully used during times of stress in the financial markets? Commenters on the 1986 Amendments suggested that standby commitments would only be used as a last resort because their use would result in losses to the broker-dealer providing the commitment. Were these commenters correct and, if so, does this suggest that standby commitments merely create the appearance of liquidity in order to comply with the Commission's policy that money market funds limit investment in illiquid securities to ten percent of fund assets?[122]

Comment is also requested concerning the liquidity of the tax exempt security market, and the mechanisms that can be used to dispose of portfolio securities subject to demand features. Do demand features provide the only mechanism for disposing of securities or are there secondary market mechanisms? What mechanisms exist for disposing of securities with demand features that cannot be exercised in intervals of seven days or less? In the release adopting the 1986 Amendments, the Commission stated that it expected boards of directors, in determining the liquidity of demand instruments, to establish procedures to evaluate the existence and depth of the secondary market for the instruments, and to consider the period remaining until the principal amount can be recovered through demand.[123] Are markets sufficiently developed for a fund to determine that a security with a demand feature that cannot be exercised every seven days is liquid?

D. Other Proposed Amendments

1. Review, Information, and Notice Requirements

a. *Continuing disclosure and review requirement.* When maturity is determined by reference to a demand feature, a portfolio security is, in essence, a long-term instrument.[124] The short-term securities typically held in taxable fund portfolios must be periodically "rolled over," triggering the obligation to perform a new credit risk evaluation.[125] In contrast, if the demand feature to which a long-term instrument is subject is not exercised, the security may remain in the fund's portfolio for a considerable length of time after the fund makes its initial determination that the demand feature and the underlying security present minimal credit risks.

Funds have a continuing duty under rule 2a–7 to ensure that all securities in their portfolios continue to present minimal credit risks.[126] Periodic reviews of instruments subject to demand features may be particularly important due to the length of time the instruments are in the fund's portfolio. During reviews subsequent to the initial purchase of a security, it may be necessary to review both the risks presented by the demand feature and, when the demand feature is conditional, those presented by the underlying issuer of the security.

The Commission is proposing to require funds to adopt written procedures concerning ongoing reviews of the credit risks of any security (other than a Government security) for which

[117] Paragraph (c)(4)(iv)(E) of rule 2a–7 as proposed to be amended. Treating the sponsor as the issuer of the security for diversification purposes is consistent with section 2(4) of the 1933 Act (15 U.S.C. 77b(4)), which provides that the person "performing the acts and assuming the duties of depositor or manager" under provisions of the relevant trust instruments is the issuer of interests in an unincorporated investment trust not having a board of directors.

[118] Paragraph (c)(8)(v) of rule 2a–7 as proposed to be amended.

[119] The fund could invest up to an additional five percent of its assets in securities subject to puts from that bank.

[120] The put diversification requirements would continue to apply to the puts and demand features applicable to a synthetic security.

[121] Paragraph (c)(4)(iv)(F) of rule 2a–7 as proposed to be amended.

[122] See supra note 65.

[123] Release 14983, supra note 64, at Section A.4.

[124] See supra Section II.C.1.

[125] Paragraph (c)(3) of rule 2a–7.

[126] Rule 2a–7 originally required a fund board to review on a quarterly basis the credit quality of instruments subject to demand features. The 1986 Amendments deleted this requirement because most of these instruments had high quality ratings from at least one NRSRO and because of concern about the appropriateness of having fund boards of directors perform these reviews. The provision of rule 2a–7 that limits fund investments to securities that present minimal credit risk requires that funds monitor their existing investments to assure that they continue to present minimal credit risks. See paragraphs (c)(3), (c)(5)(ii), (c)(6)(i), and (c)(7) of rule 2a–7.

maturity is determined by reference to a demand feature.[127] This review should be based on all pertinent financial and other credit related information about the issuer of the security (or where the security is subject to an unconditional demand feature, the issuer of the demand feature) that is publicly available or provided under the terms of the security's governing documents. The review should also include an examination of pertinent information about the provider of any demand feature or other credit or liquidity enhancement. Under paragraph (e) of rule 2a–7, the credit review could be delegated to the fund's investment adviser, subject to the conditions for delegation.

b. *Analysis of underlying securities.* A fund may determine whether a security subject to an unconditional demand feature is an eligible or first tier security based solely on the unconditional demand feature.[128] It may be appropriate in certain circumstances for the fund to review or have available not only information concerning the credit risks of the demand feature but the underlying security as well. These circumstances may include a significant adverse change in the credit quality of the provider of the demand feature or the impending expiration of the demand feature.[129] The proposed amendments would require that, in these circumstances, funds obtain sufficient information about the issuers of securities subject to unconditional demand features to permit them to value the security without the demand feature.[130] The information that funds should consider obtaining would include financial statements, notices concerning unscheduled draws on any reserve fund or credit enhancement established to assure timely payment of interest or principal on the security, and notice of any events of default.[131]

Comment is requested on whether the circumstances specified are appropriate and whether additional circumstances that warrant a credit review of the underlying issuer are appropriate. Comment is also requested on whether the rule should specify what events or standards should be used to determine that a "significant adverse change" in the credit quality of the demand feature has occurred.

Tax exempt funds may experience particular problems obtaining information concerning issuers of securities subject to demand features because tax exempt issuers generally do not file periodic reports with the Commission.[132] The lack of reports may make it difficult for funds to obtain current information about the financial condition of these issuers. The consequences of the lack of publicly available information regarding municipal issuers were illustrated when money market funds holding approximately $110 million of MBLI-backed VRDNs experienced difficulty in obtaining current financial information about the issuers of the underlying securities. This lack of information impeded obtaining a replacement for MBLI and contributed to problems in valuing these securities.[133] In at least one case, a fund did not reflect the effects of the MBLI seizure in ascertaining the market price of its holding for five weeks.[134] Under the proposed revisions, if a fund could not obtain this information in the specified circumstances, the fund would be required to dispose of the security as soon as practicable by sale or by exercise of the demand feature.[135]

Comment is requested on whether the Commission should prohibit funds from investing in securities subject to demand features unless the issuer of the security is subject to the periodic reporting requirements of the Securities Exchange Act of 1934 or submits information to the Commission under rule 12g3–2(b) (17 CFR 240.12g3–2(b)) thereunder, or the holder of the instrument has the right to obtain from the issuer pertinent credit information sufficient to permit the fund to conduct periodic credit risk reviews. Do other standards for secondary market information provide more appropriate guidelines for the information that should be available to money market funds?[136] Should such an information requirement be applied only to securities that have final maturities longer than thirteen months and for which the demand feature also serves to shorten their maturity? Should securities currently outstanding be subject to such an information requirement or should funds be able to continue to hold (or purchase) currently outstanding securities if the required credit information is not available? As an alternative, should a security subject to an unconditional demand feature be held to a requirement of high quality independent of the demand feature?

c. *Notice of substitution of put provider.* The Commission is aware of several instances in which a money market fund has invested in a security backed by a LOC or other credit or liquidity enhancement (such as a remarketing arrangement with a broker-dealer) that was replaced during the life of the underlying security without notice to the fund. It is important for purposes of assuring compliance with rule 2a–7 that a fund know the identity of the put provider.[137]

[127] Paragraphs (c)(6)(ii)(D) and (c)(7)(ii)(A) of rule 2a–7 as proposed to be amended.

[128] Paragraph (c)(3)(i) of rule 2a–7. See supra text accompanying notes 66–67.

[129] For example, if the financial condition of the issuer of an LOC-backed demand feature has deteriorated significantly, security holders may desire to obtain a substitute or supplemental LOC to assure that the security continues to be first tier. It may be impracticable to obtain a new LOC in the absence of financial information about the underlying issuer. Similarly, if the LOC is approaching its expiration, a fund should be in a position to know whether substitute LOCs will be available. In either case, the fund should be in a position to know if the financial condition of the underlying issuer has deteriorated, so that the fund can demand payment prior to the expiration of the LOC.

[130] Paragraph (c)(6)(ii)(E) and (c)(7)(ii)(B) of rule 2a–7 as proposed to be amended.

[131] The last two items are among the information the American Bankers Association Corporate Trust Committee has recommended that issuers direct the trustees of their bond issues to provide to security holders on a voluntary basis. See American Bankers Association Corporate Trust Committee, Disclosure Guidelines for Corporate Trustees (Oct. 1991) ("ABACT Guidelines").

[132] See sections 3(a)(12)(A) (including municipal securities in the definition of an "exempted security") and 12(a) (excluding "exempted securities" from registration requirements) of the 1934 Act [15 U.S.C. 78c(a)(12)(A) and 78*l*(a)]. See also "Staff Report on the Municipal Securities Market," supra note 49, at 39 (quality of municipal securities market disclosure could be addressed through a variety of means, including rescission of statutory exemptions).

[133] See "Caution Flags for Muni Investors," Wall Street Journal, July 22, 1991 ("even as investors scramble to determine what their [MBLI backed] bonds are worth, they are finding the task extremely difficult due to the lack of financial disclosure in the $800 billion municipal bond market").

[134] See In the Matter of Bank of California, Investment Company Act Rel. No. 19545, 54 SEC Dkt. 1300 (June 28, 1993).

[135] Paragraph (c)(5)(ii)(E) of rule 2a–7 as proposed to be amended. Disposal would not be required if the fund board concluded that disposing of the security would not be in the best interests of the fund.

[136] See, e.g., Government Finance Officers Association, Disclosure Guidelines for State and Local Government Securities (1991) ("GFOA Guidelines"). The GFOA Guidelines, published by an association of state and local finance officers, identify information that over the years has been important for primary and secondary market disclosure. Adherence to the GFOA Guidelines is voluntary. The American Bankers Association Corporate Trust Committee, representing bank trustees, published guidelines designed to guide bond indenture trustees in assisting issuers of municipal securities with respect to secondary market information disclosure. ABACT Guidelines, supra note 131. See "Staff Report on the Municipal Securities Market," supra note 49, at 29–31 for a discussion of other efforts by the Commission, the Municipal Securities Rulemaking Board, and market participants to improve secondary market disclosure.

[137] A fund must know the identity of the put provider for purposes of determining compliance with the rule's put diversification test. Paragraph (c)(4)(iii) of rule 2a–7 as proposed to be amended.

Continued

Comment is requested on whether rule 2a–7 should be amended to restrict funds to investing only in those credit or liquidity enhanced securities that obligate the issuer or the trustee under any applicable indenture to inform investors of the substitution of a credit enhancer or, alternatively, securities whose issuer has agreed to provide written notice to funds in the event that the credit or liquidity enhancer is replaced.

2. Variable and Floating Rate Securities

Rule 2a–7 defines a "variable rate security" as an instrument the terms of which provide for the adjustment of the interest rate on specified dates and that, upon adjustment, can reasonably be expected to have a market value that approximates par value.[138] A "floating rate" security is defined as an instrument the terms of which provide for the adjustment of its interest rate whenever a specified benchmark changes and that, at any time, can reasonably be expected to have a market value that approximates par value.[139] Rule 2a–7 allows variable and floating rate securities ("adjustable rate instruments") to be treated as having maturities shorter than their final maturities; however, the manner in which adjustable rate instruments are treated depends upon whether they have demand features, the final maturity of the instrument and whether the instrument is a Government security.

a. Maturity determinations: Floating rate securities. The maturity of a floating rate security subject to a demand feature is the period remaining until principal can be recovered through demand.[140] The same test is generally applicable in determining the maturity of a variable rate security subject to a demand feature, the principal amount of which is scheduled on the instrument's face to be paid in more than 397 days.[141] In contrast, a variable rate security (without a demand feature) scheduled to be paid in 397 days or less may be treated as having a maturity equal to the period remaining until the next readjustment of the interest rate.[142] There is no parallel provision for floating rate securities with final maturities of 397 days or less.

Because variable and floating rate securities expose funds to similar types of interest rate risk, the Commission is proposing to amend the rule to permit funds to determine the maturity of floating rate securities with final maturities of 397 days or less by referring to the interest rate reset.[143] The interest rate of a floating rate security moves in tandem with changes in the interest rate to which it is linked, and the proposed amendment will permit funds to treat these instruments as having one-day maturities.

b. Maturity determinations: Variable rate securities. When the period remaining until the final maturity of a variable rate demand instrument (i.e., its maturity without reference to the demand feature) is less than 397 days, its maturity under rule 2a–7 is the longer of the period remaining until the next interest rate readjustment or the date on which principal can be recovered on demand.[144] A variable rate security with the same final maturity that does not have a demand feature is treated as having a remaining maturity equal to the period remaining until the next readjustment in the interest rate.[145] The effect of these provisions is that a variable rate security with a final maturity of less than 397 days will have a longer maturity when a demand feature is added to it. To correct this anomaly, the amendments would provide that only a variable rate demand security with a final maturity in excess of 397 days would have its maturity measured by the longer of the period remaining until its next interest rate adjustment or the date on which principal can be recovered on demand;[146] the maturities of securities with final maturities of less than 397 days would be measured by reference to the earlier of the date on which the interest rate next readjusts or the date on which principal can be recovered on demand.[147]

Comment is requested on whether rule 2a–7 could be simplified by allowing the maturity of a variable rate demand instrument to be determined by reference to the date on which principal can be recovered on demand as opposed to the longer of the period remaining until the next interest rate readjustment or the date on which principal can be recovered on demand.[148] Comment is also requested on whether funds should be permitted to use the interest rate reset date to determine the fund's weighted average portfolio maturity.[149] The put date would be used to determine whether the fund could purchase the instrument.[150]

c. Adjustable rate government securities. Rule 2a–7 provides that "an instrument that is issued or guaranteed by the United States government or any agency thereof which has a variable rate of interest adjusted no less frequently than every 762 days"[151] is deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.[152] The Commission is proposing amendments to clarify the scope of this provision.

First, the rule would be amended to make clear that the maturity of the security may only be determined by reference to the interest readjustment date if, upon readjustment, the security can reasonably be expected to have a market value that approximates par value.[153] This change would make explicit that Government securities are

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In addition, substitution of a put provider may require the fund to take certain actions if the substitute put has a lower NRSRO rating than the original put or, if as a result of the substitution, the security ceases to be an eligible security or no longer presents minimal credit risks. Paragraph (c)(5) of rule 2a–7. Finally, if proposed amendments to Regulation S–X are adopted, funds will have to know the identity the put provider for purposes of preparing the portfolio schedule that accompanies fund financial statements. See infra Section III.C.

[138] Paragraph (a)(21) of rule 2a–7 (paragraph (a)(30) of rule 2a–7 as proposed to be amended). These instruments must be expected to return the value of the instrument to par so that the market-based value of the instrument does not deviate significantly from its amortized cost value. *See* Release 14983, supra note 64, at nn. 10–11 and accompanying text.

[139] Paragraph (a)(7) of rule 2a–7 (paragraph (a)(12) of rule 2a–7 as proposed to be amended).

[140] Paragraph (d)(4) of rule 2a–7.

[141] Paragraph (d)(3) of rule 2a–7.

[142] Paragraph (d)(2) of rule 2a–7.

[143] Paragraph (d)(4) of rule 2a–7 as proposed to be amended.

[144] Paragraph (d)(3) of rule 2a–7.

[145] Paragraph (d)(2) of rule 2a–7.

[146] Paragraph (d)(3) of rule 2a–7 as proposed to be amended.

[147] Paragraph (d)(2) of rule 2a–7 as proposed to be amended.

[148] It is the Commission's understanding that while interest reset dates may occur more frequently than dates on which demand features can be exercised, demand feature exercise dates almost always correspond to interest rate readjustment dates.

[149] Industry representatives have suggested that the interest rate sensitivity of a variable rate security depends upon the frequency of its interest rate reset dates and that weighted average maturity is often treated as an indication of the fund's sensitivity to interest rate changes. The current manner in which weighted average maturity is calculated may overstate a fund's interest rate sensitivity.

[150] For example, a variable rate instrument with quarterly reset dates and subject to annual demand would be treated as having a one year maturity for purposes of determining whether the fund could buy it under paragraph (c)(2)(i) of the rule but as having a ninety day maturity for purposes of calculating the fund's average portfolio maturity under paragraph (c)(2)(iii) of the rule.

[151] Paragraph (d)(1) of rule 2a–7. Generally, the readjustment must occur every 397 days to reflect the rule's maturity requirements. For certain funds that mark-to-market, however, readjustment may occur every 762 days. See paragraph (c)(2)(ii) of rule 2a–7.

[152] Paragraph (d)(1) of rule 2a–7.

[153] This would codify the position taken by the Division of Investment Management in no-action letters. See Investment Company Institute (pub. avail. June 16, 1993) ("ICI Capped Floater Letter"); Morgan Keegan & Company, Inc. (pub. avail. July 24, 1992) at n.7.

treated the same way as other adjustable rate securities under the rule.[154]

Second, the reference to Government securities in paragraph (d)(1) of rule 2a–7 would be conformed to other provisions of the rule relating to Government securities. As proposed to be amended, the provision would apply to all Government securities, including securities issued by persons controlled or supervised by and acting as instrumentalities of the U.S. Government.[155]

d. Other issues concerning adjustable rate instruments. Rule 2a–7 allows the maturity of adjustable rate instruments to be determined by reference to interest rate adjustment dates if the instrument "can reasonably be expected to have a market value that approximates its par value" upon adjustment of the interest rate.[156] When rule 2a–7 was adopted, the Commission acknowledged limited experience with adjustable rate instruments, emphasized that the funds' boards, as part of a general duty to supervise to ensure share price stability, should make volatility determinations for long-term notes, and stated that rule amendments would be considered if "market experience indicates that it is inappropriate to the rule's overall purposes."[157]

The Commission is proposing to clarify that the board of directors or its delegate must have a reasonable expectation that, upon adjustment of its interest rate at any time until the final maturity of the instrument or until the principal amount can be recovered through demand, the instrument will return to or maintain its par value.[158] The Commission also is proposing to require that funds maintain written records of the determination, with respect to a security the maturity of which is determined by reference to the date on which the next interest rate readjustment is to occur, that the instrument will either maintain a value of par (for a floating rate instrument) or return to par (for a variable rate instrument).[159]

New types of adjustable rate instruments have recently been developed and purchased by money market funds whose advisers have asserted that they meet the definitions of variable or floating rate instruments because they believe they are likely to return to par upon the next interest rate adjustment date. These instruments include "inverse floaters,"[160] "capped floaters,"[161] "CMT floaters,"[162] leveraged floaters[163] and instruments linked to an interest rate that significantly lags prevailing short-term rates.[164] These securities share the common characteristic that, at the time of issuance, changes in interest rates or other conditions that can reasonably be foreseen to occur during their term will result in their market value not returning to par at the time of an interest rate adjustment. To compensate funds

[154] The proposed amendments would also make clear that this provision applies to floating rate Government securities. See paragraph (d)(1) of rule 2a–7 as proposed to be amended. As proposed, funds may treat floating rate Government securities as having a maturity of one day.

[155] The amendment would reflect a no-action position taken by the Division of Investment Management with respect to securities issued by instrumentalities of the U.S. government. See Student Loan Marketing Association (pub. avail. Jan. 18, 1989).

Paragraph (c)(3) of rule 2a–7 limits money market fund investments to instruments that present minimal credit risks and requires a fund's board to determine instruments' creditworthiness, including securities issued by the U.S. government and its agencies. A practical application of this requirement to Government securities requires different levels of analyses depending upon the government entity issuing the security and the terms of the security. The depth of the analysis required—and the adequacy of a fund's records of the analysis—will depend on: (i) whether the securities are backed by the full faith and credit of the U.S. Government; and (ii) whether the instrument has any special features or a guarantee structure that might increase the riskiness of the instrument or the fund's potential failure to comply with some aspect of rule 2a–7. Comment is requested on the level of credit analysis and related documentation that would be appropriate for various types of Government securities.

[156] Paragraphs (a)(7) and (a)(21) of rule 2a–7. Adjustable rate securities may be priced at a premium to par value when the instrument pays interest above market rates. A fund may treat the instrument as an adjustable rate instrument for purposes of rule 2a–7's maturity provisions if the fund reasonably expects that upon readjustment of the interest rate, the market value of the instrument will approximate its amortized cost. The premium generally would be amortized over the life of the instrument. It is critical that the fund carefully consider all factors involved in the valuation of the instrument, particularly the likelihood of prepayment before the premium is fully amortized. An accelerated return of principal will require the fund to write off the premium before it is amortized, and could result in a significant deviation between the amortized cost and market value of the instrument.

[157] Release 13380, supra note 8, at note 16.

[158] Paragraphs (a)(12) and (a)(30) of rule 2a–7 as proposed to be amended.

[159] Paragraphs (c)(6)(ii)(F), (c)(7)(ii)(C) and (c)(8)(iv) of rule 2a–7 as proposed to be amended.

[160] An inverse floater has an interest rate that fluctuates inversely with market rates. Thus, if interest rates increase, the interest rate of the inverse floater (and its market value) would decrease. Typically, the interest rate adjustment mechanisms are such that the effect of a market rate change is magnified through use of a multiplier, resulting in a highly volatile security. See infra note 163. The Division of Investment Management has stated, and the Commission agrees, that these instruments are not appropriate investments for money market funds. See Investment Company Institute (pub. avail. Dec. 6, 1991) ("ICI Inverse Floater Letter").

[161] A capped floater limits the amount by which the interest rate may increase. The cap may place a limit on the amount the interest rate can increase over the instrument's lifetime or for each interest rate readjustment period (e.g., a cap of 25 basis points per quarter). The staff has interpreted rule 2a–7 as not permitting its maturity shortening provisions to be applicable to these instruments in the absence of a demand feature. Thus, a capped floater with a final maturity of more than thirteen months is generally not eligible for fund investment because the rule's maturity shortening provisions may not be used. This position has not been applied when the cap is set to conform with state usury laws and the maximum rate is in excess of twenty percent. ICI Capped Floater Letter, supra note 153. When the capped floater has a demand feature, the maturity shortening provisions can be used regardless of the reason for the cap and the level at which it is set, subject to certain conditions (e.g., it can be expected to reset at par). See Nuveen Advisory Corp., supra note 97. When a capped floater has a remaining maturity of less than thirteen months and no demand feature, it may be purchased by the funds but its maturity must be measured by reference to its final maturity date. Investment Company Institute (pub. avail. June 25, 1993).

[162] CMT floaters and similar instruments have interest rates that are tied to fixed rates that are often medium- or long-term, raising the question of whether these instruments will return to par in the event of a change in short-term rates relative to long-term rates (i.e., a change in the shape of the yield curve). Yields on Treasury securities at constant maturity are interpolated by the U.S. Treasury from the yield curve, which is based on the market bid yields on actively traded Treasury securities in the over-the-counter market. The constant maturity yield values are read from the yield curve at fixed points of between one year and thirty years.

[163] The interest rate adjustment mechanism of a leveraged floater employs multipliers so that the effect of an increase or decrease in interest rates on the coupon of the instrument is greatly magnified. For example, for an instrument with a multiplier of 3.0 in its interest rate reset mechanism, a decrease of 50 basis points in short-term market rates would result in a decrease of 150 basis points in the instrument's coupon. Such "leveraged" coupons could result in an instrument trading far below par should interest rates decline even slightly. ICI Inverse Floater Letter, supra note 160, at n.2.

[164] An example of this type of mechanism is one linked to the monthly Cost of Funds Index ("COFI"), representing the cost of funds to thrift institutions in the Eleventh Federal Home Loan Bank District. Changes in the COFI can significantly lag the market. This lag means that an instrument with a rate linked to the COFI always trades at a premium or a discount to par since a change in the COFI will always occur following market rate changes. In a declining interest rate environment, COFI floaters have generally traded at a premium; however, in an environment in which short-term rates steadily rise, the lag will result in COFI floaters trading under par, creating significant risks for funds.

for assuming this risk, these instruments typically offer yields greater than short-term instruments of comparable maturity and credit quality. Some fund advisers have justified investment in these instruments by asserting that they would be able to sell them before an interest rate adjustment occurs that would result in the value of the security falling below par. Because many of these securities have been designed for and are held primarily by money market funds, a significant change in interest rates (or even a widely anticipated change) could result in a "fire sale" of these securities by funds. The increased selling pressure could result in the instruments having market values of less than par. Selling funds would realize losses and funds that did not sell might have to take actions to address any resulting significant deviation between market and par value. This type of risk is inappropriate for a money market fund to assume.

The effect of the proposed language would be to prohibit funds from purchasing a long-term adjustable rate Government security unless the adjustment mechanism can reasonably be expected to return the instrument to par upon all interest rate adjustment dates during the life of the instrument. A fund could purchase a short-term adjustable rate security the value of which the fund does not expect to return to par on all interest rate adjustment dates, but would have to treat the security as a fixed rate security and measure its maturity by reference to its final maturity. Adjustable rate securities with demand features generally would not be affected by the proposed changes because if a discount develops or is likely to develop a fund could exercise the demand feature and receive the amortized cost value of the instrument.

Comment is requested on whether alternative amendments are required to reflect the development of the types of instruments described above. For example, should funds relying on the maturity-shortening provisions of the rule be restricted to investing in instruments whose interest rate mechanisms are based solely on a single short-term interest rate benchmark? Comment is requested on whether other tests can be developed to measure interest rate risk. For example, should the rule establish interest rate risk criteria based on "duration" as opposed to maturity? Should adjustable rate instruments be subject to a price sensitivity test (that would preclude fund investment if the estimated market price of the instrument would shift by more than a specified amount in the event of a significant immediate and sustained parallel shift in the yield curve)?[165] In addition, the Commission requests information on other interest rate mechanisms that may result in securities not returning to par and on whether these mechanisms are used primarily for Government securities, non-government securities, or both.

3. Repurchase Agreements

Rule 2a–7 permits a fund to "look through" a repurchase agreement ("repo") to the underlying collateral for diversification purposes when the obligation of the counterparty to repurchase the securities from the fund is "collateralized fully."[166] A repo is collateralized fully if, among other things, the collateral consists entirely of Government securities or securities that, at the time the repurchase agreement is entered into, are rated in the highest rating category by the requisite NRSROs.[167] The proposed amendments would limit the types of collateral that could be used for purposes of the "look through" provisions to assure that a repo can be liquidated if the counterparty enters bankruptcy or, in the case of a federally insured depository institution, a conservator or receiver is appointed.[168]

The Federal Bankruptcy Code (11 U.S.C. 101 et seq.) (the "Bankruptcy Code") provides special treatment in bankruptcy to repos collateralized by securities issued or guaranteed by the U.S. Government or one of its agencies, certificates of deposit and certain bankers' acceptances.[169] If the counterparty is a bank, the Federal Deposit Insurance Act affords preferential treatment to repos collateralized by certain mortgage-related securities as well.[170] Both statutes provide that repos collateralized by the specified securities can be liquidated immediately and the lender can realize immediately on the collateral.

The proposed amendments would permit repos to be treated as fully collateralized only if, among other things, they are collateralized by securities that would qualify the repo for preferential treatment.[171] Repos otherwise collateralized would be deemed to be securities issued by the counterparty for purposes of the rule's diversification and quality requirements.[172] As under the current rule, the non-Government securities constituting collateral also would have to be first tier securities.

Comment is requested on whether money market funds should only be permitted to enter into repos when they may "look through" the counterparty. Comment is also requested on the need to retain the current requirement that funds make a minimal credit risk determination with respect to repo counterparties that are collateralized fully. The requirement that a fund analyze the repo counterparty reflected uncertainty concerning the treatment of repurchase agreements in bankruptcy proceedings.[173] Have the Bankruptcy Code amendments sufficiently addressed these concerns or do the

[165] See Federal Financial Institutions Examinations Council Supervisory Policy Statement on Securities Activities, 57 FR 4028 (Feb. 3, 1992).

[166] Paragraph (c)(4)(i) of rule 2a–7.

[167] Paragraph (a)(3)(iv) of rule 2a–7.

[168] Depository institutions are not eligible for protection under the Bankruptcy Code. Section 109 of the Bankruptcy Code (11 U.S.C. 109). Instead, the bank regulatory laws provide for the establishment and conduct of conservatorship and receiverships of depository institutions in default. See, e.g., section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821).

[169] See, e.g., section 559 of the Bankruptcy Code (11 U.S.C. 559).

[170] See 12 U.S.C. 1821(e)(8)(A) and (C) (affording preferential treatment to "qualified financial contracts"), 12 U.S.C. 1821(e)(8)(D)(i) (defining qualified financial contract to include repurchase agreements) and 12 U.S.C. 1821(e)(8)(D)(v) (defining repurchase agreement).

[171] Paragraph (a)(4) of rule 2a–7 as proposed to be amended. Not all collateral that would qualify a repo for preferential treatment under the Federal Deposit Insurance Act would be permitted. Of the mortgage-related securities referred to in 12 U.S.C. 1821(e)(8)(D)(v), only "mortgage related securit[ies]" as defined in section 3(a)(41) of the 1934 Act (15 U.S.C. 78c(a)(41)) would be permitted.

[172] If the collateral does not qualify for special treatment under these statutes, a fund could encounter significant liquidity problems if a large percentage of its assets were invested in a repo with a bankrupt counterparty. The "look through" provisions of the rule may be inappropriate in these circumstances because the credit risks assumed by the fund would be directly tied to the counterparty rather than the issuers of the underlying collateral.

[173] See Release 13380, supra note 8, at n.31. Before the passage of the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA") [Pub. L. No. 98–353], the treatment of a repo under the Bankruptcy Code depended upon whether it was characterized as a secured loan or a purchase-and-sale transaction. If the repo was characterized as a secured loan, the borrower-counterparty would retain at least an equitable interest in the securities, and the securities would be subject to the automatic stay provisions of the Bankruptcy Code, preventing the lender from taking any action against the borrower's property. If the repo was characterized as a purchase-and-sale transaction, the open portion of the repo (the repurchase obligation) would be viewed as an executory contract, which the bankruptcy trustee could reject or accept. Until rejection or acceptance, the buyer (i.e., the fund) would be exposed to the market risk of the securities. Regardless of the repo's characterization, prior to BAFJA a question existed whether "mark-to-market" payments (the payments required to keep the repo fully collateralized) could be voided by the trustee as preferential transfers. The BAFJA amendments removed qualifying repos from operation of the Bankruptcy Code's stay and avoidance provisions.

mechanics of bankruptcy filings and the manner in which these provisions have been applied suggest that funds should continue to analyze the counterparty's credit quality? For example, the protection from the automatic stay provisions offered by section 559 do not apply to stockbrokers or depositary institutions, which constitute the counterparties of many repos entered into by funds. Thus, a liquidation of a stockbroker could result in a repo with that stockbroker being temporarily illiquid.[174] Comment is also requested on whether repos with foreign institutions receive protections similar to those afforded by U.S. insolvency laws such that they should be treated as being fully collateralized for purposes of rule 2a–7.

The definition of "collateralized fully" in Rule 2a–7 would be amended to include a definition of the term "resale price."[175] The resale price would be equal to the price paid to the seller of the securities plus the accrued resale premium—the "interest rate" specified in the repo agreement or the daily amortization of the difference between the purchase price and the resale price.[176] Currently, the rule requires that the market value of the collateral be at least equal to the resale price provided in the repo agreement. This has been interpreted to require that the full repurchase price (including unaccrued interest) must be collateralized at all times, rather than allowing additional margin to be transferred as interest accrues. By contrast, interest on an open repo can be collateralized as it accrues over the term of the repo. The proposed amendment would permit all repos to be collateralized as interest accrues.

Rule 2a–7 also would be amended to provide that a repo that is "collateralized fully" need not always be deemed to be an acquisition of the underlying securities. When a repo permits the counterparty to substitute collateral to replicate the original collateral, determinations that the collateral meets the rule's diversification requirements may be difficult. In these cases, the proposed amendments would permit a fund to look to the counterparty, rather than to the underlying collateral, in meeting the diversification requirements of the rule.[177]

4. U.S. Dollar-Denominated Instruments

To eliminate their exposure to foreign currency risk, money market funds are limited by rule 2a–7 to investing only in "United States dollar-denominated instruments."[178] The purpose of this provision was to preclude exposure of the fund to currency fluctuations. The Commission is proposing to define the term "United States dollar-denominated" to clarify that it means: (1) The payment of interest and principal must be made in U.S. dollars in all circumstances;[179] and (2) an eligible instrument's interest rate may not vary or float with a rate tied to foreign currencies, foreign interest rates, or any index expressed in a currency other than U.S. dollars.[180]

5. Investment in Other Money Market Funds

The Commission is proposing amendments to rule 2a–7 that codify existing staff positions regarding money market fund investment in other money market funds ("acquired funds"). The amendments clarify that shares in other money market funds that comply with rule 2a–7: (i) Are First Tier Securities;[181] and (ii) should be treated as having a rolling maturity equal to the period of time within which the acquired fund is required to make payment upon redemption under applicable law.[182] A shorter maturity may be used if the fund making the investment has a contractual arrangement with the acquired fund for more rapid receipt of redemption proceeds. For diversification purposes, an investment in another money market fund would generally be treated as an investment in any other issuer (and therefore could generally not exceed five percent of the investing fund's assets).[183]

An exception to this treatment would be made for funds that invest substantially all of their assets in shares of another money market fund (the "underlying fund"),[184] in which case the fund would be permitted to "look through" the shares to the assets of the underlying fund.[185] As proposed, such a fund would be deemed to be in compliance with rule 2a–7 for diversification and other purposes if the board of directors reasonably believes that the underlying money market fund is in compliance with the rule. The proposed amendment would not require the board of directors of the fund to monitor every investment decision made by the underlying fund. Rather, the board could review the underlying fund's procedures and obtain regular reports concerning the underlying fund's compliance with the rule.

6. Board Approval of Certain Securities

The 1991 Amendments added a requirement that the board of directors

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[174] In a liquidation of a stockbroker, the Securities Investors Protection Corporation ("SIPC") may request an order from the court barring the closeout of repo transactions with the debtor firm. 15 U.S.C. 78aaa et seq. However, SIPC has developed a policy to address the unwinding of repos in insolvency proceedings designed to minimize the effects of the proceedings on their liquidity when the repo would be a qualified repo under the Bankruptcy Code. See Letter from Michael E. Don, Deputy General Counsel of SIPC, to Robert A. Portnoy, Deputy Executive Director and General Counsel of the Public Securities Association (Feb. 4, 1986).

[175] Paragraph (a)(4)(v) of rule 2a–7 as proposed to be amended.

[176] Under the proposed amendment, the collateralization of "open" repos and those with established repurchase prices would be subject to the same collateralization requirements.

[177] Paragraph (c)(4)(iv)(A) of rule 2a–7 as proposed to be amended.

[178] Paragraph (c)(3) of rule 2a–7.

[179] For example, an instrument that pays interest in Mexican pesos in the event of the devaluation of the peso is currently ineligible for fund investment under the rule. The proposed definition would clarify this interpretation.

[180] For example, an instrument with an interest rate linked to the London Interbank Offered Rate ("LIBOR") for a currency other than United States dollars (*e.g.*, Swiss franc LIBOR) or the consumer price index of another nation would not be eligible for fund investment under rule 2a–7.

[181] See paragraph (a)(11)(iv) of rule 2a–7, as proposed to be amended.

[182] See paragraph (d)(8) of rule 2a–7 as proposed to be amended. Currently, this period would be seven calendar days. See section 22(e) of the 1940 Act (15 U.S.C. 80a–22(e)). Under revisions to rule 15c6–1 effective June 1, 1995, purchases and sales of shares in a fund distributed by a registered broker-dealer must settle within three business days of the trade date. See Rel. No. 34–33023; Investment Company Act Rel. No. 19768 (Oct. 6, 1993) [58 FR 52891 (Oct. 12, 1993)]. Thus, after June 1, 1995, shares of a fund that are distributed by a broker-dealer may be deemed to have a rolling maturity of three days.

In addition, draft staff guides to Forms N–1A and N–3 being published with this Release state that the two money market funds must not have inconsistent investment objectives and policies. For example, a money market fund whose investments are limited to Government securities could not invest in a money market fund that invests primarily in commercial paper and other corporate obligations. See proposed Guide 34 to Form N–1A and proposed Guide 38 to Form N–3.

[183] Investment by one fund in another is limited by section 12(d)(1)(A) of the 1940 Act (15 U.S.C. 80a–12(d)(1)(A)). Section 12(d)(1)(A) provides that a fund may not invest more than ten percent of its assets in securities issued by other investment companies, invest more than five percent of its assets in any single investment company, or acquire more than three percent of the voting securities of another investment company.

[184] The restrictions of Section 12(d)(1)(A) do not apply if the fund making the investment invests all of its assets in the shares of another fund, subject to certain conditions. Section 12(d)(1)(E) (15 U.S.C. 80a–12(d)(1)(E)).

[185] These include feeder funds in "master-feeder" arrangements and certain separate accounts offering variable insurance products. In a "master-feeder" structure, one or more open-end management investment companies with their own service and distribution arrangements invest all of their assets in a single mutual fund or a single series of a mutual fund. In some variable insurance structures, a unit investment trust offers units of interest in variable insurance contracts to investors and invests at least a portion of the proceeds in a mutual fund.

of a taxable fund approve or ratify purchases of unrated securities and securities that are rated by only one NRSRO.[186] The Commission excepted tax exempt funds from the ratification requirement prior to its becoming effective.[187] Seven commenters urged the Commission also to eliminate the requirement for taxable funds, arguing that directors lack the specialized, technical knowledge necessary for credit analysis. They suggested that board involvement in these determinations on a day-to-day basis was inappropriate and that boards should be permitted to delegate this responsibility to portfolio managers. The proposed amendments would eliminate this requirement for taxable funds.

Two commenters recommended eliminating the requirement that the fund board promptly reassess whether a security presents minimal credit risks when the fund's investment adviser becomes aware that an unrated security or second tier security has been given a rating by any NRSRO below the NRSRO's second highest rating category.[188] The Commission requests comment on whether to permit delegation of the reassessment requirement.

7. Recordkeeping

During 1991, the Commission staff conducted special inspections of almost all money market funds to examine, among other things, whether they were performing the credit analysis required to determine that portfolio securities present minimal credit risks.[189] Some funds lacked adequate records to document their analysis and, thus, the Commission could not confirm that these funds had complied with the rule. To permit the Commission to determine compliance with rule 2a–7, the Commission is proposing to amend the rule to specifically require a fund to maintain a written record of the determination that a portfolio instrument presents minimal credit risks and to maintain a record of the NRSRO ratings (if any) used to determine the status of the security under the rule.[190] In addition, funds would be required to keep a written record of their diversification analysis of any ABS the qualifying assets of which consist of the securities of ten or fewer issuers.[191]

The Commission's recent examinations of money market funds also indicate that funds frequently fail to maintain sufficient records regarding the particular features of each security to permit ready determination that the security complies with rule 2a–7. The Commission is proposing an amendment to rule 31a–1 that would require money market funds to maintain in their portfolio investment records information identifying: (1) Each security by its legal name; (2) any liquidity and credit enhancements associated with each security; and (3) any coupons, accruals, maturities, puts, calls, or any other information necessary to identify, value, and account for each security.

8. Defaulted Securities

Rule 2a–7 requires a fund to dispose of defaulted securities as soon as practicable (subject to certain conditions)[192] and to report to the Commission if it holds defaulted securities that, prior to the default, accounted for more than one half of one percent of the fund's assets.[193] Some funds believed that it was unclear whether the seizure of MBLI by New Jersey regulators and MBLI's subsequent refusal to honor its puts constituted a default within the meaning of these requirements. To clarify the application of these requirements, rule 2a–7 would be amended to include "events of insolvency" with respect to the issuer of the security or any put to which the security is subject as events that trigger these obligations.[194]

The Commission is proposing an amendment to the rule that would change the circumstances under which a money market fund must notify the Commission that an issuer of securities held by the fund has defaulted. Rule 2a–7 currently requires funds to report to the Commission by telephone (or fax) and on Form N-SAR all defaults related to the financial condition of the issuer. Under the proposed rule, reporting would be required, in the case of a security subject to a credit enhancement or put, only when the provider of the credit enhancement or put fails to fulfill its obligations, whether by continuing to make principal and interest payments on the security without protest or by paying out the security's full value when it is put back by the fund.

9. Technical Amendments

Additional technical revision to rule 2a–7 are being proposed to clarify the terminology and operation of the rule. References to "instruments" would be changed to "securities." In addition, the definition of "unrated security" would be revised to clarify that if an unrated security becomes rated while held by the fund, the fund may continue to treat it as an unrated security, in the same manner as a fund may continue to determine whether a security rated by a single NRSRO is first or second tier if a second NRSRO rates the security after it is acquired by the fund.[195] Comments are requested on other necessary clarifications.

III. Proposed Revisions to Disclosure Rules

The Commission continues to believe, as reflected in the 1991 Amendments, that investors should be given information that makes it clear that investment in a money market fund is not without risk. The Commission is proposing amendments to the forms and advertising rules used by tax exempt funds and publishing a draft Staff Guide designed to elicit disclosures concerning the specific risks of investing in tax exempt funds.

A. Single State Funds

To alert investors to the greater risks of investing in single state funds, Form N–1A would be amended to require that a single state fund disclose in its prospectus that: (1) Its investments are geographically concentrated; (2) for a single state fund that does not meet the Five Percent Diversification Test, that the fund may invest a significant percentage of its assets in the securities of a single issuer; and (3) that an investment in the fund therefore may be riskier than an investment in other types of money market funds.[196] Comment is requested as to whether single state funds that meet the diversification

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[186] Paragraph (c)(3) of rule 2a–7.

[187] Investment Company Act Rel. No. 18177 (May 31, 1991) (56 FR 26028 (June 6, 1991)). Tax exempt funds argued that the high percentage of tax exempt securities that were either unrated or single-rated would make the requirement impracticable and unduly burdensome for these funds.

[188] Paragraph (c)(5)(i)(A) of rule 2a–7.

[189] Paragraph (c)(3) of rule 2a–7 requires funds to limit portfolio investments to securities determined to present minimal credit risks.

[190] These records would include the proposed "minimal risk" analysis with respect to certain adjustable rate instruments. See supra note 159 and accompanying text. A fund would be required to retain these records in a readily accessible location for a period of three years after the date the fund acquired the instrument or last reviewed its credit risks, whichever is later. See paragraphs (c)(8)(iii) and (iv) of rule 2a–7 as proposed to be amended.

[191] Paragraph (c)(8)(v) of rule 2a–7 as proposed to be amended. The Commission is proposing to require that the diversification requirements be met as to issuers of qualifying assets when the qualifying assets consist of the securities of no more than ten issuers. See supra Section II.C.4.d.

[192] Paragraph (c)(5)(ii) of rule 2a–7.

[193] Paragraph (c)(5)(iii) of rule 2a–7.

[194] Id. "Event of insolvency" would be defined in paragraph (a)(10) of rule 2a–7 as proposed to be amended.

[195] Paragraph (a)(29) of rule 2a–7 as proposed to be amended.

[196] Item 4(c) of Form N–1A as proposed to be amended.

requirements of section 5(b)(1) of the 1940 Act should be permitted to provide modified risk disclosure.

B. Disclosure of Exposure to Put Providers

A substantial portion of many money market fund portfolios is supported by credit and liquidity enhancements from third parties, generally LOCs issued by domestic and foreign banks.[197] As a result, the credit quality of these portfolios is largely dependent on the credit quality of banks. Because investors may believe that the designation "tax exempt" signifies that the credit quality of the portfolio is more closely tied to that of municipal and state issuers, the Commission is publishing for comment an amendment to Staff Guide 21 of Form N–1A that would interpret the form as requiring a fund to disclose in its prospectus the relationship between the credit quality of put providers and that of the fund's portfolio; that letters of credit are not necessarily subject to federal deposit insurance; and that adverse developments in the banking industry may adversely affect the credit quality of the portfolio and the fund's ability to maintain a stable net asset value and share price. These requirements would apply where more than forty percent of a fund's portfolio is subject to puts. Comment is requested on whether funds should be required to make any other disclosures concerning the composition of their portfolios, such as the extent to which the fund invests in unrated securities.

C. Identification of Put Providers

Investment company financial statements include a "portfolio schedule" of all securities held by the fund.[198] A portfolio schedule lists the name of the issuer and the title of the issue, but is not required to list the name of the party providing a put or guarantee with respect to the security.[199] Because the credit quality of a financial institution providing a put is important in assessing an instrument's quality, the Commission is proposing that the portfolio schedules of money market funds include the names of parties providing puts.[200] Identifying these institutions would make the portfolio schedules of money market funds more meaningful to investors. Comment is requested on whether this disclosure should not be required if the put is a standby commitment designed only to provide liquidity. In addition, should the portfolio schedule be required to state the ratings of the securities held by the fund? Finally, should this disclosure be required for all investment companies?

D. Risk Disclosure in Certain Advertisements

Funds are required to include in certain advertisements and sales literature a statement that an investment in a money market fund is not insured or guaranteed by the U.S. Government and there can be no assurance that the fund will maintain a stable net asset value.[201] The proposed amendments would extend this requirement to "tombstone" advertisements under rule 134 under the 1933 Act.

IV. Proposed Exemptive Rule Governing Purchases of Certain Portfolio Instruments by Affiliated Persons

When money market funds have held a defaulted security, fund advisers or related persons generally have repurchased the security from the fund at the security's principal amount plus accrued interest (or amortized cost value) to avoid any fund shareholder loss.[202] These transactions came within section 17(a)(2) of the 1940 Act (15 U.S.C. 80a–17(a)(2)), which prohibits an affiliated person of a fund from knowingly purchasing a security from the fund in the absence of a Commission exemption.[203] Nevertheless, these transactions appeared to be reasonable, fair, in the best interests of fund shareholders, and consistent with the actions that a fund should take in the event of a default of a portfolio security.[204] Thus, the staff of the Division of Investment Management has advised the parties to these transactions that the staff would not recommend enforcement action to the Commission if these transactions were consummated.

The Commission now is proposing new rule 17a–9 under the 1940 Act to exempt these types of transactions from section 17(a). The proposed exemption would apply when (1) The security is no longer an eligible security; (2) the purchase price is paid in cash; and (3) the purchase price is equal to the greater of the amortized cost of the security or its market price (in each case, including accrued interest). Funds using the exemptive rule would continue to be required to notify the Commission in the event of a default with respect to portfolio securities that account for one half of one percent or more of a fund's assets before the occurrence of the default.[205] Comment is requested on the scope of the proposed exemption and these conditions. Should the exemption be available when the fund board has determined that a security no longer presents minimal credit risks?[206]

V. Conforming Amendment

Rule 12d3–1 under the 1940 Act (17 CFR 270.12d3–1) provides exemptive relief to permit investment companies to purchase or otherwise acquire securities issued by persons engaged in securities related activities, subject to certain limitations. Under rule 12d3–1, an investment company, including any money market fund, may acquire puts issued by persons engaged in securities related activities, provided that the company complies with the diversification requirements in rule 2a–7.[207] Rule 2a41–1 (17 CFR 270.2a41–1) under the 1940 Act allows investment companies to assign a fair value of zero to standby commitments under certain conditions.[208] The Commission is proposing to amend rule 12d3–1 to reflect the proposed diversification limitations,[209] and to amend rule 2a41–1 to revise the reference therein to rule 2a–7.

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[197] Recent money market fund inspections suggest that approximately seventy percent of national fund and sixty-one percent of single state fund assets are subject to unconditional credit enhancements.

[198] Financial statements are included in a fund's Statement of Additional Information that is part of the fund's registration statement under the Securities Act of 1933 and must be delivered on request to prospective investors. See Items 1 and 23 of Form N–1A (17 CFR 239.15A and 274.11A). They are also included in fund semi-annual and annual reports to shareholders. See rule 30d–1 under the 1940 Act (17 CFR 270.30d–1).

[199] See section 210.12–12 of Regulation S–X.

[200] 17 CFR 210.12–12 as proposed to be amended. Funds would also be required to maintain a written record of the liquidity and credit enhancements associated with each portfolio security under the proposed amendment to rule 31a–1. See supra Section II.D.7.

[201] Paragraph (a)(7) of rule 482 (17 CFR 230.482(a)(7)) and introductory paragraph of rule 34b-1 (17 CFR 270.34b-1).

[202] See supra notes 12 and 28 and accompanying text.

[203] The definition of "affiliated person" is contained in section 2(a)(3) of the 1940 Act (15 U.S.C. 80a–2(a)(3)).

[204] Paragraph (c)(5)(ii) of rule 2a–7 requires funds holding a defaulted security to dispose of the security as soon as practicable consistent with achieving an orderly disposition of the security, unless the fund board concludes that disposal would not be in the best interests of the fund.

[205] Paragraph (c)(5)(iii) of rule 2a–7.

[206] As in the case of a default and a security no longer being an eligible security, in this instance the rule requires the fund to dispose of the security as soon as practicable. See paragraph (c)(5)(ii) of rule 2a–7.

[207] See Release 14983, supra note 64. These diversification requirements were not changed by the 1991 Amendments except to make them applicable to taxable funds with respect to 100 percent of these funds' assets.

[208] Id.

[209] See supra Section II.C.2.a.

VI. Transition Period

If the proposed rule and form amendments are adopted, the Commission would expect to make the amendments effective ninety days after publication in the Federal Register to provide registrants, issuers, and other participants in the money markets with an appropriate period of time to make any changes required by the rule. Comment is requested on whether ninety days would be sufficient or whether a shorter or longer period would be appropriate.

VII. General Request for Comments

Any interested persons wishing to (1) submit written comments on the proposed rule and form changes that are the subject of this Release; (2) suggest additional changes (including changes to provisions of rule 2a–7 that the Commission is not proposing to amend); or (3) submit comments on other matters that might have an effect on these proposals, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

VIII. Cost/Benefit of the Proposal

The Commission believes that the proposals discussed above will not substantially increase costs for money market funds. Whatever increased costs are incurred should be outweighed by the benefits of increased money market fund safety. Most national funds already comply with the Five Percent Diversification test, and those national funds not in compliance should be able to adapt to the proposed limit without great expense. Because most single state fund assets consist of first tier securities, these funds are not likely to incur significant additional costs if the proposal to limit their investments to first tier securities is adopted.

The Commission believes that although most funds meet the proposed quality and diversification requirements for put providers, a significant minority of funds may not. The Commission requests comments on the extent to which finding alternative put providers will increase fund costs. The conditions proposed with respect to ABSs may impose some additional costs on funds, but it is not expected that these costs will be significant and they should be outweighed by the benefits of clarifying the conditions under which funds may invest in these instruments, which may facilitate development of the ABSs markets. The proposed rescission of the requirement that boards of directors of taxable funds approve or ratify unrated and single-rated securities should reduce fund costs to a limited extent. Most funds currently meet the proposed recordkeeping requirements, and these should impose only modest costs on funds. The proposed disclosure requirements would not impose any expense for funds, since it is anticipated that additional disclosure will be permitted to be added when the funds make their annual updates. These costs should be outweighed by the benefits of additional disclosure. The proposed exemptive rule governing purchases of certain portfolio securities from funds by fund affiliates should produce savings in administrative expenses for those funds that hold securities that are no longer eligible for fund investment and whose advisers wish to repurchase the security as permitted by the rule.

The Commission requests specific comment on its assessment of the costs and benefits associated with the proposal, including specific estimates of costs and benefits.

IX. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis explains that in February 1991 the Commission adopted amendments to rule 2a–7 to tighten the risk-limiting conditions of the rule. These amendments were applicable primarily to taxable money market funds. Thereafter, the Commission examined the characteristics of tax exempt funds and the markets in which they trade to determine whether the same or similar amendments should apply to tax exempt funds. This examination has revealed certain areas of concern that have led the Commission to propose further amendments to rule 2a–7 applicable primarily to tax exempt funds. The analysis describes the characteristics of tax exempt funds and explains that the safety of these funds would be increased by application of certain risk-limiting conditions tailored specifically to their characteristics.

The analysis summarizes the proposed amendments to rule 2a–7 and related rules and forms and a new proposed rule. The amendments to rule 2a–7 would tighten the conditions of the rule relating to the quality and diversity of tax exempt fund investments, including puts. The amendments would require funds to reevaluate at least annually the credit risks of certain long-term portfolio investments, and limit investments in such securities to those whose issuers supply periodic financial and other information. The amendments to related rules and forms would require ongoing credit reviews and certain other procedures with respect to fund investments in securities subject to puts. A new exemptive rule would permit funds to sell securities that are no longer eligible securities to advisers and other affiliated persons without obtaining exemptive relief.

The analysis states that the objectives of the proposals are to (1) tighten the quality standards in the rule; (2) reduce the exposure of tax exempt funds to the credit risks posed by investment in a single issuer; (3) limit risks associated with investing in securities subject to puts, including ABSs; (4) provide for continuing determinations with respect to the credit quality of issuers of certain long-term securities; (5) rationalize the provisions of the rule relating to the determination of maturity of certain instruments; (6) allow fund boards of directors to delegate certain portfolio management responsibilities, subject to oversight; (7) improve fund recordkeeping; and (8) limit the risks associated with investing in repurchase agreements. The objectives of the amendments to related rules and forms are intended to improve money market fund disclosure relating to (1) fund investments in securities subject to puts; and (2) lack of diversification of certain single state funds. The objective of proposing a new exemptive rule under section 17(a) is to facilitate certain transactions between funds and their affiliates that benefit shareholders.

The analysis states that as of September 29, 1993, 211 money market funds are small entities for purposes of rule 0–10 of the 1940 Act (17 CFR 270.0–10). Of these 211 funds, ninety-three were tax exempt funds. The proposed amendments would primarily affect tax exempt funds.

The analysis states that the reporting, recordkeeping and other compliance requirements of the proposed amendments should not be significantly greater than those currently imposed by rule 2a–7, and that the additional costs, if any, should not be any greater for small money market funds than for other money market funds. The analysis further states that the Commission believes that there are no duplicative, overlapping or conflicting rules.

The analysis discusses the significant alternatives to the proposed amendments that would accomplish their objectives while minimizing any significant economic effect of the proposals on small funds. For example, the analysis states that the Commission considered the establishment of different compliance or reporting requirements or timetables that would

take into account the resources available to small money market funds, and the simplification of compliance and reporting requirements under rule 2a–7 for small money market funds. The use of performance rather than design standards was considered. Lastly, the Commission considered the alternative of exempting small money market funds from one or more of the conditions of the rule. The analysis concludes that these alternatives would not accomplish the objectives of the rule, nor would the alternatives be consistent with the statutory mandate of the Commission under the 1940 Act. A copy of the analysis may be obtained by contacting Martha H. Platt, Office of Disclosure and Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

X. Statutory Authority

The Commission is proposing to amend rule 2a–7 under the exemptive authority set forth in sections 6(c) (15 U.S.C. 80a–6(c)), 22(c) (15 U.S.C. 80a–22(c)), 34(b) (15 U.S.C. 80a–33(b)), and 38(a) (15 U.S.C. 80a–37(a)) of the Investment Company Act of 1940. The authority citations for the amendments to the rules and forms precede the text of the amendments.

XI. Appendices

Appendix A

The following table sets forth the terminology used by the NRSROs to characterize their highest ratings for taxable short-term debt:

Moody's (P–1)	S&P (A–1)	Fitch (F–1)	D&P (Duff–1)	IBCA (A1+)	TBW (TBW–1)
Superior	Strong	Very strong	Very high certainty of timely repayment	Very highest quality	Very strong

APPENDIX B

The following table sets forth the ratings categories of the principal NRSROs that rate tax-exempt notes and the meaning that the NRSROs ascribe to the rating:

	Moody's	S&P	Fitch
MIG–1	Best quality		
SP–1		Very strong or strong	
F–1			Very strong
MIG–2	High quality		
SP–2		Satisfactory	
F–2			Good
MIG–3	Favorable quality		
SP–3		Speculative	
F–3			Fair
MIG–4	Adequate quality		
F–S			Weak
SG	Speculative quality		
D			Actual or imminent default

XII. Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 210, 230, 239, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend chapter II, title 17 of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37a, unless otherwise noted.

2. Section 210.12–12 is amended by adding the following as the second sentence in footnote two:

§ 210.12–12 Investment in securities of unaffiliated issuers

* * * * *

2 * * * In the case of a money market fund, also identify any institution providing a put (as defined in rule 2a–7 under the Investment Company Act of 1940 [§ 270.2a–7 of this chapter]) or guarantee with respect to a portfolio security and give a brief description of the nature of the put (e.g., unconditional demand feature, conditional demand feature, guarantee, letter of credit, or bond insurance). * * *

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 781, 78m, 78n, 78o, 78w, 79*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

4. Section 230.134 is amended by adding paragraph (e) to read as follows:

§ 230.134 Communications not deemed a prospectus.

* * * * *

(e) In the case of an investment company registered under the Investment Company Act of 1940 that holds itself out as a "money market fund," a communication used under this section shall contain the disclosure required by § 230.482(a)(7).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for part 270 is amended by removing the third paragraph in the sub-authority to read as follows:

Authority: 15 U.S.C. 80a–1 et seq., 80a–37, 80a–39 unless otherwise noted;

* * * * *

6. Section 270.2a–7 is revised to read as follows:

§ 270.2a–7 Money market funds.

(a) *Definitions.*

(1) *Amortized Cost Method* of valuation shall mean the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(2) *Asset Backed Security* shall mean a fixed income security issued by a Special Purpose Entity (as hereinafter defined), substantially all of the assets of which consist of Qualifying Assets (as hereinafter defined). *Special Purpose Entity* shall mean a trust, corporation, partnership or other entity organized for the sole purpose of issuing fixed income securities which entitle their holders to receive payments that depend primarily on the cash flow from Qualifying Assets, but does not include a registered investment company. *Qualifying Assets* shall mean financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(3) *Business day* shall mean any day, other than Saturday, Sunday, or any customary business holiday.

(4) *Collateralized Fully* in the case of a repurchase agreement shall mean that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the money market fund reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price (as defined hereinafter) provided in the agreement; and

(ii) The money market fund or its custodian either has actual physical possession of the collateral or, in the case of an instrument registered on a book entry system, the book entry is maintained in the name of the money market fund or its custodian; and

(iii) The money market fund retains an unqualified right to possess and sell the collateral in the event of a default by the seller; and

(iv) The collateral consists entirely of securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency thereof, and/or certificates of deposit, bankers' acceptances which are eligible for acceptance by a Federal Reserve Bank, and, if the seller is a depositary institution as defined in 12 U.S.C. 1813(c), mortgage related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)) that, at the time the repurchase agreement is entered into, are rated in the highest rating category by the Requisite NRSROs; and

(v) *Resale Price* shall mean the purchase price paid to the seller of the securities plus the accrued resale premium on such purchase price. The accrued resale premium shall be the amount specified in the repurchase agreement or the daily amortization of the difference between the purchase price and the resale price specified in the repurchase agreement.

(5) A *Conditional Demand Feature* shall mean a Conditional Put that is also a Demand Feature.

(6) A *Conditional Put* shall mean a Put that is not an Unconditional Put, provided that its exercise is subject only to one or more of the following conditions:

(i) A default in the payment of principal of or interest on the underlying security;

(ii) An Event of Insolvency with respect to the issuer of the underlying security or guarantor of the underlying security;

(iii) The downgrading of the underlying security or a guarantor of the underlying security by more than two full rating categories by an NRSRO; and

(iv) In the case of a security the interest payments on which purport to be exempt from federal income tax, a determination of taxability by the Internal Revenue Service.

(7) *Conduit Security* shall mean a security issued by a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality thereof, which is not:

(i) Payable from the revenues of such governmental unit;

(ii) Unconditionally guaranteed by such governmental unit;

(iii) Related to a project or facility owned and operated by such governmental unit; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned by and under the control of such governmental unit.

(8) *Demand Feature* shall mean a Put that may be exercised either:

(i) At any time on no more than 30 days' notice; or

(ii) At specified intervals not exceeding 397 calendar days and upon no more than 30 days' notice;

Provided, however, that in the case of an Asset Backed Security, a feature permitting the holder of the Asset Backed Security to receive principal and interest within thirteen months of making demand shall be deemed a Demand Feature.

(9) *Eligible Security* shall mean:

(i) A security with a remaining maturity of 397 days or less that is rated (or that has been issued by an issuer that is rated with respect to a class of Short-term debt obligations, or any debt obligation within that class, that is comparable in priority and security with the security) by the Requisite NRSROs in one of the two highest rating categories for Short-term debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(ii) A security:

(A) That at the time of issuance was a Long-term debt obligation but that has a remaining maturity of 397 calendar days or less, and

(B) Whose issuer has received from the Requisite NRSROs a rating, with respect to a class of Short-term debt obligations (or any debt obligation within that class) that is now comparable in priority and security with the security, in one of the two highest rating categories for Short-term debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(iii) An Unrated Security (other than a security subject to a Demand Feature or an Asset Backed Security) that is of comparable quality to a security meeting the requirements of paragraphs (a)(9) (i) or (ii) of this section, as determined by the money market fund's board of directors; *Provided, however,* that:

(A) The board of directors may base its determination that a Standby Commitment that is not a Demand Feature is an Eligible Security upon a finding that the issuer of the commitment presents a minimal risk of default;

(B) A security that at the time of issuance was a Long-term debt obligation but that has a remaining maturity of 397 calendar days or less and that is an Unrated Security is not an Eligible Security if the security has a Long-term rating from any NRSRO that is not within the NRSRO's two highest categories (within which there may be sub-categories or gradations indicating relative standing);

(C) An Asset Backed Security shall not be an Eligible Security unless:

(1) It has short-term debt rating from an NRSRO and,

(2) In the case of an Asset Backed Security that has a final maturity of greater than 397 days that is subject to a Conditional Demand Feature and the Qualifying Assets of which do not consist of securities that have a long-term debt rating from an NRSRO; and

(D) A security that is subject to a Demand Feature shall not be an Eligible Security unless the Demand Feature has received a rating from an NRSRO (or the issuer of the Demand Feature has received from an NRSRO a rating with respect to a class of short-term debt obligations or any debt obligation within that class that is comparable in priority and security to the Demand Feature).

(10) *Event of Insolvency* shall mean, with respect to an issuer or guarantor, an admission of insolvency, the application by the issuer or guarantor for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the issuer of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors, or the institution of similar proceedings by another person (other than a governmental agency responsible for regulating the activities of the issuer or guarantor) which is not contested by the issuer or guarantor.

(11) *First Tier Security* shall mean any Eligible Security that:

(i) Is rated (or that has been issued by an issuer that is rated with respect to a class of Short-term debt obligations, or any debt obligation within that class, that is comparable in priority and security with the security) by the Requisite NRSROs in the highest rating category for Short-term debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(ii) Is a security described in paragraph (a)(9)(ii) of this section whose issuer has received from the Requisite NRSROs a rating, with respect to a class of Short-term debt obligations (or any debt obligation within that class) that now is comparable in priority and security with the security, in the highest rating category for Short-term debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(iii) Is an Unrated Security that is of comparable quality to a security meeting the requirements of paragraphs (a)(11)(i) and (ii) of this section, as determined by the fund's board of directors; or

(iv) Is a security issued by a registered investment company that is a money market fund.

(12) *Floating Rate Security* shall mean a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate (such as a bank's designated prime lending rate) changes and which, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its par value.

(13) *Government Security* shall mean any Government security as defined in section 2(a)(16) of the Act.

(14) *Long-term* shall mean having a remaining maturity greater than 366 days.

(15) *NRSRO* shall mean any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi) (E), (F) and (H) of § 240.15c3–1 of this chapter that is not an affiliated person, as defined in section 2(a)(3)(c) of the Act (15 U.S.C. 80a–2(a)(3)(c)), of the issuer of, or any insurer, guarantor or provider of credit support for, the security.

(16) *Penny-Rounding Method* of pricing shall mean the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(17) A *Put* shall mean a right to sell a specified underlying security or securities within a specified period of time and at an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise, that may be sold, transferred or assigned only with the underlying security or securities.

(18) *Refunded Security* shall mean a debt security the principal and interest payments of which are to be paid by Government Securities ("deposited securities") that have been irrevocably placed in an escrow account pursuant to agreement between the issuer of the debt security and an escrow agent that is not an affiliated person, as defined in section 2(a)(3)(c) of the Act (15 U.S.C. 80a–2(a)(3)(c)), of the issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow agent; *provided* that:

(i) The deposited securities shall not be redeemable prior to their final maturity;

(ii) At the time the deposited securities are placed in the escrow account, an independent certified public accountant or an NRSRO shall have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities; and

(iii) The escrow agreement shall prohibit the substitution of the deposited securities unless the substituted securities are Government Securities and, at the time of such substitution, the escrow agent shall have received a certification substantially the same as that required by paragraph (a)(18)(ii) of this section which certification shall give effect to the substitution.

(19) *Requisite NRSROs* shall mean:

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer, or

(ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund purchases or rolls over the security, that NRSRO.

(20) *Second Tier Security* shall mean any Eligible Security that is not a First Tier Security.

(21) *Short-term* shall mean having a remaining maturity of 366 days or less.

(22) *Single State Fund* shall mean a Tax Exempt Fund that holds itself out as primarily distributing income exempt from the income taxes of a specified state or locality.

(23) *Standby Commitment* shall mean a Put that entitles the holder to achieve same day settlement and to receive an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise.

(24) *Tax Exempt Fund* shall mean any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(25) *Total Assets* shall mean, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund, the total market-based value of its assets.

(26) An *Unconditional Demand Feature* shall mean an Unconditional Put that is also a Demand Feature.

(27) An *Unconditional Put* shall mean a Put, any guarantee, or letter of credit or similar unconditional credit enhancement that by its terms would be readily exercisable in the event of a default in payment of principal or

interest on the underlying security or securities.

(28) *United States Dollar-Denominated* shall mean, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(29) An *Unrated Security* shall mean:

(i) A security with a remaining maturity of 397 days or less issued by an issuer that did not, at the time it was acquired or rolled over by the fund, have a current short-term rating assigned by any NRSRO:

(A) To the security, or

(B) To the issuer of the security with respect to a class of Short-term debt obligations (or any debt obligation within that class) that is comparable in priority and security with the security, or a Demand Feature with respect to the security; and

(ii) A security:

(A) That at the time of issuance was a Long-term debt obligation but that has a remaining maturity of 397 calendar days or less, and

(B) Whose issuer had not at the time it was acquired or rolled over by the fund received from any NRSRO a rating with respect to a class of Short-term debt obligations (or any debt obligation within that class) that now is comparable in priority and security with the security; and

(iii) A security that is a rated security and is the subject of an external credit support agreement (including an arrangement by which the security has become a Refunded Security) that was not in effect when the security (or the issuer) was assigned its rating unless the security has a rating from an NRSRO reflecting the existence of the credit support agreement.

(iv) A security is not an Unrated Security if any Short-term debt obligation ("reference security") that is issued by the same issuer and is comparable in priority and security with that security is rated by an NRSRO. The status of such security as an Eligible Security or First Tier Security shall be the same as that of the reference security.

(30) A *Variable Rate Security* shall mean a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and which, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its par value.

(b) *Holding Out.* It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)) to:

(1) Adopt the term *money market* as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or

(2) Hold itself out to investors as, or adopt a name which suggests that it is, a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of this section. For purposes of this paragraph, a name which suggests that a registered investment company is a money market fund or the equivalent thereof shall include one which uses such terms as "cash," "liquid," "money," "ready assets" or similar terms.

(c) *Share Price Calculations.* The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by any registered investment company ("money market fund"), notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of §§ 270.2a–4 and 270.22c–1 thereunder, may be computed by use of the Amortized Cost Method or the Penny-Rounding Method; *Provided, however,* that:

(1) *Board Findings.* The board of directors of the money market fund shall determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the Amortized Cost Method or the Penny-Rounding Method, and that the money market fund will continue to use such method only so long as the board of directors believes that it fairly reflects the market-based net asset value per share.

(2) *Portfolio Maturity.* The money market fund shall maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share or price per share; *Provided, however,* that the money market fund will not:

(i) Except as provided in paragraph (c)(2)(ii) of this section, purchase any instrument with a remaining maturity of greater than 397 calendar days, or

(ii) In the case of a money market fund not using the Amortized Cost Method, purchase a Government Security with a remaining maturity of greater than 762 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds ninety days.

(3) *Portfolio Quality.* The money market fund shall limit its portfolio investments, including Puts and repurchase agreements, to those United States Dollar-Denominated securities that its board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to the rating assigned to such securities by an NRSRO) and which are at the time of acquisition Eligible Securities and, in the case of a Single State Fund, First Tier Securities. For purposes of this section:

(i) A security that is subject to an Unconditional Demand Feature may be determined to be an Eligible Security or a First Tier Security based solely on whether the Unconditional Demand Feature is an Eligible Security or First Tier Security, as the case may be; and

(ii) A security that is subject to a Conditional Demand Feature may be determined to be an Eligible Security or a First Tier Security only if:

(A) The Conditional Demand Feature is an Eligible Security or First Tier Security, as the case may be, and,

(B) The security (or the Long-term debt securities of the issuer of the security subject to the Conditional Demand Feature) has been rated by the Requisite NRSROs in one of the two highest rating categories for Long-term debt obligations (within which there may be sub-categories or gradations indicating relative standing), or, if unrated, are determined to be of comparable quality by the money market fund's board of directors.

(4)(i) *Portfolio Diversification: Taxable Funds.* (A) Immediately after the acquisition of any security (other than a Government Security), a money market fund that is not a Tax Exempt Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however,* that a money market fund may invest more than five percent of its Total Assets in

the First Tier Securities of a single issuer for a period of up to three Business days after the purchase thereof; *Provided, further,* that such investments made by the money market fund in accordance with the foregoing proviso at any time may not exceed twenty-five percent of the money market fund's Total Assets; and

(B) In the event that such security is a Second Tier Security, the money market fund shall not have invested more than:

(*1*) The greater of one percent of its Total Assets or one million dollars in securities issued by that issuer which, when acquired by the money market fund (either initially or upon any subsequent roll over) were Second Tier Securities, and

(*2*) Five percent of its Total Assets in securities which, when acquired by the money market fund (either initially or upon any subsequent roll over) were Second Tier Securities.

(ii) *Portfolio Diversification: National Funds.* (A) Immediately after the acquisition of any security (other than a Government Security), a Tax Exempt Fund that is not a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security, *Provided, however,* that a fund may invest more than five percent of its Total Assets in the First Tier Securities of a single issuer for a period of up to three Business days after the purchase thereof; *Provided, further,* that such investments made by the money market fund in accordance with the foregoing proviso at any time may not exceed twenty-five percent of the fund's Total Assets;

(B) In the event that such security is a Second Tier Security that is a Conduit Security, the money market fund shall not have invested more than:

(*1*) The greater of one percent of its Total Assets or one million dollars in securities issued by that issuer which, when acquired by the money market fund (either initially or upon any subsequent roll over) were Second Tier Securities, and

(*2*) Five percent of its Total Assets in securities which, when acquired by the money market fund (either initially or upon any subsequent roll over) were Second Tier Securities that are Conduit Securities.

(iii) *Portfolio Diversification: Puts.* Immediately after the acquisition of any Put or security subject to a Put, no more than ten percent of the money market fund's Total Assets may be invested in securities issued by or subject to Puts from the institution that issued such Put. In addition, if at the time of its acquisition, such Put (or the security, after giving effect to the Put) was a Second Tier Security, the fund shall not, after giving effect to the acquisition of such Put, have invested more than five percent of its Total Assets in securities issued by or subject to Puts from the institution that issued such Put.

(iv) *Portfolio Diversification: Certain Calculations.* For purposes of making calculations under this paragraph (c)(4):

(A) The acquisition of a repurchase agreement which provides for the repurchase of underlying securities at a date certain not later than one year after the purchase of the underlying securities may be deemed to be an acquisition of the underlying securities, provided that the obligation of the seller to repurchase the securities from the money market fund is Collateralized Fully;

(B) The acquisition of a Refunded Security shall be deemed to be an acquisition of a Government Security, provided that the fund has not invested more than twenty-five percent of its assets in the Refunded Securities of a single issuer;

(C) A Conduit Security shall be deemed to be issued by the person ultimately responsible for payments of interest and principal on the security;

(D) If a security is subject to Puts from more than one institution, the diversification requirements of paragraph (c)(4)(iii) of this section shall be satisfied as to each institution and each institution shall be deemed to have guaranteed the entire principal amount of the security unless the obligation of the institution is otherwise limited (except as provided in paragraph (c)(4)(iv)(F) of this section);

(E) The acquisition of an Asset Backed Security shall be deemed to be an acquisition of the securities comprising the Qualifying Assets unless the Qualifying Assets consist of securities issued by more than ten issuers, in which case it shall be deemed to be an acquisition of a security issued by the institution that deposited the assets in the Special Purpose Entity that issued the Asset Backed Security; and

(F) Each institution providing a credit enhancement with respect to an Asset Backed Security (whether the enhancement consists of a Put, a line of credit or an obligation to maintain specified levels of collateral) shall be deemed to be the issuer of a Put with respect to the entire principal amount of the Asset Backed Security.

(v) A money market fund substantially all of the assets of which consist of shares of another money market fund acquired in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)) shall be deemed to be in compliance with this section if the board of directors reasonably believes that the money market fund in which it has invested is in compliance therewith.

(vi) A money market fund that satisfies the applicable diversification requirements of paragraph (c)(4) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules promulgated thereunder.

(5)(i) *Downgrades.* (A) In the event that:

(*1*) A portfolio security of a money market fund (other than a Single State Fund) ceases to be a First Tier Security (either because it no longer has the highest rating from the Requisite NRSROs or, in the case of an Unrated Security, the board of directors of the money market fund determines that it is no longer of comparable quality to a First Tier Security), or

(*2*) The money market fund's investment adviser (or any person to whom the money market fund's board of directors has delegated portfolio management responsibilities) becomes aware that any Unrated Security or Second Tier Security held by the money market fund has, since the security was acquired by the fund, been given a rating by any NRSRO below the NRSRO's second highest rating category, the board of directors of the money market fund shall reassess promptly whether such security presents minimal credit risks and shall cause the money market fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders.

(B) The reassessments required by paragraph (c)(5)(i)(A) of this section shall not be required if, in accordance with the procedures adopted by the board of directors, the security is disposed of (or matures) within five business days of the specified event and, in the case of events specified in paragraph (c)(5)(i)(A)(*2*) of this section, the board is subsequently notified of the adviser's actions.

(C) In the event that after giving effect to a rating downgrade, more than five percent of the fund's Total Assets are invested in securities issued by or subject to Demand Features from a single institution that are Second Tier Securities, the board of directors shall cause the fund to reduce its investment in securities issued by or subject to Demand Features from that institution to five percent of its Total Assets by exercising the Demand Features at the next succeeding exercise date(s).

(ii) *Defaults and other events.* In the event:

(A) Of a default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(B) A portfolio security of a money market fund ceases to be an Eligible Security or, in the case of a Single State Fund, a First Tier Security;

(C) It has been determined that a portfolio security no longer presents minimal credit risks;

(D) Of an Event of Insolvency with respect to the issuer of or the provider of any Put with respect to a portfolio security; or

(E) The fund is unable to obtain the information specified by paragraphs (c)(6)(ii)(E) or (c)(7)(ii)(B) of this section concerning the issuer of a security subject to an Unconditional Demand Feature prior to the last time that the Unconditional Demand Feature can be exercised or upon the occurrence of a significant adverse change in the credit quality of the issuer of the Unconditional Demand Feature; absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security), the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any Demand Feature or otherwise.

(iii) *Notice to the Commission.* In the event of a default with respect to one or more portfolio securities (other than an immaterial default unrelated to the financial condition of the issuer) or an Event of Insolvency with respect to the issuer of the security or any Put to which it is subject, where immediately before default the securities (or the securities subject to the Put) accounted for 1/2 of 1 percent or more of a money market fund's Total Assets, the money market fund shall promptly notify the Commission of such fact and the actions the money market fund intends to take in response to such situation. Notification under this paragraph shall be made telephonically or by means of a facsimile transmission, followed by letter sent by first class mail, directed to the attention of the Director of the Division of Investment Management.

(iv) *Defaults for Purposes of Paragraphs (c)(5) (ii) and (iii).* For purposes of paragraphs (c)(5) (ii) and (iii) of this section, an instrument subject to a Demand Feature or unconditional credit enhancement shall not be deemed to be in default (and an Event of Insolvency with respect to the security shall not be deemed to have occurred) if:

(A) In the case of an instrument subject to a Demand Feature, the Demand Feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest, or

(B) The provider of the credit enhancement is continuing to make payments as due on the instrument without protest.

(6) *Required Procedures: Amortized Cost Method.* In the case of a money market fund using the Amortized Cost Method:

(i) In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(ii) Included within the procedures adopted by the board of directors shall be the following:

(A) Written procedures providing that the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute which reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions; periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and maintenance of records of the determination of deviation and the board's review thereof; and

(B) In the event such deviation from the money market fund's amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the board of directors shall promptly consider what action, if any, should be initiated by the board of directors; and

(C) Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results; and

(D) In the case of a security for which maturity is determined by reference to a Demand Feature, written procedures requiring ongoing review of the security's continued minimal credit risks, which review must be based on, among other things, financial data for the most recent fiscal year of the issuers of the Demand Feature and, in the case of a security subject to a Conditional Demand Feature, the security, whether publicly available or provided under the terms of the security's governing documentation; and

(E) In the case of a security subject to an Unconditional Demand Feature, written procedures designed to assure that the fund has access to sufficient financial and other information concerning the issuer of the security subject to the Demand Feature to permit the fund to perform a credit analysis of the issuer:

(*1*) In the event of a significant adverse change in the credit quality of the issuer of the Unconditional Demand Feature; and

(*2*) Prior to the last time that the Demand Feature can be exercised or the expiration of any letter of credit or other credit enhancement securing the Demand Feature, unless the credit enhancement will be timely substituted for or renewed in a manner that preserves the security's eligibility for purposes of this section; and

(F) In the case of a Variable Rate or Floating Rate Security that does not have a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1) or (d)(2) of this section, written procedures requiring periodic review of whether the security, upon readjustment of its interest rate, can reasonably be expected to have a market value that approximates its par value.

(7) *Required Procedures: Penny-Rounding Method.* (i) In the case of a money market fund using the Penny-Rounding Method, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to assure to the extent reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the

money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the board of directors.

(ii) The board of directors shall also:

(A) In the case of a security for which maturity is determined by reference to a Demand Feature, adopt written procedures requiring ongoing review of the security's continued minimal credit risks, which review must be based on, among other things, financial data for the most recent fiscal year of the issuers of the Demand Feature and, in the case of a security subject to a Conditional Demand Feature, the security, whether publicly available or provided under the terms of the security's governing documentation;

(B) In the case of a security subject to an Unconditional Demand Feature, adopt written procedures designed to assure that the fund has access to sufficient financial and other information concerning the issuer of the security subject to the Demand Feature to permit the fund to perform a credit analysis of the issuer:

(*1*) In the event of a significant adverse change in the credit quality of the issuer of the Unconditional Demand Feature; and

(*2*) Prior to the last time that the Demand Feature can be exercised or the expiration of any letter of credit or other credit enhancement securing the Demand Feature, unless the credit enhancement will be timely substituted for or renewed in a manner that preserves the security's eligibility for purposes of this section; and

(C) In the case of a Variable Rate or Floating Rate Security that does not have a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1) or (d)(2) of this section, adopt written procedures requiring periodic review of whether the security, upon readjustment of its interest rate, can reasonably be expected to have a market value that approximates its par value.

(8) *Record Keeping and Reporting.* (i) The money market fund will record, maintain, and preserve:

(A) For a period of not less than six years following the replacement of such procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in paragraphs (c)(5), (c)(6), (c)(7) and (e) of this section;

(B) For a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings;

(C) For a period of not less than three years from the date of the acquisition of a portfolio security (or the date that the credit risks of a portfolio security were most recently reviewed in accordance with paragraph (c)(6)(ii)(D) or (c)(7)(ii)(A) of this section), in an easily accessible place, a written record of the determination that a portfolio security presents minimal credit risks and the NRSRO ratings (if any) used to determine the status of the security as an Eligible Security, First Tier Security or Second Tier Security;

(D) For a period of not less than three years from the date of the acquisition of a portfolio security, in an easily accessible place, a written record of the determination required by paragraphs (c)(6)(ii)(F) or (c)(7)(ii)(C) of this section that a Variable Rate or Floating Rate Security that does not have a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1) or (d)(2) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its par value;

(E) For a period of not less than three years from the date of the acquisition of an Asset Backed Security the Qualifying Assets of which are comprised of the securities of ten or fewer issuers, in an easily accessible place, a written record of the identities of the issuers of the Qualifying Assets and the percentage of the Qualifying Assets constituted by the securities of each such issuer and the percentage of the fund's Total Assets that are invested in securities of each issuer of Qualifying Assets.

(ii) The documents preserved pursuant to this paragraph (c)(8) shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)). If any action was taken under paragraphs (c)(5)(ii) (with respect to defaulted securities) or (c)(6)(ii)(B) of this section, the money market fund will attach an exhibit to the Form N–SAR (17 CFR 274.101) filed for the period in which the action was taken describing with specificity the nature and circumstances of such action. The money market fund will report in an exhibit to such Form any securities it holds on the final day of the reporting period that are not Eligible Securities.

(d) *Maturity of portfolio securities.* For the purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except that:

(1) A Government Security which is a Variable Rate Security where the variable rate of interest is readjusted no less frequently than every 762 days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A Government Security which is a Floating Rate Security shall be deemed to have a remaining maturity of one day.

(2) A Variable Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) A Variable Rate Security, the principal amount of which is scheduled to be paid in more than 397 days, that is subject to a Demand Feature shall be deemed to have a maturity equal to longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) A Floating Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day.

(5) A Floating Rate Security, the principal amount of which is scheduled to be paid in more than 397 days, that is subject to a Demand Feature shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where no date is specified, but the agreement is subject to a demand, the

notice period applicable to a demand for the repurchase of the securities.

(7) A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where no date is specified, but the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the acquired money market fund is required to make payment upon redemption, unless the acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(e) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section (other than the determinations required by paragraphs (c)(1), (c)(5)(i)(A)(*2*), (c)(5)(ii), (c)(6)(i), (c)(6)(ii) (A), (B), and (C), and (c)(7)(i) of this section) provided that the board:

(1) Establishes and periodically reviews written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (c)(3) of this section) and procedures under which the delegate makes such determinations; and

(2) Exercises adequate oversight (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security that requires notification of the Commission under paragraph (c)(5)(iii) of this section) to assure that the guidelines and procedures are being followed.

7. Section 270.2a41–1 is amended by revising paragraph (a), introductory text, to read as follows:

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

(a) A standby commitment as defined in § 270.2a–7(a)(23) may be assigned a fair value of zero, Provided, that:

* * * * *

8. Section 270.12d3–1 is amended by revising paragraph (d)(7)(v) to read as follows:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(d) * * *

(7) * * *

(v) Acquisition of Puts, as defined in § 270.2a–7(a)(17), provided that, immediately after the acquisition of any Put:

(A) In the case of a company (other than a money market fund), the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Puts from the same institution; and

(B) In the case of a money market fund, no more than ten percent of the total value of its assets may be invested in securities issued by or subject to Puts from the same institution.

For the purposes of this section, a Put will be considered to be from the party to whom the company will look for payment of the exercise price.

* * * * *

9. Section 270.17a–9 is added to read as follows:

§ 270.17a–9 Purchase of certain securities from a money market fund by an affiliate, or an affiliate of an affiliate.

The purchase of a security that is no longer an Eligible Security (as defined in paragraph (a)(9) of § 270.2a–7) from an open-end investment company holding itself out as a "money market" fund by an affiliated person of the company, or any affiliated person of such a person, shall be exempt from section 17(a) of the Act (15 U.S.C. 80a–17(a)), provided that:

(a) The purchase price is paid in cash; and

(b) The purchase price is equal to the greater of the amortized cost of the security or its market price (in each case, including accrued interest).

10. Section 270.31a–1 is amended by adding a sentence to the end of paragraph (b)(1) to read as follows:

§ 270.31a–1 Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(b) * * *

(1) * * * In the case of a money market fund, also identify the provider of any put (as defined in § 270.2a–7(a)(17)) or guarantee with respect to a portfolio security and give a brief description of the nature of the put (e.g., unconditional demand feature, conditional demand feature, guarantee, letter of credit, or bond insurance) and, in a subsidiary portfolio investment record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

11. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

12. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 80a–1, et seq., unless otherwise noted.

Note: The following Forms and Guides do not and the amendments will not appear in the Code of Federal Regulations.

§§ 239.15A and 274.11A [Amended]

13. Form N–1A (§ 239.15A and § 274.11A) is amended by adding a sentence and an Instruction to the end of paragraph (c) of Part A, Item 4 to read as follows:

FORM N–1A

* * * * *

PART A INFORMATION REQUIRED IN A PROSPECTUS

* * * * *

Item 4. General Description of Registrant

* * * * *

(c) * * * In the case of a Registrant that holds itself out as a money market fund primarily distributing income exempt from the income taxes of a specified state or locality ("single state fund"), a prominent statement that (1) the registrant is concentrated in securities issued by the state or entities within the state and (2) the registrant may invest a significant percentage of its assets in a single issuer, and that therefore investment in the Registrant may be riskier than an investment in other types of money market funds.

Instruction: The disclosure required for money market funds by Item 4(c) may be modified if the registrant limits investment in a single issuer to five percent of fund assets as to 100 percent of assets.

* * * * *

§§ 239.17a and 274.11b [Amended]

14. Form N–3 (17 CFR 239.17a and 274.11b) is amended by adding

Instruction 11.e. to Part A, paragraph (a) of Item 4 to read as follows:

FORM N–3

* * * * *

PART A INFORMATION REQUIRED IN A PROSPECTUS

* * * * *

Item 4. **Condensed Financial Information**

(a) * * *

Instructions

11.The portfolio turnover rate to be shown at caption 10 shall be calculated as follows:

* * * * *

e. A registrant that holds itself out as a money market fund is not required to provide a portfolio turnover rate in response to this Item.

* * * * *

§ 274.101 [Amended]

15. Form N–SAR (17 CFR 274.101) is amended by revising the definition of "Money Market Fund" in General Instruction G to read as follows:

FORM N–SAR

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. Definitions

* * * * *

Money Market Fund: The term "money market fund" means any open-end investment company that maintains a stable price per share and holds itself out as a "money market fund."

* * * * *

16. Form N–SAR (17 CFR 274.101) is amended by revising the last sentence of the Instruction to Item 63 to read as follows:

FORM N–SAR

* * * * *

Instructions to Specific Items

* * * * *

ITEM 63: Dollar Weighted Average Maturity

* * * A money market fund shall make this calculation in the same manner as it would in monitoring compliance with the average portfolio maturity provisions of Rule 2a–7 under the Act.

17. Form N–SAR (17 CFR 274.101) is amended by adding a sentence at the end of the first paragraph of the Instruction to Item 71 to read as follows:

FORM N–SAR

* * * * *

Instructions to Specific Items

* * * * *

ITEM 71: Portfolio Turnover Rate

* * * A money market fund should enter a portfolio turnover rate of "0" even if it owns securities that have maturities in excess of one year.

* * * * *

§§ 239.15A and 274.11A [Amended]

18. Guide 21 (Disclosure of Risk Factors) to Form N–1A (§§ 239.15A and 274.11A) is amended by adding a paragraph to the end of the Guide to read as follows:

Guide 21. Disclosure of Risk Factors

* * * * *

In many cases, a substantial portion of the portfolio securities held by tax exempt money market funds is supported by credit and liquidity enhancements from third parties, generally letters of credit from foreign or domestic banks. These securities include variable rate demand notes, tender or "put" bonds and similar securities. Where more than forty percent of a money market fund registrant's portfolio consists, or is likely to consist, of securities subject to these features, the registrant should, in response to Item 4, state that the credit quality of the securities in its portfolio is largely based on letters of credit and other arrangements with foreign and domestic banks and other financial institutions, that these arrangements are not necessarily subject to federal deposit insurance, and that adverse developments in the banking industry could have a significant negative effect on the credit quality of the registrant's portfolio securities and the registrant's ability to maintain a stable net asset value and share price.

19. Guide 34 is added to Form N–1A (17 CFR 239.15A and 274.11A) to read as follows:

Guide 34. Money Market Fund Investments in Other Money Market Funds

Money market funds are permitted to invest in the securities of other money market funds in accordance with the provisions of rule 2a–7 and section 12(d)(1) of the 1940 Act. Except when a fund has invested substantially all of its assets in the other money market fund, the investing fund does not need to "look through" the shares of the fund(s) in which it is investing in order to determine compliance with the diversification or Second Tier Security limitations of rule 2a–7.[45] However, the investment objectives and policies of the money market fund making the investment and the money market fund(s) in which it is investing should not be inconsistent. Paragraph (c)(4)(v) of rule 2a–7 describes the obligations of a fund that invests substantially all of its asset in another money market fund.

20. Guide 38 is added to Form N–3 to read as follows:

Guide 38. Money Market Fund Investments in Other Money Market Funds

Money market funds are permitted to invest in the securities of other money market funds in accordance with the provisions of rule 2a–7 and section 12(d)(1) of the 1940 Act. Except when a fund has invested substantially all of its assets in the other money market fund, the investing fund does not need to "look through" the shares of the fund(s) in which it is investing in order to determine compliance with the diversification or Second Tier Security limitations of rule 2a–7.[45] However, the investment objectives and policies of the money market fund making the investment and the money market fund(s) in which it is investing should not be inconsistent. Paragraph (c)(4)(v) of rule 2a–7 describes the obligations of a fund that invests substantially all of its assets in another money market fund.

By the Commission.

Dated: December 17, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31212 Filed 12–27–93; 8:45 am]

BILLING CODE 8010–01–P

[45] See Letter to Investment Company Registrants from the Division of Investment Management (Feb. 22, 1993).

[45] See Letter to Investment Company Registrants from the Division of Investment Management (Feb. 22, 1993).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R–93–1697; FR–3598–P–01]

RIN 2502—AG17

Section 8 Housing Assistance Payments Program: Contract Rent Annual Adjustment Factors—Revision to "Rounding" Factor

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the method for "rounding" contract rents. Existing regulations provide for adjustment to be made to the contract rent of a dwelling unit by rounding the computed monthly contract rent which contains a fractional dollar amount to the next higher whole dollar amount. (The monthly contract rent is rounded to the next higher whole dollar amount even when the dollar fraction is as low as .01.) HUD would revise the adjustment by providing for contract rents which contain fractional dollar amounts of .01 to .50 to be rounded to the next lower dollar amount, and for contract rents which contain fractional dollar amounts of .51 to .99 to be rounded to the next higher

dollar amount. This revision to the "rounding" factor would more accurately reflect the actual rent adjustments, and would result in significant savings of section 8 subsidies which HUD can use to help other low-income families who need housing assistance.

DATES: Comment due date: February 28, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6180, Washington, DC 20410. Telephone (202) 708–3944 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 888.203(b) of HUD's regulations in 24 CFR part 888 provides as follows:

> The adjusted monthly amount of the Contract Rent of a dwelling unit shall be determined by multiplying the Contract Rent in Effect on the anniversary date of the contract by the applicable Automatic Annual Adjustment Factor (see paragraph (a) of this section) and rounding the result to the next higher whole dollar amount.

The rounding procedure in § 888.203(b) provides for all contract rents which contain fractional dollar amounts to be rounded to the next higher whole, regardless if the dollar fraction is as low as .01. HUD has determined that there are approximately two million dwelling units receiving section 8 assistance. The rounding procedure provided by § 888.203(b) costs about $24 million in annual section 8 subsidies (2,000,000 units×$1 per unit×12 months=$24,000,000), and provides many housing authorities and project owners with section 8 subsidies substantially beyond their section 8 assistance needs.

Through this rule, HUD proposes to revise the rounding procedure to make this procedure consistent with generally accepted mathematical and statistical principles, and to bring disbursement of section 8 subsidies more in line with a housing authority's or project owner's actual section 8 subsidy needs. HUD proposes to revise § 888.203(b) to read as follows:

> The adjusted monthly amount of the Contract Rent of a dwelling unit shall be determined by multiplying the Contract Rent in Effect on the anniversary date of the contract by the applicable Automatic Annual Adjustment Factor (see paragraph (a) of this section) and rounding the result as follows:
>
> (1) If the result contains a fractional dollar amount ranging from $0.01 to $0.50, round to the next lower whole dollar amount;
>
> (2) If the result contains a fractional dollar amount ranging from $0.51 to $0.99, round to the next higher whole dollar amount.

The proposed revision to § 888.203(b) would adjust section 8 contract rents by an average of fifty cents per unit per month less than contract rents are now adjusted using the current rounding procedure. HUD estimates that it would save approximately $12 million annually in section 8 subsidies—subsidies that are urgently needed to provide housing assistance to other low-income families.

HUD acknowledges that the revised rounding procedure will result in less section 8 subsidies for a considerable number of housing authorities and project owners. However, the reduced section 8 subsidies are more consistent with the actual computed contract rents. As stated earlier, the current rounding procedure provides many housing authorities and owners with section 8 subsidies substantially beyond their section 8 assistance needs.

Because HUD's resources are tightly constrained, even as the need for housing assistance intensifies, it is essential that HUD use existing resources more efficiently so that HUD may meet the increased demands for housing assistance. The revision to the method of rounding section 8 contract rents, as proposed by this rule, is one way in which HUD is attempting to address these increased housing needs through more effective use of existing resources.

Other Matters

Environmental Impact

An environmental assessment is unnecessary because statutorily required establishment and review of rent schedules that do not constitute a development decision affecting the physical condition of specific project areas or building sites is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(l).

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget as a significant regulatory action under Executive Order 12866.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and, by approving it, certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule, if implemented, would result in reduced section 8 subsidies for a substantial number of housing authorities (not necessarily small housing authorities) and project owners. However, the reduced section 8 subsidies would not result in a significant economic impact on these entities because a substantial number of these authorities are currently receiving section 8 subsidies considerably beyond their actual section 8 housing assistance needs. The savings in section 8 subsidies achieved by this rule, if implemented, would result in disbursement of section 8 subsidies to additional housing authorities and owners. Thus, the proposed rule would not result in a significant economic impact on a substantial number of small entities within the meaning of the order.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, Federalism, has determined that this proposed rule would not have a substantial, direct effect on the States or their political subdivisions or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The proposed rule relates solely to the method of determining Federal financial assistance—that is, the method of determining the amount of section 8 assistance needed by a housing authority or project owner, based on the procedure for computing adjusted contract rent. This matter does not affect the States or their political subdivisions or the distribution of power or responsibilities among the various levels of government.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule would not have a potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the order. No significant change in existing HUD policies or programs will

proposed rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This proposed rule was not listed in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

Accordingly, 24 CFR part 888 would be amended as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

1. The authority citation for part 888 would continue to read as follows:

Authority: 42 U.S.C. 1437c, 1437f, and 3535(d).

2. In § 888.203, paragraph (b) would be revised to read as follows:

§ 888.203 Use of contract rent automatic annual adjustment factors.

* * * * *

(b) The adjusted monthly amount of the Contract Rent of a dwelling unit shall be determined by multiplying the Contract Rent in Effect on the anniversary date of the contract by the applicable Automatic Annual Adjustment Factor (see paragraph (a) of this section) and rounding the result as follows:

(1) If the result contains a fractional dollar amount ranging from $0.01 to $0.50, round to the next lower whole dollar amount;

(2) If the result contains a fractional dollar amount ranging from $0 51 to $0.99, round to the next higher whole dollar amount.

Dated: December 20, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–31522 Filed 12–27–93; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional revisions pertaining to a previously proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for North Dakota's proposed rules pertain to: Reimbursement of costs of training provided under the Small Operator Assistance Program (SOAP); proposed rules to implement North Dakota's revised statutory provisions for SOAP; the definition of "road" as referenced in the coal exploration performance standards; and the statutory authorization for individual civil and criminal penalties under the North Dakota coal exploration program. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t., January 12, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601–1918. Telephone: (307) 261–5776

Edward J. Englerth, Director, Reclamation Division; Public Service Commission; Capitol Building; Bismarck, ND 58505–0165. Telephone: (701) 224–4092

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the Public Service Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Submission of Proposed Amendment

By letter dated April 21, 1993 (Administrative Record No. ND–Q–01), North Dakota submitted a proposed amendment ("Amendment XVIII") to its permanent program pursuant to SMCRA. The North Dakota proposed amendment reflects changes to the North Dakota Century Code (NDCC) chapter 38–12.1 in response to the required program amendments 30 CFR 934.16(l) and (y), published in the January 9, 1992 **Federal Register** (57 FR 827). In addition, North Dakota has proposed state-initiated changes to NDCC chapter 38–14.1 reflecting 1992 changes (Energy Policy Act, Pub. L. 102–486) to the Small Operator Assistance Program in SMCRA 507(c), and changes to the requirements for preblasting surveys.

The provisions of the North Dakota Century code (NDCC) that North Dakota proposes to amend are: NDCC 38–14.1–21(5) [permit approval or denial standards]; NDCC 38–14.1–24(13)(e) [environmental protection performance standards]; NDCC 38–14.1–37 [small operators]; NDCC 38–12.1–03 [definitions, coal exploration program]; and NDCC 38–12.1–08 [civil and criminal penalties, coal exploration program].

OSM published a notice in the May 19, 1993, **Federal Register** (58 FR 29155) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. ND–Q–7). The public comment period ended June 18, 1993.

During its review of the amendment, OSM identified concerns relating to the provisions of: NDCC 38–14.1–21(5) regarding the requirement for an operator to reimburse the regulatory authority for the costs of training if that operator produces in excess of 300,000 tons of coal during the 12 months following permit issuance; NDCC 38–12.1–03(6) regarding the definition of "road" in the coal exploration program; and NDCC 38–12.1–08, pertaining to civil and criminal penalties in the coal exploration program. OSM notified North Dakota of the concerns by letter dated November 12, 1993 (Administrative Record No. ND–Q–14). North Dakota responded in a letter dated December 3, 1993, by submitting clarifications and proposed rule revisions (Administrative Record No. ND–Q–15).

In its December 3, 1993, response, North Dakota states with regard to the first concern above that it intends to submit, in the future, additional statutory changes regarding reimbursement of costs for training provided under SOAP. With regard to the second and third concerns above, North Dakota's response proposes new changes to the rules implementing the coal exploration program, as follows.

North Dakota Administrative Code (NDAC) 43–02–01–20.3(c)(2)

North Dakota proposes to add a new clause clarifying that a road is to be considered altered if it is constructed, reconstructed, improved, or maintained in any way that causes the changes addressed in the rule.

NDAC 43–02–01–05

North Dakota proposes to add a new paragraph providing that, when corporate permittees violate NDCC 38–12.1 or any implementing rule, or any permit condition, directors, officers, or agents who knowingly cause such violations would be subject to the criminal penalties of NDCC 38–12.1–08(2); further, such directors, officers, or agents would be subject to the civil penalties of NDCC 38–12.1-08(1) if they willfully or negligently violate NDCC 38–12.1, any implementing rule, or any permit condition; finally, knowingly, willfully, and negligently are to be understood as defined by NDCC 12.1–02–02.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed North Dakota program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 17, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–31581 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of meetings.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Corporation is considering recommending to the Authority that joint rulemaking be undertaken to change the fundamental basis of the toll structure. In order to determine whether such a rulemaking is warranted, what the substance should be, and what is the scope of the issues involved, the Corporation is holding three public meetings to discuss the problems encountered under the existing toll structure and possible solutions. This notice announces the dates, times, and places of the meetings.

DATES: The meetings will be held on February 1, 1994, in Chicago, Illinois, on February 9, 1994, in Cleveland, Ohio, and on February 17, 1994, in Duluth, Minnesota, each beginning at 9 a.m. and concluding at 12 noon.

ADDRESSES: The meetings will be held in: The Cordova Room, Intercontinental Hotel, 505 North Michigan Avenue, Chicago, Illinois; the Conference Room, Cleveland-Cuyahoga County Port Authority, 101 Erieside Avenue, Cleveland, Ohio; and the Conference Room, Seaway Port Authority of Duluth, 1200 Port Terminal Drive, Duluth, Minnesota.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, DC 20026–4090, (202) 366–0091.

SUPPLEMENTARY INFORMATION: Discussions between the Corporation and the Authority about the Seaway Tariff of Tolls has resulted in several basic conclusions for future Tariff amendments. It is necessary to take into account prevailing market conditions and not unduly restrict maritime commerce or create additional barriers to trade in the development of the Tariff. Both parties wish to pursue fairness among their primary goals and strive for equal treatment for vessels and cargoes using the Seaway. It is necessary to seek simplicity in developing the Tariff as complexity and ambiguity tend to provide a disincentive to using the Seaway. Lastly, both parties wish to strive for stability so that those engaged in commerce on the Seaway can make long-term planning decisions with some confidence of future conditions.

Based upon these mutual conclusions, the Corporation is considering recommending to the Authority that joint rulemaking be undertaken to change the fundamental basis of the toll structure. In order to determine whether such a rulemaking is warranted, what the substance should be, and what is the scope of the issues involved, the Corporation is holding three public meetings to discuss the problems encountered under the existing tool structure and possible solutions. These meetings will be open for discussion, however, any person wishing to make a formal presentation is requested to notify the Corporation at least ten working days before the meetings and provide the approximate time desired for the presentation to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, DC 20026–4090. In addition, the Corporation requests an

original written text of any formal presentation along with five copies before or at the time of the meeting. Finally, if any person wishes to present written comments, but not participate in the meetings, they may submit those comments to that same address at any time before or at the time of the meetings.

The meetings are open to the public, each beginning at 9 a.m. and concluding at 12 noon, and will be at the following dates and places: On February 1, 1994, in the Cordova Room, Intercontinental Hotel, 505 North Michigan Avenue, Chicago, Illinois; on February 9, 1994, in the Conference Room, Cleveland-Cuyahoga County Port Authority, 101 Erieside Avenue, Cleveland Ohio; and on February 17, 1994, the Conference Room, Seaway Port Authority of Duluth, 1200 Port Terminal Drive, Duluth, Minnesota.

Issued at Washington, DC, on December 21, 1993.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 93–31635 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Ch. VI

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee and the Guaranty Agency Reserves Regulations Negotiated Rulemaking Advisory Committee; Proposed Establishment

AGENCY: Department of Education.

ACTION: Notice of proposed establishment.

SUMMARY: The Secretary of Education and the Assistant Secretary for Postsecondary Education announce their intention to establish two negotiated rulemaking advisory committees to draft proposed rules for direct lending and guaranty agency reserves, in order to implement the Student Loan Reform Act of 1993. That statute, enacted on August 10, 1993, established a new loan program, known as the Direct Loan Program, under the Higher Education Act of 1965, as amended (HEA). See subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). This program will phase in a system of direct federal lending.

DATES: The first meetings of both committees will be held in mid to late January, 1994, with the specific date, time, and location of each meeting to be announced in a subsequent notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4082, ROB–3), Washington, DC 20202–5100 Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department has retained the services of two professional mediators to serve as neutral convenors and facilitators for the negotiations. Brian Kerrigan, Deputy Director for the Policy, Training, and Analysis Service in the Office of Postsecondary Education is proposed to serve as the negotiator for the Department of Education on the direct lending committee. Donald Feverstein, Special Assistant in the Office of Postsecondary Education, is proposed to serve as the Department's negotiator on the guaranty agency reserves committee. Administrative support for the committees will be provided by the Office of Postsecondary Education. Each negotiating committee will be balanced and representative of all the significantly affected interests, including those of higher education organizations, banks, guaranty agencies, loan servicers, legal aid, students, and states.

1. Issues To Be Negotiated

A. Director Lending Issues To Be Negotiated

—Development of a sliding fee schedule for the payment of fees to schools and consortia that originate Direct Loans. As required by the HEA, the origination fee paid to a school will decrease as the number of loans originated at the school increases.

—Development of procedures to determine the last date on which a student or parent who is eligible for a Direct Loan may apply for that loan, and development of procedures for late disbursement of a Direct Loan.

—Development of procedures and criteria to be used to select schools to participate in the Direct Loan Program in future years. Negotiators will determine to what extent factors such as a school's default rate, commitment to direct lending, capacity to implement and administer the Direct Loan Program, and electronic capabilities will be considered in determining which schools will participate in the Direct Loan Program.

—Development of criteria to be used to determine whether a school participating in the Direct Loan Program will originate Direct Loans or will use an alternative originator to originate Direct Loans. Negotiators will determine to what extent factors such as the school's electronic capabilities and ability to administer the program will be considered in determining which schools originate loans and which schools use alternative origination. The procedures by which an alternative originator participates will also be negotiated.

—Development of procedures under which a school may withdraw from the Direct Loan Program, including the timeframe in which a school may withdraw from the program and the amount of notice a school must give before it may withdraw.

—Development of procedures for the U.S. Department of Education's termination of agreements with schools that participate in the Direct Loan Program, including the type and timing of notice that must be given to a school before termination may occur.

—Development of the terms of the repayment plans for Direct Loans. The four repayment plans required by the HEA are the standard repayment plan, in which the borrower makes fixed payments over a fixed period of time; the extended repayment plan, in which the borrower makes fixed payments for an extended period of time; the graduated repayment plan, in which the borrower makes payments at two or more levels for a fixed or extended period of time; and the income contingent repayment plan, in which the borrower pays a percentage of the income of the borrower and the borrower's spouse (if applicable) over a period of time not to exceed 25 years. Negotiators will determine the method by which income contingent repayment will be calculated and the method by which a borrower's income will be determined and documented.

—Development of procedures under which the Secretary will select a repayment plan for borrowers who do not select a plan for themselves. In accordance with the HEA, the Secretary may select the standard, extended, or graduated repayment plans for a borrower who does not select a repayment plan.

—Development of the terms and conditions under which the Secretary may provide an alternative repayment plan to a borrower who demonstrates that available repayment plans do not accommodate the borrower's exceptional circumstances. Negotiators will determine issues such as the circumstances. under which the Secretary may provide an alternative repayment plan and the permissible terms of an alternative repayment plan.

—Development of the circumstances under which the Secretary may require a borrower who has defaulted on a Direct Loan to repay the loan on an income contingent repayment plan, and development of procedures for placing a borrower who has defaulted on a Direct Loan into an income contingent repayment plan.

—Development of procedures for maintaining fiscal control and accountability for federal funds, including a determination of whether schools must deposit Direct Loan Program funds in an account that is separate from accounts containing other funds under title IV of the HEA, and the development of the accounting procedures that a school in the Direct Loan Program must follow to account for program funds.

B. Guaranty Agency Reserves Issues To Be Negotiated

—Development of the standards by which the Secretary may direct a guaranty agency to return to the Secretary the portion of its reserve fund that the Secretary determines is unnecessary to pay the program expenses and contingent liabilities of the agency.

—Development of the standards by which the Secretary may require a guaranty agency to return (to the Secretary or the guaranty agency) reserve funds or assets held by, or under control of, any other entity, if the Secretary determines those funds or assets are needed to pay the program expenses and contingent liabilities of the guaranty agency, or are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

2. Agenda for First Meetings

The following is a draft agenda for the first meeting of each committee, which will be organizational. Meetings will not be held simultaneously.

(1) Welcoming remarks.

(2) Introduction of facilitators and participants.

(3) Discussion of procedural ground rules.

(4) General discussion of participants' perspectives on substantive issues.

(5) Development of issue agendas or drafts for subsequent meetings.

3. Structure of Committees

A. The ultimate goal of negotiated rulemaking is to reach a consensus through discussion and negotiation among all interested and affected parties, including the Department of Education. With this in mind, the Department will conduct these negotiations within a structure that is designed to reach this goal fairly and efficiently and that takes account of the large number and complex nature of the issues to be negotiated.

The neutral convenors retained by the Department have recommended that the Department establish within each Committee a "full" membership and an "associate" membership. All members will be able to participate in discussion and negotiation. However, only full members will have the power to vote to reach a consensus. The Department has determined full members to be those whose interests will be significantly affected by the final rule. Some organizations are proposed to serve as full members of both committees, but, in general, all full members of the Direct Student Loan Negotiated Rulemaking Advisory Committee are proposed to serve as associate members of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee, and vice versa. Some organizations with similar interests are proposed as coalition members.

B. The organizations listed below are proposed as full members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee:

Department of Education
American Association of Community Colleges
American Association of Universities
American Association of State Colleges and Universities
American Council on Education
National Association of Independent Colleges and Universities
National Association of State Universities and Land Grant Colleges
Career College Association
American Association of Cosmetology Schools
National Association of State Financial Aid Administrators
National Association of College and University Business Officers
Federation of Associations of Schools for Health Professionals
National Association for Equal Opportunity in Higher Education/United Negro College Fund (a coalition)
Hispanic Association of Colleges and Universities
United States Student Universities
United States Student Association
Legal Aid (a coalition)
State Higher Education Executive Officers Association
Student Loan Servicing Alliance

C. The following organizations are proposed as full members of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee:

Department of Education
Consumer Bankers Association
Education Finance Council
National Coalition of Higher Education Loan Programs
Private Guaranty Agency Coalition
Sallie Mae
State Higher Education Executive Officers Association
Student Loan Servicing Alliance
United States Student Association
Legal Aid (a coalition)

D. The following organizations are proposed as full members of both committees:

Department of Education
Legal Aid (a coalition)
Student Loan Servicing Alliance
United States Student Association
State Higher Education Executive Officers Association

4. *Invitation To Comment*

The Secretary and the Assistant Secretary invite comments from interested parties on the proposal to establish the committees described in this notice and the proposed membership of the committees. If an organization believes that it has a significantly affected interest that would not be represented by the proposed members and wishes to apply for membership or nominate another organization for membership, it may do so. Comments on this notice and requests for membership should be sent to Jennifer Peck, at the address stated at the beginning of this notice, no later than 20 days after the publication of this notice. A request must include:

1. Name of the proposed member and a description of the interests to be represented;

2. Evidence that the proposed member is authorized to represent parties related to the interests the member would represent;

3. A written commitment that the proposed member will participate actively and in good faith in the development of the rule under consideration; and

4. The reasons that the organizations listed in the notice to do not adequately represent the interest of the organization submitting the request or nomination.

Please note that participation in the rulemaking process is not limited to members of the committee. Meetings of the negotiated rulemaking committees are open to the public so that interested parties may observe the negotiations, and each meeting will include an opportunity for comment by observers. In addition, following the negotiated rulemaking process, proposed rules will be published in the **Federal Register** for public comment. There are expected to be a total of approximately five meetings of each committee, all of which will be held in the Metropolitan Washington, DC area. The target date for publication of proposed rules developed by the committees is July 1, 1994.

Dated: December 22, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–31618 Filed 12–27–93; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E4288 and PP 4E4289/P574; FRL–4750–6]

RIN 2070–AC18

Pesticide Tolerances for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise tolerances for residues of the insecticide chlorpyrifos in or on the raw agricultural commodities pears, peaches, nectarines, and plums. The proposed regulations to revise maximum permissible levels for residues of chlorpyrifos were requested in petitions submitted by DowElanco and are needed to cover maximum expected residues in or on imported commodities.

DATES: Comments, identified by the document control number [PP 4E4288 and PP 4E4289/P574], must be received on or before January 28, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

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

SUPPLEMENTARY INFORMATION: DowElanco has submitted pesticide petition PP 4E4288 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.342 by revising the tolerance for residues of the insecticide chlorpyrifos in or on the raw agricultural commodity pears from 0.01 part per million (ppm) to 0.05 ppm; and pesticide petition PP 4E4289 requesting revision of tolerances for residues in or on peaches, nectarines, and plums from 0.01 ppm to 0.05 ppm. These revisions in the tolerances are needed because of differing use patterns of chlorpyrifos in other parts of the world as compared to the U.S.

The Agency has reviewed preliminary residue data and concluded that residues should not exceed the proposed tolerances. However, the Agency has determined that additional residue data for imported pears, peaches (data for peaches will suffice for nectarines), plums, and prunes (the processed commodity of plums) must be submitted. Therefore, the Agency is proposing to revise these tolerances with a 2-year expiration date, at which time the tolerances will revert to the previous 0.01 ppm for the named commodities. Once the required residue data are submitted and determined to be adequate, the Agency, upon request by DowElanco, will take appropriate steps to make the proposed tolerances permanent.

The available data do not support a change in the U.S. use pattern for the crops listed above. If such a change is desired, additional residue data generated in the U.S. must be submitted.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for systemic effects of 1.0 milligram (mg)/kilogram (kg)/day and lowest effect level (LEL) (increased liver weight) of 3.0 mg/kg/day. The NOELs for cholinesterase (ChE) inhibition were as follows: 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day for brain cells. Levels tested were 0, 0.01, 0.03, 0.1, 1.0, and 3 mg/kg/day.

2. A voluntary human study with ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2-year mouse chronic toxicity/carcinogenicity study with a NOEL of 15 ppm for systemic effects (equivalent to 2.25 mg/kg/day) and no carcinogenic effects observed under the conditions of the study at all levels tested (0, 0.5, 5, and 15 ppm, equivalent to 0.075, 0.75, and 2.25 mg/kg/day).

4. A 2-year rat feeding/carcinogenicity study with ChE NOEL of 0.1 and LEL of 1.0 mg/kg/day (based on decreased plasma and brain ChE activity), and a systemic NOEL of 1.0 mg/kg/day and LEL of 10 mg/kg/day (based on decreased erythrocyte and hemoglobin values and increased platelet count during the first year). There were no observed carcinogenic effects at the levels tested (0.05, 0.1, 1.0, and 10 mg/kg/day) under the conditions of the study.

5. A three-generation reproduction study in rats with no reproductive effects observed at the dietary levels tested (0, 0.1, 0.3, and 1.0 mg/kg/day).

6. Two rat developmental toxicity studies: one negative for developmental toxicity at all dose levels (levels tested were 0.1, 3.0, and 15.0 mg/kg/day); and one with maternal and developmental NOELs of 2.5 mg/kg/day (levels tested, by gavage, were 0, 0.5, 2.5, and 15 mg/kg/day).

7. A mouse developmental toxicity study with a teratogenic NOEL greater than 25 mg/kg/day (highest dose tested) and a developmental fetotoxic NOEL of 10 mg/kg/day and LEL of 25 mg/kg/day (decreased fetal length and increased skeletal variants).

8. A developmental toxicity study in rabbits with maternal and developmental NOELs of 81 mg/kg/day, and maternal and developmental LELs of 140 mg/kg/day (based on maternal

decreased food consumption on gestation days 15 to 19, and body weight loss during the dosing period followed by a compensatory weight gain; and based on a slight reduction in fetal weights and crown-rump lengths, and fetal increased incidence of unossified fifth sternebrae and/or xiphisternum). Levels tested were 0, 1, 9, 81, and 140 mg/kg/day.

9. An acute delayed neurotoxicity study in the hen that was negative at 50 and 100 mg/kg/day.

10. Several mutagenicity studies which were all negative. These include an Ames assay, two Chinese hamster ovary cell mutation assays, a micronucleus assay for chromosomal aberration, an *in vitro* chromosomal aberration assay with and without enzymatic activation, and an unscheduled DNA synthesis assay.

11. A general metabolism study in rats shows that the major metabolite of chlorpyrifos is 3,5,6-trichloro-2-pyridinol (TCP). The studies listed below were conducted to demonstrate that TCP is less toxic than chlorpyrifos and is not a ChE inhibitor.

a. A 90-day rat feeding study with a systemic NOEL of 30 mg/kg/day. Levels tested were 0, 10, 30, and 100 mg/kg/day.

b. A rat developmental toxicity study with no developmental toxicity observed at the dosages tested (0, 50, 100, and 150 mg/kg/day).

c. Mutagenicity studies (including an Ames assay and an unscheduled DNA synthesis assay) were negative for mutagenic effects.

Based on the above studies, the Agency has concluded that the TCP metabolite is not of toxicological concern.

The reference dose (RfD) based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold uncertainty factor is calculated to be 0.003 mg/kg of body weight/day. Tolerances for food uses appear in 40 CFR 180.342 and 40 CFR 185.1000. The Dietary Risk Exposure Section (DRES) chronic dietary exposure analysis made use, when justified and appropriate, of anticipated residues rather than published tolerance values, and data regarding percent crop treated (when less than 100%). The anticipated residue contribution (ARC) from published uses of chlorpyrifos is 0.000859 mg/kg of body weight/day for the overall U.S. population. This represents 28.6% of the RfD. The proposed tolerances on pears, nectarines, peaches, and plums contribute 0.000001 mg/kg of body weight/day of exposure, raising the ARC to 0.000860 mg/kg of body weight/ day, or 28.7% of the RfD. None of the DRES subgroups has an exposure that exceeds the RfD. The population subgroup most highly exposed is nonnursing infants, less than 1 year old, with an ARC from published uses of 0.002137 mg/kg of body weight/day, 71.2% of the RfD. The proposed tolerances contribute 0.000011 mg/kg of body weight/day, which raises the ARC for that subgroup to 0.002147 mg/kg of body weight/day, or 71.6% of the RfD. The next most highly exposed population subgroup is children, 1 to 6 years old, with an ARC from published uses of 0.001912 mg/kg of body weight/day, 63.7% of the RfD. The proposed tolerances contribute 0.000002 mg/kg of body weight/day, which raises the ARC for that subgroup to 0.001914 mg/kg of body weight/day, or 63.8% of the RfD.

Adequate gas chromatographic analytical methods are available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. There are currently no actions pending against continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408 (e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E4288 and PP 4E4289/P574]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: December 14, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.342, by amending paragraph (c) by removing the entries in the table therein for nectarines, peaches, pears, and plums and by adding new paragraph (e), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues

* * * * *

(e) Tolerances are established as follows for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the following raw agricultural commodities:

Commodity	Parts per million	
	Until Jan. 28, 1996	After Jan. 28, 1996
Nectarines	0.05	0.01
Peaches	0.05	0.01
Pears	0.05	0.01
Plums	0.05	0.01

[FR Doc. 93–31473 Filed 12–21–93; 4:52 pm]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC23

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Gymnoderma Lineare

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the lichen *Gymnoderma lineare* (rock gnome lichen) as an endangered species under authority of the Endangered Species Act of 1973, as amended (Act). This lichen, which is limited to 25 populations in North Carolina and 7 populations in Tennessee, is threatened by collection, logging, and habitat disturbance due to heavy use by hikers and climbers. It is also indirectly threatened by exotic insect pests and possibly air pollution, which are contributing to the demise of Fraser fir forests at higher elevations in the Southern Appalachians. This proposal, if made final, would implement the Act's protection and recovery provisions for *Gymnoderma lineare*.

DATES: Comments from all interested parties must be received by February 28, 1994. Public hearing requests must be received by February 11, 1994.

ADDRESSES: Comments and materials and requests for public hearings concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/665–1195, Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Gymnoderma lineare, first described by Evans (1947) as *Cladonia linearis* from material collected in Tennessee, is a squamulose lichen in the reindeer moss family. This species is the only member of its genus occurring in North America (Yoshimura and Sharp 1968). *Gymnoderma lineare* occurs in rather dense colonies of narrow straps (squamules). The only similar lichens are the squamulose species of the genus *Cladonia*. *Gymnoderma lineare* has terminal portions of the strap-like individual lobes that are blue-grey on the upper surface and generally shiny-white on the lower surface; near the base they grade to black (unlike squamulose *Cladonia*, which are never blackened toward the base) (Weakley 1988, Hale 1979). Hale's (1979) description of the species reads as follows: "Squamules dark greenish mineral grey; lower surface white to brownish toward the tips, weakly corticated; podetia lacking, but small clustered apothecia common on low tips. K plus yellow (atranorin)." Weakley further describes the species as having squamules about 1 millimeter across near the tip, tapering to the blackened base, sparingly and subdichotomously branched, and generally about 1 to 2 centimeters long (though they can be longer or shorter, depending upon environmental factors). The squamules are nearly parallel to the rock surface, but the tips curl away from the rock, approaching or reaching a perpendicular orientation to the rock surface. The fruiting bodies (apothecia) are borne at the tips of the squamules and are black (contrasting to the brown or red apothecia of *Cladonia* spp.) (Weakley 1988). The apothecia are borne singly or in clusters, usually at the tips of the squamules but occasionally along the sides; these have been found from July through September (Evans 1947, North Carolina Natural Heritage Program records 1991). The apothecia are either sessile or borne on short podetia 1 to 2 millimeters in height, and the largest of these have a diameter of about 1 millimeter, with most being much smaller. The apothecia are cylindrical in shape and radial in symmetry (Evans 1947). The primary means of propagation of this lichen appears to be asexual, with colonies spreading clonally. *Gymnoderma* was considered a monotypic genus for over a century, until its revision by Yoshimura and Sharp (1968). These authors reclassified Evans' (1947) *Cladonia linearis* as *Gymnoderma lineare* on the basis of its short and solid podetia that lack symbiotic algae.

Gymnoderma lineare is endemic to North Carolina and Tennessee and occurs only in areas of high humidity, either at high elevations, where it is frequently bathed in fog, or in deep gorges at lower elevations. It is primarily limited to vertical rock faces where seepage water from forest soils above flows at (and only at) very wet times. It is almost always found growing with the moss *Andreaea* in these vertical intermittent seeps. This association makes it rather easy to search for, due to the distinctive reddish-brown color of *Andreaea* that can be observed from a considerable distance (Weakley 1988). Most populations occur above 5,000 feet elevation. In Tennessee, it is apparently limited to the Great Smoky Mountains. Other common associates of this species include *Huperzia selago*, *Stereocaulon* sp., *Scirpus cespitosus*, *Carex misera*, *Rhododendron* spp., *Saxifraga michauxii*, *Krigia montana*, *Heuchera villosa*, *Geum radiatum*, and sometimes *Juncus trifidus*. The high-elevation coniferous forests adjacent to the rock outcrops and cliffs most often occupied by the species are dominated by red spruce (*Picea rubens*) and another Federal candidate species, Fraser fir (*Abies fraseri*).

Thirty-seven populations of *Gymnoderma lineare* have been reported historically; thirty-two remain in existence. Seven of these populations are in Sevier County, Tennessee. In North Carolina, two populations remain in Mitchell County, five in Jackson County, four in Yancey County, one in Swain County, three in Transylvania County, four in Buncombe county, two in Avery County, two in Ashe County, one in Rutherford County, and one in Haywood County. Five additional populations were historically known for this species. The reasons for the disappearance of the species at most of these sites are undocumented; however, one is believed to have been destroyed by highway construction. Many of the formerly occupied sites are subjected to heavy recreational use by hikers, climbers, and sightseers. In addition, the coniferous forests, particularly those dominated by Fraser fir at the high-elevation sites, are being decimated by the balsam wooly adelgid, an exotic insect pest, and possibly by air pollution. The death of the forests adjacent to the habitat occupied by this lichen has resulted in locally drastic changes in microclimate, including desiccation and increased temperatures.

The continued existence of this species is threatened by trampling and

associated soil erosion and compaction, other forms of habitat disturbance due to heavy recreational use of the habitat by hikers, climbers, and sightseers, as well as by development for commercial recreational facilities and residential purposes. It is also potentially threatened by logging, collectors, and directly or indirectly by air pollution.

Only 7 of the remaining 32 populations cover an area larger than 2 square meters. Most are 1 meter or less in size. It is unknown what constitutes a genetic individual in this species, and it is possible that each of these small colonies or patches consists of only a single clone (Weakley 1988). Over the past decade several of the currently extant populations have undergone significant declines (Paula DePriest, Smithsonian Institution, personal communication, 1992; Karin Heiman, Environmental Consultant, personal communication, 1992), some within as little as 1 year (Alan Smith, Environmental Consultant, personal communication, 1992). Although all but five of the remaining populations are in public ownership, many continue to be impacted by collectors, recreational use, and environmental factors. Although no populations are known to have been lost as a result of logging operations, this is a potential threat.

Federal government actions on *Gymnoderma lineare* began with the 1990 publication in the Federal Register of a revised notice of review of plant taxa for listing as endangered or threatened species (55 FR 6184); *Gymnoderma lineare* was included in that notice as a category 2 species. Category 2 species are those for which listing as endangered or threatened may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

Subsequent to that notice, the Service received additional information from the North Carolina Natural Heritage Program (Alan Weakley, North Carolina Natural Heritage Program, personal communication, 1991) and the Smithsonian Institution (DePriest, personal communication, 1992); this information and additional field data gathered by the North Carolina Natural Heritage Program, the Fish and Wildlife Service, and the National Park Service (Keith Langdon and Janet Rock, Great Smoky Mountains National Park, personal communication, 1992; Bambi Teague, Blue Ridge Parkway, personal communication, 1991) indicate that the addition of *Gymnoderma lineare* to the Federal List of endangered or threatened plants is warranted. The Service included this species as category 1 candidate in the September, 1993, plant notice of review (58 FR 51167).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gymnoderma lineare* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Gymnoderma lineare is a narrow endemic, restricted to high-elevation mountaintops and cliff faces and the lower-elevation gorges in the Southern Appalachians of western North Carolina and eastern Tennessee (see "Background" section for specific distributions). Although populations are declining and vanishing for reasons that are, in many cases, not clearly understood, destruction and adverse modification of habitat pose a major threat to the remaining populations of this species. Fourteen percent of the historically known populations have been completely extirpated, and many others have been severely reduced in size. Only 32 populations, most less than 1 square meter in extent, remain.

Five of these populations are on privately owned lands, with one slated for residential development within the near future. Although the majority of the remaining populations are on publicly owned lands, most of these are subject to heavy recreational use, and many have been damaged as a result. Four populations contain 75 percent of the remaining plants. Three of these are located on lands administered by the National Park Service and the U.S. Forest Service, at sites where they are subjected to intense use by hikers, climbers, and sightseers. The only other relatively large population is located on a privately owned site which has been developed as a commercial recreational facility. All the known populations combined cover a total area of approximately 142 square meters. All five privately owned sites are unprotected and are located in an area that is rapidly developing as a center for resorts and tourism.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Gymnoderma lineare is not currently a significant component of the commercial trade in native plants. Hale (1979) stated, "This is one of the most unusual endemic lichens in North America and should not be collected by individuals." Nevertheless, many populations have been decimated by scientific collectors. Paula DePriest (personal communication, 1992) observed that at least one population in the Great Smokies was virtually wiped out by collections made during a field trip of lichenologists. Given the very small size of most colonies and the slow growth rate of this species, extirpation by collecting or by natural accident (such as slides or floods) is a distinct possibility (Weakley 1988). Many of the populations are easily accessible, being close to trails or roads. Publicity could generate an increased demand and intensify collecting pressure (see "Critical Habitat" section for reasons why critical habitat is not being designated).

C. Disease or Predation

This taxon is not known to be threatened by disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Gymnoderma lineare is afforded legal protection in North Carolina by North Carolina General Statute, Article 20, Chapter 106, Sections 202.1–202.8, that prohibits intrastate trade and taking of State-listed plants without a State permit and written permission of the landowner. *Gymnoderma lineare* is listed in North Carolina as threatened; it is not currently listed in Tennessee. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat or unintentional damage from recreational use. The Endangered Species Act will provide additional protection and encouragement of active management for *Gymnoderma lineare*, particularly on Federal lands.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

This taxon is rare and vulnerable due to its specialized habitat requirements for bare rock faces with a precise amount of moisture and light. As mentioned in the previous sections of this proposed rule, most of the remaining populations are small in numbers of individuals and in terms of area covered by the plants. Therefore, there is probably little genetic variability in this species, making it

more important to maintain as much habitat and as many of the remaining colonies as possible. Rock slides, severe storms or droughts, or other natural events could easily eliminate populations of this lichen.

In recent years the spruce-fir forests adjacent to the high-elevation cliffs and rock outcrops occupied by this rare lichen have suffered dramatic declines due, at least in part, to airborne pollution and the impacts of an exotic insect, the balsam wooly adelgid. The impacts of this forest decline on *Gymnoderma lineare* cannot be accurately assessed at this time. Even though rock gnome lichen often grows in exposed places, the drastic decline of adjacent high-elevation forests may result in excessive desiccation of the moist sites required by the species. This theory would seem to be supported by the fact that *Geum radiatum*, already federally listed as endangered, is showing drastic declines at many of the same sites. With all but seven of the remaining populations of *Gymnoderma lineare* being less than 2 square meters in size, and with this species' very slow growth rate, even relatively small declines could pose a significant threat to the long-term survival and recovery of the species.

In addition to the indirect effects of air pollution on this species' habitat, lichens are known to effectively accumulate a wide variety of pollutants washed from the atmosphere by precipitation (St. Clair 1987). Photosynthetic rates, respiration rates, and membrane integrity of lichens have all been found to be very sensitive to a wide range of common air pollutants, including sulfur dioxide. St. Clair (1987) states, "Indeed lichen physiological processes appear to provide an indication of pollution damage long before any visible thallus necrosis or changes in community structure can be detected." A field study conducted by Pearson and Rodgers (1982) showed that membrane integrity in lichens is severely impacted following exposure to sulfur dioxide. Lawrey (1987) found that increasing levels of sulfur dioxide pollution had resulted in the elimination of some species of lichens in an area just north of the range of *Gymnoderma lineare*. Heavy metals and ozone also have been found to negatively affect lichens' potassium efflux, chlorophyll content, and photosynthetic rates (Puckett 1976, Nash and Sigal 1979, Sigal and Taylor 1979). Several observers have already noted declines in populations of *Gymnoderma lineare* which cannot be directly attributed to physical disturbance of the habitat (Weakley, personal communication, 1992; DePriest, personal communication, 1992; Shawn Oakley, The Nature Conservancy, North Carolina Field Office, personal communication, 1992). With the extremely small size of most of the remaining populations, declines of just a few centimeters a year could result in the imminent extinction of all but three of the remaining populations of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Gymnoderma lineare* as endangered. With 14 percent of the known populations having been completely extirpated and all the remaining populations subject to some form of threat, this species warrants protection under the Act. With the small number of individuals and area covered by the remaining populations, and with significant declines having been documented in many of these, this species is in danger of extinction throughout all or a significant portion of its range and, therefore, qualifies as an endangered species under the Act. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Gymnoderma lineare*. Publication of critical habitat descriptions and maps would increase public interest and possibly lead to additional threats for this species from collecting and vandalism (see threat factor "B" above). The species has already been subjected to excessive collecting by scientific collectors at several sites. Increased publicity and a provision of specific location information associated with critical habitat designation could result in increased collection from the remaining wild populations. Although taking of endangered plants from lands under Federal jurisdiction (and from privately owned lands under certain circumstances—see "Available Conservation Measures" section) and reduction to possession is prohibited by the Endangered Species Act, taking provisions are difficult to enforce. Publication of critical habitat descriptions would make *Gymnoderma lineare* more vulnerable and would increase enforcement problems for the U.S. Forest Service and the National Park Service. Also, the populations on private lands would be more vulnerable to taking. Increased visits to population locations stimulated by critical habitat designation, even without collection of plants, could adversely affect the species due to the associated increase in trampling of the fragile habitat occupied by this lichen. The lichen is easily scraped off its rocky substrate, and denuded habitat is not quickly recolonized. The Federal and State agencies and land owners involved in managing the habitat of this species have been informed of the plant's locations and of the importance of protection; therefore, it would not be prudent and no additional benefit would result from a determination of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the 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 action may affect a listed species or its critical habitat, the responsible Federal agency

must enter into formal consultation with the Service.

The U.S. Forest Service and the National Park Service have jurisdiction over portions of the species' habitat.

Federal activities that could impact *Gymnoderma lineare* and its habitat in the future include, but are not limited to, the following: Construction of recreational facilities (including trails, buildings, or maintenance of these facilities), use of aerially applied retardants in fire-fighting efforts, road construction, certain timber-harvesting techniques, permits for mineral exploration, and any other activities that do not include planning for the species' continued existence. The Service will work with the involved agencies to secure protection and proper management of *Gymnoderma lineare* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions at section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, the 1988 amendments (Pub. L. 100–478) to the Act protect endangered plants from malicious damage or destruction on Federal lands, and the removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Gymnoderma lineare* is not common in the wild and is not commercially cultivated. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions should be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, MS 432, 1849 C Street, NW., Washington, DC 20240 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Gymnoderma lineare;*

(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 as provided by section 4 of the Act;

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

(4) Current or planned activities in the subject area and their possible impacts on *Gymnoderma lineare.*

Final promulgation of the regulation on *Gymnoderma lineare* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office (see "ADDRESSES" section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Evans, A. W. 1947. A study of certain North American *Cladoniae.* Bryologist 50:14–51.

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Pearson, L., and G. Rodgers. 1982. Air pollution damage to cell membranes in lichens. III. Field experiments. Phyton 22(2):329–327.

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St. Clair, L. 1987. Final report concerning the establishment of an air quality biomonitoring program using various lichen parameters in the James River Face Wilderness Area, Jefferson National Forest, Virginia. U.S. Forest Service, Jefferson National Forest, Roanoke, VA. 16 pp.

Sigal, L., and O. Taylor. 1979. Preliminary studies on the gross photosynthetic response of lichens to peroxyacetylnitrate fumigations. The Bryologist 82(4):564–575.

Weakley, A. S. 1988. Species account for *Gymnoderma lineare.* North Carolina Plant Conservation Program, Raleigh, NC. 3 pp.

Yoshimura, I., and A. J. Sharp. 1968. A revision of the genus *Gymnoderma. American Journal of Botany 55(5):635–640.*

Author

The primary author of this proposed rule is Ms. Nora Murdock Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195, Ext. 231).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes 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. § 17.12(h) is amended by adding the following, in alphabetical order, under *Cladoniaceae,* to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *	*	*	*	*		*
Cladoniaceae—Reindeer moss family:						
* * *	*	*	*	*		*
Gymnoderma lineare.	Rock gnome lichen	U.S.A. (NC, TN)	E		NA	NA
* * *	*	*	*	*		*

Dated: November 9, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–31590 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 247
Tuesday, December 28, 1993

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

Intent To Prepare an Environmental Impact Statement for the Construction of an Office Complex in Beltsville, Prince Georges County, MD

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the Department of Agriculture (USDA) announces its intent to prepare an Environmental Impact Statement (EIS) for the proposed construction of a building complex on Government-owned land within the Beltsville Agricultural Research Center, Prince Georges County, Maryland. The complex has been considered to be constructed in two phases, each with 350,000 square feet of space plus parking for up to 1400 vehicles. The building complex will house elements of USDA currently housed in leased facilities in Washington, DC, Maryland, Virginia and in the Agriculture Headquarters Complex in Washington, DC.

The EIS will consider—Site A: approximately 100 acres located north of Interstate 95, southeast of the intersection of Rhode Island Avenue with Sunnyside Avenue; Site B: approximately 220 acres located east of the Baltimore/Washington Parkway, southeast of the intersection of Powder Mill Road with Soil Conservation Service Road; and Site C: approximately 75 acres located east of Edmonston Road, and 1000 feet south of Beaverdam Road. The EIS will also consider a No Action alternative—continued use of scattered leased facilities.

Potential environmental impacts resulting from the proposed project include short-term construction-related impacts, long-term changes in traffic, and socio-economic and physical conditions within the project area.

USDA will initiate the EIS process with a public scoping meeting for the purpose of determining significant issues related to the proposed construction and relocation of USDA employees. A public scoping meeting will be scheduled for *Monday, January 31, 1994, at 7:00 p.m.* in the auditorium of the *Beltsville Public Library*, located at *4319 Sellman Road*, Beltsville, Maryland. A short formal presentation will precede the request for public comments. USDA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, state and county agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS. In the interest of available time, each speaker will be asked to limit oral comments to ten (10) minutes.

In addition to the scoping meeting, USDA has made available for inspection at the Beltsville Library, and upon request, an Environmental Assessment (EA) addressing construction of the proposed complex at Site A. Agencies and the general public are invited and encouraged to provide written comments on the EA, in addition to, or in lieu of oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

All written statements and/or questions regarding the USDA Beltsville Office Complex must be mailed no later than *Wednesday, February 16, 1994*, to the address below.

Mr. Michael Sazonov, Contracting Officer Technical Representative, United States Department of Agriculture, Office of Operations, Facilities Management Division, Engineering Branch, South Building, room S–313, 14th Street & Independence Avenue SW., Washington, DC 20250.

Dated: December 6, 1993.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 93–31606 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–90–M

Federal Crop Insurance Corporation

Termination of the Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of termination of the Standard Reinsurance Agreement, and Agency Sales and Service Contract.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice that it will terminate the current (1994) Standard Reinsurance Agreement, and Agency Sales and Service Contract, effective as of June 30, 1994.

FOR FURTHER INFORMATION CONTACT: E. Heyward Baker, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8245.

SUPPLEMENTARY INFORMATION: The Food, Agriculture, Conservation, and Trade Act of 1990 (The 1990 Farm Act), enacted on November 28, 1990 (Pub. L. 101–624, 104 Stat. 3359) amended the Federal Crop Insurance Act (5 U.S.C. 1501 *et seq.*) to provide that beginning with the 1992 reinsurance year, the FCIC shall revise its reinsurance agreements to require an assumption of a greater share of risk by reinsured companies. In addition, the Omnibus Budget Reconciliation Act of 1993 requires the FCIC to take management actions to achieve budget savings and a projected loss ratio of 1.10 or less by October 1, 1995, and thereafter.

This action is necessary to provide FCIC sufficient time to address issues and changes for the 1995 Standard Reinsurance Agreement and is consistent with the direction provided by the 1990 Farm Act, Omnibus Budget Reconciliation Act of 1993, and other program improvements necessary to attain greater financial soundness in the multiple peril crop insurance program.

Notice

Accordingly, The Federal Crop Insurance Corporation (FCIC) herewith gives notice that it will terminate the current (1994) Standard Reinsurance Agreement and Agency Sales and Service Contract, effective as of June 30, 1994.

Done in Washington, DC on December 20, 1993.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–31699 Filed 12–27–93; 8:45 am]

BILLING CODE 3910–08–M

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Ft. Lauderdale, Florida, January 20–22, 1994 with a tour of local projects, January 20, 8:30 a.m., to 4:30 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is to begin oversight responsibilities and budget estimates for members of Congress. The meeting will be Chaired by William Kruidenier of the International Society of Arboriculture and is open to the public. Time will be provided at the beginning of each major agenda topic for public input. Time to speak must be requested in advance from the committee staff. However, Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held January 20–22, 1994.

ADDRESSES: The meeting will be held at the Courtyard Marriott, 7780 SW., 6th Street, Plantation, Florida 33324.

Send written statements and/or requests for agenda items or participation in the tour to Brian McGuire, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090–6090, or phone (202) 205–1689.

FOR FURTHER INFORMATION CONTACT: Brian McGuire, Cooperative Forestry Staff, (202) 205–1689.

Dated: December 21, 1993.

Michael T. Rains,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 93–31523 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Office of General Counsel

DEPARTMENT OF THE INTERIOR

Office of the Solicitor

Water Rights Under the Wilderness Act

AGENCIES: Office of General Counsel, Agriculture; Office of the Solicitor, Interior.

ACTION: Notice with request for comment.

SUMMARY: The Departments of Agriculture and the Interior are seeking public comment on a reevaluation of the Federal position on interpreting the Wilderness Act of 1964 in relation to Water rights.

DATES: Comments are requested by April 1, 1994.

ADDRESSES: Comments may be submitted to James Gilliland, General Counsel, Department of Agriculture, room 107W, Administration Building, 14th and Independence Ave. SW., Washington, DC 20250–1401, or to John D. Leshy, Solicitor, Department of the Interior, MS 6352, 1849 C St. NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: James Gilliland, 202–720–3351, or John D. Leshy, 202–208–4423.

SUPPLEMENTARY INFORMATION: The Departments of Agriculture and the Interior, in consultation with the Department of Justice, are undertaking to reexamine the position of their agencies not to file claims for water rights under federal law based upon congressional designation of federal lands as part of the National Wilderness Preservation System. Pending that reevaluation, a Department of the Interior Solicitor's Opinion reaching that conclusion (# M–36914) (Supp. III) (July 26, 1988), overruling a portion of Solicitor's Opinion M–36914, 86 I.D. 553 (June 25, 1979), has been suspended, as has the concurrence of the Attorney General in the 1988 Opinion.

The legal issue presented is primarily the interpretation to be given certain provisions of the Wilderness Act of 1964 and related federal legislation. As part of this reevaluation, comment is sought from interested persons, including especially state water rights administrators, water users, and others interested in water management. Comment is invited not only on the legal issues, but also on any practical questions that may be raised by their resolution.

Those interested are urged to submit views on these issues and questions to either or both of the addresses listed above by April 1, 1994.

Pending completion of this reevaluation, pertinent federal agencies will, in order not to forfeit claims of water rights that might be made as a result of this reevaluation, file claims for water rights in pertinent designated wilderness areas when required to file water rights claims by court deadlines in pending adjudications.

Dated: December 16, 1993.

James Gilliland,

General Counsel, Department of Agriculture.

John D. Leshy,

Solicitor, Department of the Interior.

[FR Doc. 93–31645 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–17–M

ARMED FORCES RETIREMENT HOME

Privacy Act of 1974; Systems of Records

AGENCY: Armed Forces Retirement Home (AFRH).

ACTION: Notice; systems of records.

SUMMARY: This notice provides an Armed Forces Retirement Home system of records and the routine uses pursuant to the Privacy Act of 1974, (5 U.S.C. 552a) as amended.

DATES: The system of records becomes effective January 27, 1994. Any public comments must be received before the effective date.

ADDRESSES: Written comments may be sent or delivered to the Administrative Officer, Administration Division/ Resource Management Directorate, U.S. Soldiers' and Airmen's Home, 3700 North Capitol Street, NW., Washington, DC 20317–0002.

FOR FURTHER INFORMATION CONTACT: Doris D. Montgomery, 202–722–3230.

SUPPLEMENTARY INFORMATION: The Armed Forces Retirement Home Act of 1991, incorporated the U.S. Soldiers' and Airmen's Home (USSAH) and the United States Naval Home (USNH) into an independent establishment in the Executive Branch of the Federal Government to be known as the Armed Forces Retirement Home. This law requires its residents, who are persons who have met the criteria for membership, to pay a monthly fee, which is a fixed percentage of their monthly Federal payments.

The "Armed Forces Retirement Home Resident Fee Maintenance System" is a system of records used by AFRH/ USSAH personnel to compile information on the source(s) and gross amount(s) of all Federal income entitled to each resident for computation,

billing, and collection of the monthly Resident Fee. The Federal payments include retired or retainer pay, civil service annuity, compensation or pension paid by the Secretary of Veterans Affairs, and Social Security.

The system of records is comprised of hard copies, computer printouts and computerized database. The records will be indexed by the residents' names and/or Social Security numbers.

The records in this system will be maintained in a secure manner and the personnel will be required to adhere to the provisions of the Privacy Act of 1974, (5 U.S.C. 552a) as amended. The system manager will control access to the data . Only authorized users having official duties requiring the use of the information have regular access to the records in this system. Authorized users are AFRH/USSAH employees responsible for implementing the AFRH Resident Fee Maintenance System. Records will be stored in computerized electronic database and file cabinets. Rooms and cabinets where records are stored are locked when not in use. During regular business hours, rooms and cabinets are unlocked but are controlled by on-site personnel.

AFRH—1

SYSTEM NAME:

Armed Forces Retirement Home Resident Fee Maintenance System.

SYSTEM LOCATION:

U.S. Soldiers' and Airmen's Home, Fiscal Division, Resource Management Directorate, 3700 North Capitol Street, NW., Washington, DC 20317–0002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Residents of the Armed Forces Retirement Home.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information relating to the residents of the Armed Forces Retirement Home, their Federal income sources, and gross monthly entitlement/s. (Name, SSN, address, source/s of Federal payment, gross amounts of payments, Resident Fee amount, payment history).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 24 U.S.C. 401–441, Armed Forces Retirement Home Act of 1991.

PURPOSE:

The purpose of the system of records is to provide a single central facility within the AFRH to maintain the Federal income sources of each resident for the purpose of billing, maintenance and collection of the monthly Resident Fee. All records in the system are subject to use in authorized approved computer matching programs as regulated by the Privacy Act of 1974, (5 U.S.C. 552a) as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system of records may be disclosed as indicated below:

1. To the Defense Manpower Data Center, Department of Defense, for the verification of retired or retainer benefit pay of the subjects of record.

2. To the Social Security Administration for the verification of benefit payments of the subjects of record.

3. To the Department of Veterans Affairs for the verification of veterans compensation or pension benefits of the subjects of record.

4. To the Office of Personnel Management for the verification of annuity benefits of the subjects of record.

5. To any other Federal agency for verification of Federal payments of subjects of record.

6. To the Inspector General of Department of Defense or his/her designee, while conducting inspections of the records of the AFRH.

7. To a Congressional office in response to an inquiry from that office made at the request of, or about, a subject of a record.

8. To a Federal agency, or an organization or person contracting with the AFRH for information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and/or making analytical or financial studies to support the function for which the records were collected and maintained.

9. To a Federal agency, a court, or a party in litigation before a court, or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a computerized electronic database, magnetic tape, computer printouts, and on cards.

RETRIEVABILITY:

These records are retrieved by the Social Security Number or name of the individual.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel. Confidential passwords are required for access to automated records.

RETENTION AND DISPOSAL:

Records are retained for 3 years. Manual records are destroyed by shredding. Tapes and diskettes are erased.

SYSTEM MANAGER AND ADDRESS:

Budget Officer, Fiscal Division/Resource Management Directorate, U.S. Soldiers' and Airmen's Home, 3700 North Capitol Street, NW., Washington, DC 20317–0002.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether the system of records contains information about themselves should contact the System Manager. Written requests should include full name and Social Security Number, and be signed by the requesting individual. For personal visits, the requesting individual must provide acceptable identification, e.g. USSAH or USNH Identification Card, U.S. Uniformed Services Identification Card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the System Manager. Written requests should include full name and Social Security Number, and be signed by the requesting individual. For personal visits, the requesting individual must provide acceptable identification, e.g., USSAH or USNH Identification Card, U.S. Uniformed Services Identification Card, driver's license, etc.

CONTESTING RECORD PROCEDURE:

Individuals seeking to amend their records should contact the System Manager. Written requests should include full name and Social Security Number, and be signed by the requesting individual. For personal visits, the requesting individual must provide acceptable identification, e.g., USSAH or USNH Identification Card, U.S. Uniformed Services Identification Card, driver's license, etc.

RECORDS SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies or the next of kin, relative, power of attorney, conservator and/or guardian acting on behalf of the individual. Verification of income is necessary and is made through the Defense Manpower

Data Center, Social Security Administration, Department of Veterans Affairs, and the Office of Personnel Management.

Dennis W. Jahnigen, M.D.

Armed Forces Retirement Home Chair.

[FR Doc. 93–31674 Filed 12–27–93; 8:45 am]

BILLING CODE 8250–01–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Preparation of Guidelines for the Production of Lead Containing Reference Materials

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: The Inorganic Analytical Research Division (IARD) of the National Institute of Standards and Technology, and the Chemical Management Division of the Office of Pollution Prevention and Toxics of the Environmental Protection Agency will conduct a one day meeting to discuss the preparation of guidelines for the production of lead-containing reference materials which will provide benchmarks for quantitative chemical analyses of lead in paint, soil, and dust. A publication will be produced from this meeting. Interested members of the public are invited to attend. Preregistration is required by January 21, 1994.

DATE: The meeting will convene January 28, 1994, at 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in Lecture Room D, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Koch, Deputy Chief, Inorganic Analytical Research Division, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–4143 or Mr. John Scalera, Office of Pollution Prevention and Toxics, Environmental Protection Agency, telephone number (202) 260–6709. Preregister by calling Jo Ann Brooks at (301) 975–4143.

Dated: December 20, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–31596 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–13–M

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Interim Meeting of the National Conference on Weights and Measures will be held January 9 through 13, 1994, at the Hyatt Regency Bethesda Hotel, Bethesda, MD. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, as well as the annual meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting), brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATE: The meeting will held January 9–13, 1994.

LOCATION OF MEETING: Hyatt Regency Bethesda Hotel, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Carroll Brickenkamp, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975–4005.

Dated: December 20, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–31595 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

National Weather Service, Modernization Transition Committee

Time and Date: January 12, 1994 from 8:30 a.m.–12 noon and 1–4:30 p.m.; and January 13, 1994 from 8:30 a.m.–12 noon and 1–2:30 p.m.

Place: This meeting will take place at the Quality Hotel, 8727 Colesville Road Silver Spring, Maryland 20910.

Status: The meeting will be open to the public. The last 30 minutes of the last day will be set aside for oral comments from the public. Approximately 20 seats will be available on a first-come first-served basis for the public.

Matters to be Considered: This meeting will cover: (1) Final Consultation with the Committee on the FY95 National Implementation Plan and the Final Modernization Criteria; (2) a briefing to the Committee by the National Weather Service Employees Organization; and (3) a briefing by NWS on the status of the Automated Weather Interactive Processing System (AWIPS).

Contact Person for More Information: Mr. Senator Raygor, National Weather Service, Transition Program Office, 1325 East-West Highway, SSMC2, Silver Spring, MD 20910, telephone: (301) 713–0391.

Elbert W. Friday,

Assistant Administrator for Weather Services.

[FR Doc. 93–31569 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–12–M

[Docket No. 931235336; I.D. 111593A]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

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

ACTION: Intent to issue a limited entry permit.

SUMMARY: The Regional Director, Southwest Region, NMFS, in consultation with the Western Pacific Fishery Management Council, has determined that the Northwestern Hawaiian Islands (NWHI) limited entry bottomfish fishery in the Ho'omalu Zone is able to support an additional fishing vessel. Under the regulations governing this fishery, this determination is to be announced in the **Federal Register**. The Regional Director intends to issue a limited entry permit to an eligible vessel owner according to regulations at 50 CFR 683.25 governing the bottomfish and seamount groundfish fisheries in the western Pacific region.

DATES: Applications for a NWHI bottomfish limited entry permit must be received by 4:30 p.m., HST January 3, 1994.

ADDRESSES: Requests for and submissions of NWHI bottomfish permit applications should be directed to the

Pacific Area Office, NMFS, 2570 Dole Street, Honolulu, Hawaii 96822, Attn: Permit Application.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Long Beach, California 90802 (310) 980–4034; or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: The bottomfish fishery in the exclusive economic zone of the NWHI is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). The Council prepared, and the Secretary approved, the FMP under the authority of the Magnuson Fishery Conservation and Management Act. Permit requirements governing participation of U.S. vessels in the NWHI bottomfish limited access fishery are contained in 50 CFR part 683.

In 1988, Amendment 2 to the FMP created a limited access program for the NWHI bottomfish fishery. A vessel owner who meets one of the six eligibility criteria in the FMP for participation in the NWHI bottomfish limited access fishery (Ho'omalu Zone) was given 5 years from the effective date of the program (i.e., until the end of 1993) to file an application and receive a limited entry permit. This was intended to prevent a rush of entry or reentry to the Ho'omalu Zone and thus reduce the risk of overfishing. The regulations also provide mechanisms for future issuance of permits as exit from the fishery or increases in the stocks provide room for new entry.

At its 81st meeting in September 1993, the Council determined that the NWHI bottomfish fishery is able to support additional vessels in the fishery since the projected total annual revenue to the expanded fleet operating on a full-time equivalent basis will still exceed the total estimated annual fixed and variable costs of the fleet in the Ho'omalu Zone. There has been a gradual decrease in the level of participation in the fishery during the past few years. The number of active vessels dropped from 12 in 1988 to 5 in 1992, and only one of the participants in 1992 was fishing in the area full time. It is estimated the stocks in the Ho'omalu Zone could support 6.5 vessels on a full time basis and up to 11 vessels at the average level of participation on 1992.

The limited entry program anticipated some attrition in the fishery over time. Under the regulations, a permit holder must make three landings in a year to qualify for renewal of his permit. Several persons have lost their permit eligibility. New entry is provided for in two ways: First, prospective entrants may earn "points" toward eligibility by fishing in the Mau Zone or around the main Hawaiian Islands; or second, a former permit holder may surrender his permit to the Regional Director and gain priority for consideration for a permit if the fishery is opened to new persons.

The application deadline for limited entry permits under the initial eligibility criteria occurs at the end of 1993. Based on records available to him concerning participation in the fishery prior to the limited entry program, the Regional Director anticipates that no more than two persons would qualify for permits under the initial criteria. Both of these individuals have indicated an interest in obtaining permits to be effective in 1994. If these persons do apply, there would still be space for one additional vessel. Therefore, in concurrence with the Council's recommendation, the Regional Director has determined that there is room for one additional vessel. He intends to issue one permit under this provision. This permit will be issued to a previous permit holder who was the first to surrender his permit under § 683.25(e)(4) of the regulations and who therefore has top priority for a permit for the fishery.

If the two permit applications anticipated for receipt within the original 5-year application period are not received, the Regional Director will announce a new opportunity for prospective new entrants to apply for permits.

Dated: December 21, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–31574 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 121793A]

Gulf of Mexico Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's (Council) Shrimp Advisory Panel (Panel) will meet on January 10, 1994, at the Radisson Inn New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, LA; telephone: (504) 467–3111. The meeting will be held from 10 a.m. until 5 p.m.

The Panel will complete the following:

(1) Review the results of the 1993 shrimp season in the Gulf of Mexico and develop recommendations to the Council for the seasonal closure off Texas for 1994;

(2) Receive a status report on studies to characterize and reduce finfish bycatch in shrimp trawls; and

(3) Review Draft Amendment #7 to the Fishery Management Plan for Gulf Shrimp which would provide a definition for overfishing of white shrimp and remedial action if overfishing should occur. It would also delete the total allowable level of foreign fishing for royal red shrimp and increase the domestic harvest levels.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Laura Mataluni at the address below by January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: December 17, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–31693 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 122093D]

North Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Industry Individual Fishing Quota (IFQ) Implementation Workgroup will meet on January 4, 1994, at 8 a.m. in conference room 445, at the Federal Building, 709 W. 9th Street, Juneau, AK.

The workgroup will discuss aspects of the final rulemaking for the Sablefish/Halibut IFQ program, which is scheduled to go into effect in 1995.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, on (907) 271–2809, at least

10 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: December 21, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–31694 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Receipt of applications for a scientific research permit (P79H and P558).

SUMMARY: Notice is hereby given that: The Institute of Marine Sciences and Department of Biology, University of California, Santa Cruz, CA 95064 (Dr. Ronald Schusterman, Principal Investigator); and Department of Anatomy, Tulane University School and Medicine, New Orleans, LA 70112 (Dr. Robert D. Yates, Principal Investigator), have each applied for a Permit to take elephant seals (*Mirounga angustirostris*) for scientific research.

ADDRESSES: Documents submitted in connection with the above applications are available for review by writing to or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1315 East-West Hwy., Suite 13130, Silver Spring, MD 20910 (301/713–2289);

(P79H and P558): Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; and

(P558): Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: The University of California and Tulane University School of Medicine each request a Scientific Research Permit as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dr. Schusterman of the Santa Crus will conduct research on one elephant seal. An animal will be obtained from beached/stranded stock or if a suitable animal is not available, a seal will be collected from the wild. If collection will be from the wild, permission is requested to take three animals initially to determine trainability. Two will then be released back into the wild within 1 to 2 weeks after capture. The animal will be used in research to determine aerial and underwater pure tone detection thresholds. The object is to gain an understanding of the sensory systems of the elephant seal in its environment, as well as to determine the impacts of anthropogenic underwater noise on the animal's hearing abilities.

Dr. Yates of TU School of Medicine requests authority to obtain four beached/stranded elephant seals from rehabilitation centers that are earmarked for euthanasia. The hearings will be removed and used for study and biopsies will be taken and processed for routine light and electron microscopy and immunocytochemistry. The objective is to extend the level of information on how cardiac cell ultrastructure varies with activity and the environment. The long-term goal is to apply these findings to an understanding of human cardiac disorders.

Written data or views, or requests for a public hearing on either application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1315 East-West Hwy., room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Dated: December 21, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–31588 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 122093E]

North Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council), its Advisory Panel (AP), and Scientific and Statistical Committee (SSC) will meet on January 9–11, 1994, at the Anchorage Hilton Hotel, 3rd Avenue & F Street, Anchorage, AK; telephone: (907) 272–7411.

The AP will begin its meeting on January 9 at 1 p.m., and the SSC will begin its meeting on January 10 at 10:30 a.m. The Council will meet on January 11 at 8 a.m. and continue through the week until the agenda is completed.

The Council will consider and may take action on the following agenda items:

(1) Review of elements and options for the comprehensive rationalization program for groundfish and crab fisheries off Alaska;

(2) Final review of a regulatory amendment that would implement a 5,000 lb. (2267.96 kg) trip limit on the 12-hour halibut openings in International Pacific Halibut Commission area 4B, with a 20-percent set-aside for vessels fishing under the trip limits;

(3) Final review of analysis for a superexclusive registration area for the Norton Sound red king crab fishery;

(4) Review of the provisions in the final rule to implement the Sablefish and Halibut Individual Fishing Quota program and receive a progress report on implementation;

(5) Receive a report from the Halibut Charter Working Group on management options for the Alaska halibut charter fleet and discuss future action;

(6) Develop research priority recommendations to forward to NMFS;

(7) Review an experimental permit request from Terra Marine Research, if available;

(8) Review activities of the Salmon Foundation and receive a report on chum salmon interceptions;

(9) Discuss and develop alternatives for full utilization of the fishery resources off Alaska;

(10) Receive a progress report from NMFS on development of alternatives for requiring total weight measurement in the fisheries; and

(11) Receive a report on bycatch of *C. opilio* in all fisheries and determine whether to proceed with further analysis of prohibited species caps.

Other committees and workgroups may meet during the week. All meetings are open to the public with the exception of a Council executive session, which will be held during the lunch hour sometime during the week. During executive sessions, the Council receives reports on litigation, international affairs, and personnel matters.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, on (907) 271–2809, at least 10 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: December 21, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–31695 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–22–P

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Ser. No. 8–087,374, titled "Device for the Removal and Concentration of Organic Compounds from the Atmosphere," to Customs Industrial Analysis Laboratories, having a place of business in St. Joseph, MO. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce NTIS' intent to grant an exclusive license to practice Ser. No. 8–087,374, it also serves to publish said patent's availability for licensing in accordance with law. The prospective exclusive license may be granted unless, within ninety days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention describes a device and method for removing, concentrating and analyzing airborne organic compounds. The device includes a nonporous membrane which contains a collection media. The liquid collection media typically includes a component which has a molecular weight that is too large to pass through transport corridors in the nonporous membrane and a component which has a molecular weight which is sufficiently small to pass through the transport corridors in the nonporous membrane and thereby forming a thin film on the exterior surface of the device. The collection media can consist of only components too large to pass through the membrane transport corridors. Organic contaminants are trapped in the thin film on the exterior surface of the device or the membrane and transported by concentration gradient diffusion forces into the bulk of the collection media within the nonporous membrane.

A copy of the above-identified patent application may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 93–31541 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

December 21, 1993.

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

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

EFFECTIVE DATE: December 23, 1993.

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 or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992; and 58 FR 62645, published on November 29, 1993). Also see 57 FR 60174, published on December 18, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1993 and extends through January 31, 1994.

Effective on December 23, 1993, you are directed to amend further the directive dated December 11, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
334	122,261 dozen.
335	181,024 dozen.
347/348	1,659,021 dozen.
635	241,956 dozen.
647/648	827,650 dozen.
847	390,153 dozen.

[1] The limit has not been adjusted to account for any imports exported after January 31, 1993.

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,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–31671 Filed 12–27–93; 8:45 am]

BILLING CODE 3510–DR–F

COUNCIL ON ENVIRONMENTAL QUALITY

Endangered Species Act Exemption; Annual Report Availability

December 21, 1993.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only: Notice of availability of annual report on Endangered Species Act exemption.

SUMMARY: This notice announces the availability of the 14th Annual Report submitted by Basin Electric Power Cooperative, as Project Manager for the Missouri Basin Power Project in the matter of an exemption granted from the requirements of the Endangered Species Act to Grayrocks Dam. The lead federal agency in the project is the Rural Electrification Administration.

DATES: The report was submitted to the Council On December 3, 1993.

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act, any agency granted an exemption under 16 U.S.C. 1536(h) must submit to the Council on Environmental Quality an annual report describing its compliance methods with the mitigation and enhancement measures prescribed by 16 U.S.C. 1536. See 16 U.S.C. 1536(L)(2). This subsection further requires that the Council publish availability of the report in the Federal Register.

On February 7, 1979, the Endangered Species Committee granted an exemption from the requirements of the Endangered Species Act to Grayrocks Dam. In granting the Exemption Order, the Committee, as required by the Act, established requirements for reasonable mitigation and enhancement measures. These requirements are set out in an "Agreement of Settlement and Compromise" and is part of the Annual Report announced here.

ADDRESSES: The Annual Report is available from Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, ND 58501–0564; Telephone (701) 223–0441.

FOR FURTHER INFORMATION CONTACT: Elisabeth Blaug, Attorney, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503; telephone (202) 395–5754.

Ray Clark,

Senior Policy Analyst.

[FR Doc. 93–31529 Filed 12–27–93; 8:45 am]

BILLING CODE 3125–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Board on Investigative Capability of the Department of Defense

AGENCY: Advisory Board on Investigative Capability of the Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meeting is to discuss the course of action for the Advisory Board over the next year. This meeting is open to the public.

DATES: January 14, 1994.

ADDRESSES: 1700 N. Moore Street, suite 1420, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

Dated: December 21, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–31553 Filed 12–27–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Acquiring Defense Software Commercially

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Acquiring Defense Software Commercially will meet in open session on January 21, 1994 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review current DoD software acquisition regulations, DoD acquisition experience with selected software-intensive systems, and contractor acquisition experiences with DoD and commercial software-intensive systems.

Persons interested in further information should call Ms. Virginia Castor at (703) 614–0212.

Dated: December 21, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–31556 Filed 12–27–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Depot Management

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Depot Management will meet in closed session on January 20–21, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the overall performance and management of depot-level activities of the Department of Defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that acccordingly this meeting will be closed to the public.

Dated: December 21, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–31555 Filed 12–27–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environment Impact Statement (DEIS), Red River of the North Cumulative Impact Evaluation Study of Impoundments

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The St. Paul District, Corps of Engineers, has received a number of Section 404 permit applications to construct surface water impoundments in the Red River of the North basin. The purpose of these impoundment is flood control, fish and wildlife enhancement/restoration, or a combination of purposes. Nationally significant natural, cultural, and socioeconomic resources

exist in the Red River Basin. Construction of impoundments could result in significant cumulative impacts to these resources. In order to evaluate the potential cumulative impacts of impoundment projects, a joint EIS with the Minnesota Department of Natural Resources will be prepared.

FOR FURTHER INFORMATION CONTACT: Questions concerning the DEIS can be directed to: Colonel James T. Scott, District Engineer, St. Paul District, Corps of Engineers, ATTN: Mr. Robert Whiting, 190 5th Street East, St. Paul, Minnesota 55101–1638.

SUPPLEMENTARY INFORMATION: The EIS will evaluate the potential for the construction of the proposed impoundments to result in cumulative environmental impacts. Alternatives to impoundments will also be evaluated. These alternatives include: levees, channelization, wetland restoration, greenbelt, watershed treatment, floodplain management, and others.

Significant issues and resources to be analyzed in the DEIS will be identified through coordination with responsible Federal, State, and local agencies; the general public; interested private organizations and parties; and affected Native Americans. Anyone who has an interest in participating in the development of the DEIS is invited to contact the St. Paul District, Corps of Engineers.

Significant issues identified to date for discussion in the DEIS are as follows:

1. Natural resources including: fishery, wildlife, vegetation, wetlands, riparian areas, and water quality;
2. Cultural resources in the basin;
3. Federally and State listed threatened or endangered plant or animal species;
4. Social and economic resources in the basin;
5. Tribal Trust resources and responsibilities.

Additional issues of significance may be identified through public and agency meetings. A notice will be provided to interested parties and to local news media.

Our environmental review and consultation will be conducted according to the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act of 1966, Council on Environmental Quality Regulations, Endangered Species Act of 1973, Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and applicable Corps of Engineers regulations and guidance.

We anticipate that the DEIS will be available to the public in March 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–31575 Filed 12–27–93; 8:45 am]

BILLING CODE 3710–CY–M

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of Meeting: 13 January 1993.

Time of meeting: 0800–1700.

Place: Fort Monmouth, NJ.

Agenda: The Army Science Board's C3I Issue Group will meet to hear selected briefing related to the team study titled—"Leveraging Commercial Technologies in Army C3 Systems." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Office, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–31546 Filed 12–27–93; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of meeting: 20 January 1993.

Time of meeting: 0800–1700.

Place: Fort Gordon, GA.

Agenda: The Army Science Board's C3I Issue Group will meet to hear selected briefing related to the team study titled—"Leveraging Commercial Technologies in Army C3 Systems." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–31547 Filed 12–27–93; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of meeting: 14 January 1994.

Time of meeting: 0800–1700.

Place: Fort Monmouth, NJ.

Agenda: The Army Science Board's C31 Issue Group will meet to hear selected briefing related to the team study titled—"Moving Army Tactical Command and Control System (ATCCS) from a Character-Oriented Message System to a Data-Oriented Message System and Leveraging Commercial technologies in Army C3 Systems." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–31548 Filed 12–27–93; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of meeting: 12 January 1994.

Time of meeting: 0900–1700.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's C31 Issue Group will meet to hear selected briefing related to the team study titled—"Moving Army Tactical Command and Control System (ATCCS) from a Character-Oriented Message System to a Data-Oriented Message System." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–31550 Filed 12–27–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTION

OMB Clearance Request for Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980, the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

DATES: Comments may be submitted on or before February 28, 1994.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the North American Free Trade Agreement (NAFTA) Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and NAFTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and NAFTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .167 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 1,140; responses per respondent, 5; total annual responses, 5,700; preparation hours per response, .167; and total response burden hours, 952.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance request regarding Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, FAR case 93–310, in all correspondence.

Dated: December 15, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–31023 Filed 12–27–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, applicable form, and OMB control number: The Army Alumni Survey

Type of request: New Collection

Number of respondents: 4,500

Responses per respondent: 1

Annual responses: 4,500

Average burden per response: 30 minutes

Annual burden hours: 2,250

Needs and uses: This is a survey of Army veterans being conducted to obtain information on their transition to civilian life and their post-service careers. The data will be used to inform those responsible for recruiting, retention, and transition policies and programs.

Affected public: Individuals or households

Frequency: One time

Respondent's obligation: Voluntary

OMB desk officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 21, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–31554 Filed 12–27–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 27, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., Room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden ; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: December 21, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: New.
Title: Fast Response Survey System—Survey of Public Library Services to Children and Young Adults.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 2,400.
Burden Hours: 792.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The purpose of this survey is to collect information regarding the services and resources that public libraries offer children and young adults. The Department will use the information to assess public libraries as they relate to the National Education Goals and to update two previous surveys.

[FR Doc. 93–31571 Filed 12–27–93; 8:45 am]

BILLING CODE 4000–01–M

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Correction.

In the notice inviting applications for new awards for fiscal year 1994, beginning on page 50138 in the issue of Friday, September 24, 1993, make the following corrections:

On page 50141, in the chart for Office of Elementary and Secondary Education, the listing for CFDA No. 84.258A, Even Start Program—Indian Tribes and Tribal Organizations, should be deleted. The competition for new awards under this program for FY 1994 has been withdrawn. Revised funding estimates preclude an expenditure of funds for new awards for FY 1994.

On page 50147, in the continuation of Chart 4.—Office of Elementary and Secondary Education, the listing for CFDA No. 84.258A, Even Start Program—Indian Tribes and Tribal Organizations, should be deleted for the reason stated in the preceding paragraph.

On page 50151 the application notice for CFDA No. 84.258A, Even Start Program—Indian Tribes and Tribal Organizations, should be deleted.

FOR INFORMATION CONTACT: Patricia McKee, U.S. Department of Education, 400 Maryland Avenue, SW., room 2017, Washington, DC 20202–6132. Telephone (202) 401–1692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Dated: December 20, 1993.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 93–31619 Filed 12–27–93; 8:45 am]

BILLING CODE 4000–01–P

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals With Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: January 20, 1994, from 10 a.m. to 5 p.m.

ADDRESSES: Crystal Gateway Marriott, Salon VI, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 400 Maryland Avenue, SW., room 4613, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is estimated under section 685 of the Individuals With Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these programs, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to identify and discuss cross-cutting interagency issues for consideration around the reauthorization of the Individuals With Disabilities Education Act (IDEA).

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible, with meeting materials provided in both braille and large print.

Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 400 Maryland Avenue, SW., room 3127, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–31599 Filed 12–27–93; 8:45 a.m.]

BILLING CODE 4000–01–M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: Tuesday, January 25, 1994 from 9 a.m. to 5 p.m. and Wednesday, January 26, 1994 from 9 a.m. to 3:30 p.m.

ADDRESSES: The meeting will beheld at the Sheraton Tampa East Hotel, 7401 East Hillsborough Avenue, Tampa, Florida, 33610, (813) 626–0999.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The meeting is open to the public. The agenda of the National Advisory Council on Indian Education includes a general business meeting and a review session of the findings from hearings previously held by the NACIE Executive Committee on November 18 and 19, 1993 in Albuquerque, New Mexico. The hearings were held to allow the Indian community the opportunity to provide written and/or oral testimony on the reauthorization of the Elementary and Secondary Education Act and the Goals 2000: Educate America Act.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m. Monday through Friday.

Dated: December 21, 1993.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 93–31579 Filed 12–27–93; 8:45 am]

BILLING CODE 4000–01–M

Nominations Committee of the National Assessment Governing Board; Closed Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the Nominations Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: January 7, 1994.

TIME: 9 a.m. to 4:30 p.m.

LOCATION: 800 North Capitol Street, NW., Suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233; Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Nominations Committee of the National Assessment Governing Board will meet in closed session on January 7, 1994, from 9 a.m. until 4:30 p.m., to review and discuss personal qualifications and experience of nominees recommended to serve in the respective category for Board membership. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

The Public is given less than fifteen days notice of this meeting because of problems encountered in scheduling.

A summary of the activities of the meeting and related matters, which are informative to the public, consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. until 5 p.m.

Dated: December 22, 1993.

Roy Truby,

Executive Director, NAGB.

[FR Doc. 93–31605 Filed 12–27–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures

for the disbursement of $200,000, plus accrued interest, obtained by the DOE under the terms of a settlement agreement entered into with the consolidated bankruptcy estate of Ted True, Inc. and Ted W. True (Case No. LEF–0115). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 F.R. 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for Refund from the crude oil funds should be clearly labeled "Application for Crude Oil Refunds" and should be mailed to Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund must be filed in duplicate no later than June 30, 1994. Any party who has previously filed an Application for Refund should not file another Application for Refund from the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $200,000, plus accrued interest, that has been remitted by the consolidated bankruptcy estate of Ted True, Inc. and Ted W. True to the DOE. The DOE is currently holding the funds in an interest bearing account pending distribution.

The DOE has determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, federal government, and injured purchasers of refined products. Under the plan, refunds to the states will be in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products that they purchased and the extent to which they can demonstrate injury.

Applications for Refund must be postmarked no later than June 30, 1994. As we state in the Decision, any party who has previously submitted a refund application for in the crude oil refund proceedings should not file another application for refund in the crude oil proceedings. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: December 20, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

December 20, 1993.

Names of Firms: Ted True, Inc. and Ted W. True.

Date of Filing: October 7, 1993.

Case Number: LEF–0115.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the ERA on October 7, 1993 for crude oil overcharge funds. The funds at issue in this Petition were obtained from the consolidated bankruptcy estate of Ted True, Inc. and Ted W. True (hereafter collectively referred to as "True"). This Office issued a Remedial Order against True for violations of the crude oil price regulations during the period from June 1979 through November 1980. *Ted True, Inc., et al.*, 15 DOE ¶ 83,032 (1987). On October 25, 1990, the United States Bankruptcy Court for the Northern District of Texas issued an order approving a compromise and settlement agreement between the Trustee for True and the DOE. In this agreement, the Trustee for True agreed to pay $200,000 to the DOE in order to resolve the DOE's claim without the expense and inconvenience of further judicial proceedings. The total amount was received by the DOE on November 14, 1990. This Decision and Order establishes the OHA's procedures to distribute those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from True and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986) (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the Subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, i.e., *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*NYP*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals (TECA). In the case *In re: The Department of Energy Stripper Well Exemption Litigation*, various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F. 2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323.

The court also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

II. The Proposed Decision and Order

On October 29, 1993, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged crude oil violation amount obtained from True. 58 Fed. Reg 59030 (November 5, 1993). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PDO, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PDO stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the True settlement funds. Consequently, the procedures will be adopted as proposed.

III. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $200,000, plus interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $40,000, plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g., Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, a covered product is any product that was covered by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751–760, and was primarily produced at a crude oil refinery. *E.g., Anchor Continental, Inc.*, 22 DOE ¶ 85,003 (1992). Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *E.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g., Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g., NYP*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *OHA Report to the District Court in the Stripper Well Litigation, reprinted in* 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Mid-America Dairyman, Inc.* v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($200,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.0000000989 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one Application for crude oil overcharge funds. *E.g., Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund Application in the crude oil refund proceedings need not file another Application. That previously filed Application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The DOE has established June 30, 1994 as the final deadline for filing an Application for Refund from the crude oil funds. See 58 FR 26,318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims filed within this deadline at the rate of $.0008 per gallon. However, while we anticipate that applicants that filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. *E.g., Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[1] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the Subpart V crude oil refund proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations, or is related to the petroleum industry, a showing

[1] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

that the applicant was injured by the alleged crude oil overcharges;

(9) If the Applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is June 30, 1994. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

C. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $160,000, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate the $160,000, plus interest, available for disbursement to the states and federal government and transfer one-half of that amount, or $80,000, plus interest, into an interest-bearing subaccount for the states, and one-half, or $80,000, plus interest, to an interest bearing subaccount for the federal government. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by the consolidated bankruptcy estate of Ted True, Inc. and Ted W. True ("True") may now be filed.

(2) All Applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1994.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $200,000 (plus interest) from the True subaccount (Account Number 6A0X00300Z), pursuant to Paragraphs (4), (5), and (6) of this decision.

(4) The Director of Special Accounts and Payroll shall transfer $80,000 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $80,000 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $40,000 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

Dated: December 20, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–31683 Filed 12–27–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4818–4]

Agency Information Collection Activities Under OMB Review

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 Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 27, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Determining Conformity of General Federal Actions to State or Federal Implementation Plans—Information Requirements (EPA ICR No. 1637.02). This is a request for approval of a new information collection.

Abstract: On November 30, 1993 (58 FR 63214), the EPA promulgated a rule to ensure that Federal actions conform to the appropriate State implementation plan (SIP). This rule is effective January 31, 1994, and will be codified at 40 CFR part 51, subpart W and 40 CFR part 93, subpart B. The General Conformity for all Federal actions, except Federal highway and transit actions ("transportation conformity"). Transportation conformity requirements were established in a separate rulemaking (see 58 FR 62188, November 24, 1993).

Conformity to a SIP is defined as meaning conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of these standards. The Federal agency responsible for a proposed action is required to determine if its actions conform to the applicable SIP and to submit information to the appropriate State or local air quality agency.

At the time of promulgation of the General Conformity rule, EPA had not yet submitted an ICR to OMB under the Paperwork Reduction Act. Therefore, the final rule was published with a statement that the information requirements would not be effective until approved by OMB. In compliance with the Paperwork Reduction Act, this notice announces that the ICR for the General Conformity rule has been forwarded to OMB for review.

Burden Statement: The public reporting burden for this collection of information is estimated to average 370 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Federal Agencies or private sponsors of activities that require Federal support or approval; State and local air quality agencies.

Estimated No. of Respondents: 802.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 297,140 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the

information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: December 21, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–31621 Filed 12–27–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4818–6]

Oklahoma; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Application of Oklahoma for Full Program Adequacy Determination.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) that may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Oklahoma applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Oklahoma's application and proposed a determination that Oklahoma's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all public comments received, EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Oklahoma shall be effective on December 28, 1993.

FOR FURTHER INFORMATION CONTACT: Becky Weber, Chief, Solid Waste Section, US EPA Region 6, Dallas, Texas 75202; (214) 655–6760.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Oklahoma

On August 10, 1993, Oklahoma submitted an application for adequacy determination for Oklahoma's municipal solid waste landfill permit program. On September 16, 1993, EPA published a tentative determination of adequacy for all portions of Oklahoma's program. Further background on the tentative determination of adequacy appears at 58 FR 48516, 48518 (September 16, 1993). A 30-day public comment period was held until October 18, 1993. In this notice of tentative determination, EPA announced that a public hearing would be held if a sufficient number of people requested a hearing. The Agency received one comment letter in response to the tentative determination. No requests for a public hearing were received, therefore, a hearing was not held.

In the tentative determination notice, EPA discussed that Oklahoma was required to pass regulations that are as stringent as the Federal regulations cited at 40 CFR part 258 (RCRA - Subtitle D) before final approval of the solid waste permitting program would be granted by EPA. On September 22, 1993, the Environmental Quality Board (the Board) of the Oklahoma Department of Environmental Quality (ODEQ) approved the proposed Oklahoma regulations, with some nonsubstantive revisions, as temporary regulations which will expire on June 30, 1994. The Oklahoma regulations were implemented on a temporary basis because of administrative requirements and because of the additional changes made by the Board. It is EPA's understanding that these additional

revisions are beyond Subtitle D requirements. On October 8, 1993, the Governor of the State of Oklahoma signed the Oklahoma regulations into law on an emergency basis effective until June 30, 1994. At the request of the Board, ODEQ currently is amending its solid waste regulations for permanent adoption on or before June 30, 1994. The amendments that are being proposed are minor in nature and do not affect the Subtitle D requirements of the Oklahoma regulations (Oklahoma Administrative Code, Title 252, Chapter 510). These minor amendments are tentatively scheduled to be presented to the Board on February 23, 1994 for final adoption.

C. Public Comments

EPA received one public comment on the tentative determination of adequacy for Oklahoma's MSWLF permit program. The commentator stated that he fully supported the approval of Oklahoma's Solid Waste Management program.

D. Decision

After reviewing the public comment and the temporary nature of the rules adopted by ODEQ on October 8, 1993, EPA concludes that Oklahoma's application for adequacy determination currently meets all of the statutory and regulatory requirements established by RCRA. EPA's final approval of the solid waste program is only applicable through June 30, 1994, since the ODEQ's solid waste regulations adopted on September 22, 1993, expire on that date. Once the ODEQ's Board adopts permanent regulation revisions (proposed date February 23, 1994) and these permanent regulations are submitted by the Governor of the State of Oklahoma as final rules, EPA will re-evaluate the revised regulations to ensure the permanent rules are as stringent as the Federal Criteria for solid waste disposal (40 CFR part 258). EPA will publish another determination of adequacy based on these permanent rule revisions in the **Federal Register**. Accordingly, Oklahoma is granted a determination of adequacy through June 30, 1994, for all portions of its municipal solid waste permit program as adopted on September 22, 1993, and signed by the Governor on October 8, 1993. Oklahoma's solid waste program does not apply and cannot be enforced in Indian country in the State. Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new compliance requirements on the regulated community. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: December 15, 1993.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 93–31700 Filed 12–27–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0549

Title: Cable Programming Service Rate Complaint Form

Form Number: FCC Form 329

Action: Revision of a currently approved collection

Respondents: Individuals or households, state or local governments, nonprofit institutions and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 23,000 responses; .75 hours average burden per response; 17,250 hours total annual burden

Needs and Uses: The Mass Media Bureau has, on its own motion, adopted a revised cable programming service rate form in order to ensure that all interested parties are able to more easily communicate their cable complaints to the Commission. The revised FCC Form 329 will make it easier for consumers and franchising authorities to request that the FCC investigate alleged violations of the Cable Act. The revised form requests the same information as the earlier edition, but in a more "user-friendly" format. The revised form also provides consumers with helpful information about cable regulations in general. Instructions for using the form have been clarified and the form has been redesigned with questions and instructions in larger type and larger spaces provided for responses. Comments for this information collection will be accepted.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

BILLING CODE 6712–01–M

Federal Communications Commission
Washington D.C. 20554

Approved by OMB
3060-0649
Expires XX/XX/XX

FCC 329

CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM INSTRUCTIONS

The Federal Communications Commission (FCC) investigates the reasonableness of rates for cable programming service based on complaints filed by subscribers, as well as local and state governments. By filing this form, you begin an investigation of your cable system's rates for cable programming service. Therefore, your participation is critical to the enforcement of the FCC's cable rate regulation rules.

Please read the following information before completing the attached Cable Programming Service Rate Complaint Form.

Who Regulates Cable Rates?

When you subscribe to cable television, your cable system offers you the option of choosing from among different programming packages. Some packages are regulated by the FCC and others by your local franchising authority.

The Federal Communications Commission is the federal administrative agency charged with regulating communications by radio, television, wire, satellite and cable.

A franchising authority is the local municipal, county or other government organization that regulates your cable television service. The name of your local franchising authority should be on the front or back of your current cable bill.

If the information is not on your bill, contact your cable company or your local government.

What Do Local Franchising Authorities Regulate?

In most instances, your local franchising authority is responsible for regulating:

- Rates for basic cable service, equipment used to receive basic cable service and installation and service charges related to basic service. The term "basic service" refers to the lowest level of cable service you can buy, and is the program package that includes signals from local television stations (such as ABC, NBC and CBS affiliates and independent television stations) and public, educational and governmental access channels. Your cable system may use other terms to describe this service.

- Customer service -- for instance, complaints about bills, a cable system's response to inquiries about signal quality and a cable system's response to service requests.

- Franchise fees -- the fees paid by the cable system to the franchising authority for the right to offer cable service.

You should contact your local franchising authority if you believe your rates for basic service, related equipment or installation are unreasonable. Your local franchising authority will tell you if it is not responsible for regulating these rates.

You should contact your local franchising authority, and not the FCC, with complaints regarding customer service and franchise fees.

What Cable Rates Does the FCC Regulate?

The FCC regulates rates you pay for certain programming that the FCC refers to as cable programming service. "Cable programming service" includes all program channels on your cable system that are not included in basic service and are not separately offered as pay-per-channel programming or pay-per-program services.

The FCC also regulates rates for equipment used solely to receive cable programming service and installation and service charges related solely to cable programming service. However, since most equipment used to receive cable programming service is also used to receive basic service, equipment complaints should generally be directed to your local franchising authority.

Are There Some Rates That Neither the FCC Nor Local Franchising Authorities Regulate?

Yes. Neither the FCC nor your local franchising authority regulates rates for pay-per-channel programming (for instance, a premium movie channel such as HBO or Showtime) and pay-per-program services (for instance, pay-per-view sports events). Therefore, you should not file a complaint about these services with the FCC or your local franchising authority..

FCC Form 329
December, 1993

Who Should Fill Out This Form?

You should fill out this form and submit it to the FCC if you are a cable subscriber wishing to file a complaint with the FCC about cable programming service, related equipment or installation. Franchising authorities and other relevant state or local governments may also use this form to file a complaint with the FCC about cable programming service, related equipment or installation.

How Does the Complaint Process Work?

Your complaint begins a legal process that requires your cable company to demonstrate that its rates are reasonable under the law.

The FCC requires your cable company to respond in writing to your complaint within thirty days of the date you file your complaint, unless your cable company is notified by the FCC that your complaint cannot be processed. In its response, your cable company must show that its rates are reasonable under the law. The cable company must provide you with a copy of its response. The FCC will examine the information submitted by the cable company and determine whether its rates for cable programming service are too high. If so, the FCC may order a refund and/or a rate reduction for the cable programming service. You and the franchising authority will receive a copy of the FCC's final ruling on the reasonableness of the cable programming service rate charged by your cable company.

Your complaint will be maintained by the FCC under the cable company's community unit identifier, which is a number assigned to each cable system by the FCC for administrative purposes. This number should appear on your cable bill. Your complaint will not be filed under your name. If you have a question concerning the status of your complaint, you may call (202) 416-0919. Please be prepared to tell us the name of the cable system and the name of the community where the cable system is located.

How To Fill Out This Form

1. You should use this form only to complain about rates for cable programming service, related equipment or installation, as described above.

2. In order to complete this form, you will need a copy of your current cable bill and the name and address of your local franchising authority. The name and address of your local franchising authority should appear on the front or back of your cable bill. If it does not, you must contact your cable company or your local government to obtain this information. We cannot process your complaint unless you include this information!

3. You may ask your local franchising authority for assistance in filling out this form. You may also attach a statement from your local franchising authority describing its views about the cable programming service rate in question. However, this is not a requirement.

4. Please fill in all information requested on this form. If you do not do so, we may not be able to process your complaint.

5. If you have any questions about how to fill out this form, you may call the FCC at (202) 416-0902.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine the reasonableness of a cable company's rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested relief.

Public reporting burden for this collection of information is estimated to average 45 minutes including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, AMD-PIRS, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0549), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1975, 5 U.S.C. 522(A)(e)(E) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D.C. 20554

FCC 329

Approved by OMB
3060-0549
Expires 05/31/95

CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM

1. PLEASE READ THE ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM

Your Name		Street Address	
City	State	Zip Code	Daytime Phone Number (optional)

2.

Franchising Authority Name		Street Address	
City	State	Zip Code	The name of your franchising authority should appear on your cable bill. If not, contact your cable company or local government for information

3.

Cable System Name		Street Address	
City	State	Zip Code	If you are complaining about the rates charged by more than one cable system, you must complete and file a separate form for each system

4. What is the FCC's community unit identifier for your cable system? This is a two letter abbreviation followed by four numbers -- for example, PA0000 -- that should appear on your cable bill. If it does not, leave this space blank. [ ][ ][ ][ ][ ][ ]

5. Have you previously filed a complaint against this cable [ ] Yes, on [ ][ ][ ] MONTH DAY YEAR
[ ] No

If yes, was your complaint returned to you by the FCC with a request for additional information? [ ] Yes, on [ ][ ][ ] MONTH DAY YEAR
[ ] No

6. Complaints about rate increases for cable programming services or related equipment must be received by the FCC within 45 days from the date you first received a bill showing the rate increase. (There is one exception to this rule. If you are challenging a rate that was in effect on September 1, 1993, you have until February 28, 1994, to file a complaint about that rate.) Late-filed complaints will be returned and your cable company will not be required to file a response to your complaint, so be sure to file your complaint within 45 days of the first time your bill includes the rate increase.

When did you first receive a bill reflecting the rate increase you are complaining about? (If you are complaining about a rate in effect on September 1, 1993, please enter "September 1, 1993" in this box.) [ ][ ][ ] MONTH DAY YEAR

7. What is your current monthly rate for cable programming service? $

If you are complaining about a rate increase, what was your previous monthly rate for cable programming service? $

8. Have any channels been added to or dropped from your cable programming service since your last bill?

a. Yes, channels have been added ☐

b. Yes, channels have been dropped ☐

c. No, there has been no change ☐

9. If you are a cable subscriber, you must attach a copy of your current cable bill or we will not be able to process your complaint. You may attach a copy of your previous cable bill as well; however, this is not required.

10. You may attach any additional comments or explanations to this form.

11. You must send copies of this complaint, your cable bill and any additional comments to your cable company and to your local franchising authority at the addresses you listed above by first class mail, postage prepaid, on the same date you sent this complaint to the FCC. If you do not send the copies, your cable company will not be required to respond and we will not be able to process your complaint.

On what date did you send the copies?

MONTH	DAY	YEAR

12. By signing this form, I certify:

a. That to the best of my knowledge, the information supplied on this form is true and correct;
b. That I am sending a copy of this complaint, including a copy of my cable bill and any additional comments, to the cable company and the local franchising authority at the addresses listed above via first class mail, postage prepaid; and
c. That I believe the cable company's rate for my cable programming service or related equipment is unreasonable.

This form must be signed or we will not be able to process your complaint.

Signature Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE TITLE 18, SECTION 1001)

13. Mail the original signed copy of this completed form, with a copy of your cable bill and any additional comments, to:

Federal Communications Commission
Attention: Cable Programming Service Rate Complaint
P.O. Box 19958
Washington, D.C. 20036
Fax Number: (202) 418-0870

Remember to also mail copies of the form, with a copy of your cable bill and any additional comments, to your cable company and your local franchising authority.

YOUR PARTICIPATION IS CRITICAL TO THE IMPLEMENTATION OF THE CABLE ACT.
YOUR INVOLVEMENT IS GREATLY APPRECIATED!

[FR Doc. 93–31628 Filed 12–23–93; 9:44 am]
BILLING CODE 6712–01–C

[Report No. 1993]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

December 22, 1993.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed by January 12, 1994. See 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 (MM Docket No. 92–266).

Petitions for Reconsideration

Number of Petitions Filed: 10.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–31602 Filed 12–27–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Rescission of Order of Revocation

Notice is hereby given that the Order of Revocation pertaining to the following ocean freight forwarder has been rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address
3376	J.B. Daman (U.S.A.) Ltd., 2500 A Broening Highway, Ste. 203, Baltimore, MD 21224.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–31559 Filed 12–27–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3640
Name: Ruben Posada dba Posada International Cargo
Address: 1595 East El Segundo Blvd., El Segundo, CA 90245
Date Revoked: November 17, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 2667
Name: Eurocontinental, Inc.
Address: 860 Thomas Dr., Bensenville, IL 60106
Date Revoked: November 18, 1993

License Number: 3421
Name: Damco Maritime Corp.
Address: 2 Hudson Place, Hoboken, NJ 07030
Date Revoked: November 26, 1993
Reason: surrendered license voluntarily.

License Number: 340
Name: B.A. McKenzie & Co., Inc.
Address: 8138 Pacific Avenue, P.O. Box 1435, Takoma, WA 98401
Date Revoked: December 1, 1993
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–31560 Filed 12–27–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegation of Authority

Part A (Office of the Secretary), Chapter AE (Office of the Assistant Secretary for Planning and Evaluation) of the Statement of Organization, Functions and Delegation of Authority for the Department of Health and Human Services (last amended at 55 FR 249 on December 27, 1990) is amended. The changes are as follows:

A. Chapter AE paragraph E. "The Office of Human Services Policy," delete in its entirety and replace with the following:

E. The Office of Human Services Policy—The Office of Human Services Policy is responsible for policy development—including policy planning, policy and budget analysis, review of regulations and formulation of legislation—and for the conduct and coordination of research and evaluation on issues relating to income assistance, income security, employment, and related human services programs. In particular, the office is responsible for policies concerning families, child and youth development, welfare, retirement and disability assistance. In these matters, the office works closely with the Social Security Administration and the Office of the Assistant Secretary for Children and Families.

1. The Division of Economic Support for Families is responsible for policy coordination, long-range planning, budget and economic analysis, program analysis, review of regulations and reports on legislation, review and conduct of research and evaluation activities, research, and information dissemination related to the Department's programs that provide cash and employment and training assistance to non-elderly populations including families and their children. The principal Department programs examined are Aid to Families with Dependent Children, Child Support Enforcement, Low-Income Home Energy Assistance, JOBS, and refugee assistance. The division performs oversight functions in regard to programs outside the Department that affect employment and income support, such as the Earned Income Tax Credit, Food Stamps, housing assistance programs, and employment and training programs.

2. The Division of Economic Security for the Elderly and Persons with Disabilities is responsible for policy coordination, long-range planning, budget and economic analysis, program analysis, review of regulations and reports on legislation, research, and information dissemination related to income security policies for the aged and persons with disabilities and especially for the Department's Social Security programs. The Division is responsible for monitoring and evaluating the performance of policies and programs affecting the economic well-being of the aged and persons with disabilities in this and other Departments including the Old Age and Survivors Insurance Program, the Supplemental Security Program, the Disability Insurance Program, pension and retirement policies, and favored tax treatment. Responsibilities include advising the Secretary about his or her decisions as a trustee of the several Social Security funds.

3. The Division of Children and Youth Policy is responsible for policy coordination and development, planning, formulating budget and legislative proposals, economic analysis, policy and program analysis, review of regulations, research, and information collection and dissemination related to programs and policies affecting children and youth. The principal areas of responsibility include: child welfare and child protection, family support, child care, child development, human services for children and youth, and issues related to special populations of children such as drug-exposed children, runaway youth, and homeless children and their families.

4. The Division of Data and Technical Analysis is responsible for the development and oversight of research and data gathering activities, analysis of databases, technical assistance and support for policy development, and modeling. The division focuses on Administration for Children and Families and cross-cutting income security issues, including Aid to Families with Dependent Children, Child Support Enforcement, Low-Income Energy Assistance, the Earned Income Tax Credit, Food Stamps, housing assistance programs, and child care.

Kenneth S. Apfel,

Assistant Secretary for Management and Budget.

[FR Doc. 93–31551 Filed 12–27–93; 8:45 am]

BILLING CODE 4110–60–M

Food and Drug Administration

[Docket No. 93N–0485]

Opportunity for Submission of Petitions for Essential Use Exemption for Certain Ozone-Depleting Substances Pursuant to the Clean Air Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing specific procedures whereby a manufacturer of a potentially essential medical product that is regulated by FDA and that is affected by the nonessential use bans under the Clean Air Act (CAA), as amended in 1990, may apply to FDA, using the petition process provided in FDA's administrative regulations for an exemption from the bans if the product meets certain criteria.

DATES: Submit written comments by January 27, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Submit petitions that do not contain confidential commercial information, pursuant to this notice, to the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: For specific questions contact the appropriate center:

For general questions: Ilisa B. Bernstein, Office of Policy, Food and Drug Administration, 5600 Fishers Lane (HF–23), rm. 15–74, Rockville, MD 20857, 301–443–2831.

For questions about medical devices: Kerry G. Rothschild, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765.

For questions about human drugs: Wayne Mitchell, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, rm. 116, 7500 Standish Place, Rockville, MD 20855, 301–594–1046.

For questions about biological products: Thomas G. Bird, Center for Biological Products (HFM–2), Food and Drug Administration, 1401 Rockville Pike, suite 200S, Rockville, MD 20852, 301–496–3556.

For questions about animal drug products: John C. Mathison, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, MPN–2, 7500 Standish Pl., Rockville, MD 20855, 301–594–1679.

SUPPLEMENTARY INFORMATION:

I. Background

Title VI of the CAA, as amended in 1990 (42 U.S.C. 7671), directs the U.S. Environmental Protection Agency (EPA) to promulgate regulations that prohibit, among other things, the sale or distribution in interstate commerce of certain nonessential products that release class I ozone-depleting substances into the environment (section 610(b) of the CAA) and any aerosol or pressurized dispenser that contains a class II ozone-depleting substance (section 610(d) of the CAA). Class I and class II substances are defined in sections 601(3) and (4) of the CAA. (See EPA's listing notice of January 22, 1991 (56 FR 2420)). Class I ozone-depleting products include chlorofluorocarbons (CFC's), halons, carbon tetrachloride, and methyl chloroform. Class II ozone-depleting substances include hydrochlorofluorocarbons (HCFC's). Section 610(b) of the CAA authorizes EPA to determine which products that release class I substances are nonessential (58 FR 4768, January 15, 1993.) Section 610(d) of the CAA addresses the nonessential use ban for class II substances and authorizes EPA to grant exceptions to the class II ban in certain circumstances (proposed September 27, 1993, 58 FR 50464). Medical products, as defined in section 601(8) (42 U.S.C. 7671(8)), are exempt from the nonessential use ban (42 U.S.C. 7671i(e)). Exempt medical products consist of:

> * * * any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 301 et seq.]), and drug delivery system—
>
> (A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of FDA]; and
>
> (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator [of EPA].
>
> (42 U.S.C. 7671(8).)

EPA's existing or proposed regulations state that exceptions to the class I (58 FR 4768, January 15, 1993) and class II (proposed September 27, 1993, 58 FR 50464) bans include medical products that FDA considers essential and medical products that FDA has listed in § 2.125(e) (21 CFR 2.125(e)). Pursuant to EPA regulations, the class I ban is effective January 17, 1994. The class II ban is effective January 1, 1994.

Currently, § 2.125 addresses the use of CFC propellants in self-pressurized containers. This document describes the process by which manufacturers of products that use other class I substances and class II substances as propellants in self-pressurized containers, and in aerosols and other pressurized containers, may petition for an exemption from the ban. Petitions need not be submitted for products already listed in § 2.125(e). The use of a CFC propellant in a self-pressurized container in those products is considered an essential use, and such products are exempt under EPA regulations implementing section 610(b) of the CAA (58 FR 4768, January 15, 1993).

II. Opportunity to Petition

A. Process for Submitting a Petition Requesting Exemption

A manufacturer of an FDA-regulated product seeking an essential use exemption from the section 610(b) and section 610(d) bans under the CAA may submit a petition to FDA in accordance with § 10.30 (21 CFR 10.30) requesting the exemption. The petition should include the following information:

1. A request to amend § 2.125(e) to specify the use as essential;
2. The name of the class I or class II substance used in the product and a description of how it is used;
3. A request for an interim exemption pending a decision on the petition;
4. A statement containing an explanation of the basis for the exemption and certifying that:

(a) There are no technically feasible alternatives to the use of a class I or class II ozone-depleting substance in the product;

(b) The product provides a substantial health benefit, environmental benefit, or other public benefit that would not be obtainable without the use of a class I or class II ozone-depleting substance; and

(c) The use does not involve a significant release of class I or class II ozone-depleting substances into the atmosphere or the release is warranted in view of the consequence if the use were not permitted; and

5. Data and information to support the statement described in section II.A.4. of this document.

The criteria listed in section II.A.4. of this document are the same criteria currently listed in § 2.125(f), but they are expanded to apply to all class I and class II substances. These criteria are consistent with the nonessential use criteria that the CAA states EPA shall consider. These include "the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors." (42 U.S.C. 7671i). In addition to these criteria, FDA may also consider the criteria for exemption under the Montreal Protocol on Substances that Deplete the Ozone Layer for that use, including the economic feasibility of using an alternative to a CFC, other class I substance, or class II substance. (See 58 FR 50464 for a summary of the Montreal Protocol).

Petitions should be submitted to the Dockets Management Branch (address above). If a petition contains confidential commercial information that the petitioner does not want to disclose publicly, the petition should be submitted directly to the appropriate reviewing center within FDA. In such an event, a copy of the petition, which refers to, but does not include the confidential data, must also be submitted to the Dockets Management Branch. The center contact person and their address is listed in the "Summary" section of this document.

B. Interim Exemption

Because of the impending effective dates for the class I and class II bans, FDA will consider granting an interim exemption based on the filing of a petition that includes the statement and summary explanation of the basis for the requested exemption, specified in section II.A.4. of this document, and a statement that the supporting data and information specified in section II.A.5. of this document will be provided to FDA within 90 days of filing the original petition. The statements must be certified by a responsible company official.

If an interim exemption has been granted and FDA determines that the certified statement, or any other element of the petition is not supported by data or information available to the agency, was not made in good faith, contains false or misleading information, or the data or information identified in section II.A.5. of this document was not provided to the agency within 90 days, FDA will rescind the interim exemption.

FDA believes that the interim exemption procedure is necessary to prevent a possible public health hazard that may result from the removal from the market of a potentially essential medical product under the CAA. This interim exemption is provided to ensure continued availability of potentially essential medical products pending a full review of all available data and information by the agency.

Pursuant to section 601(8) of the CAA, FDA will consult with EPA prior to granting an interim exemption for a medical product. Periodically, FDA will publish in the **Federal Register** a list of products that have received interim exemptions. FDA intends to place the petitions in the public docket for public comment. FDA also intends to undertake notice and comment rulemaking and to consult with EPA in determining essential use exemptions, which will be codified in FDA regulations. FDA intends to amend § 2.125 and other affected sections to reflect the essential use exemptions and the expansion of the regulation to include other class I and class II substances.

At this time, FDA is not proposing any specific medical products for exemption under § 2.125(e) and section 601(8) of the CAA. Products already exempted in § 2.125(e) will continue to be exempted. FDA will only consider a new exemption or interim exemption upon submission of a petition as described above.

III. Opportunity for Public Comment

Interested persons may, on or before January 27, 1994, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–31705 Filed 12–22–93; 5:08 pm]

BILLING CODE 4160–01–P

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, December 3, 1993.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Certificate of Election for Reduced Spouse's Benefits— 0960–0398. The information on form SSA–25 is used by the Social Security Administration to entitle eligible spouses to reduced benefits for months in which they do not have an entitled child in care. The affected public consists of spouses who file this certificate to elect reduced benefits.

Number of Respondents—30,000
Frequency of Response—1
Average Burden Per Response—2 minutes
Estimated Annual Burden—1,000 hours

2. Appointment of Representative—0960–NEW. The information on form SSA–1696 is used by the Social Security Administration (SSA) to verify the applicant's appointment of a representative. It allows SSA to inform the representative of items which affect the applicant's claim. The affected public consists of applicants who notify SSA that they have appointed a person to represent them and such representatives.

Number of Respondents—360,000
Frequency of Response—1
Average Burden Per Response—10 minutes
Estimated Annual Burden—60,000 hours

3. Marital Relationship Questionnaire—0960–0460. The information on form SSA–4178 is used by the Social Security Administration to determine if two unrelated individuals of the opposite sex who are living together are considered married for Supplemental Security Income (SSI) purposes. The respondents are applicants for and recipients of SSI who are living together in a questionable relationship.

Number of Respondents—5,100
Frequency of Response—1
Average Burden Per Response—5 minutes
Estimated Annual Burden—425 hours

4. Letter to Employer Requesting Wage Information—0960–0138. The information on form SSA-L4201 is used by the Social Security Administration to verify wages claimed by an applicant for Supplemental Security Income. The affected public consists of employers who are requested to verify the applicant's claim by completing this form.

Number of Respondents—133,000
Frequency of Response—1
Average Burden Per Response—30 minutes
Estimated Annual Burden—66,500 hours

5. Request for Correction of Earnings Record—0960–0029. Form SSA–7008 is used by individuals to request that the Social Security Administration (SSA) correct its record of earnings. The respondents are individuals who question SSA's record of their earnings.

Number of Respondents—375,000
Frequency of Response—1
Average Burden Per Response—10 minutes
Estimated Annual Burden—62,500 hours

6. Report to U.S. Social Security Administration by Person Receiving Benefits for a Child or for an Adult Unable to handle Funds (SSA–7161); Report to U.S. Social Security Administration (SSA–7162)—0960–0049. The information on these forms is used by the Social Security Administration to determine continuing entitlement and proper benefit amounts for Social Security beneficiaries who live outside the U.S. The affected public consists of persons living outside the U.S. who are entitled to benefits or who are representative payees for an entitled beneficiary.

Number of Respondents—275,000
Frequency of Response—1
Average Burden Per Response—(SSA–7161) 15 minutes, (SSA–7162) 5 minutes
Estimated Annual Burden—31,250 hours

7. Employer Classification Update—0960–0262. The information on form SSA–L378 is combined with other data obtained by the Social Security Administration and used in program planning, revenue estimates, and employment studies. The affected public consists of employers who have at least 11 employees and who have not provided sufficient information on form SS–4 for geographical and industrial classification.

Number of Respondents—75,000
Frequency of Response—1
Average Burden Per Response—3 minutes
Estimated Annual Burden—3,750 hours

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 21, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–31598 Filed 12–27–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15; AA–6703–B, AA–6703–D, AA–6703–F, and AA–6703–A2]

Alaska Native Claims Selection; Tatitlek Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Tatitlek Corporation for approximately 7,789.335 acres. The lands involved are in the vicinity of the Village of Tatitlek, Alaska.

Copper River Meridian, Alaska

T. 11 S., R. 6 W., T. 12 S., R. 6 W., T. 11 S., R. 7 W., T. 12 S., R. 7 W., T. 13 S., R. 8 W., T. 9 S., R. 9 W., T. 10 S., R. 9 W., T. 13 S., R. 9 W., T. 10 S., R. 10 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 27, 1994, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 93–31580 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–050–94–7122–14–X218; AZA–054–94–01]

Arizona: Temporary Closure of Selected Public Lands in La Paz County, Arizona

AGENCY: Bureu of Land Management, Interior.

ACTION: Temporary closure of selected public lands in Las Paz County, Arizona, during the operation of the 1994 SCORE Parker 400 Off-Road Vehicle Race.

SUMMARY: The District Manager of the Yuma District announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 1994 SCORE Parker 400 Off-Road Vehicle Race.

DATES: January 19, 1994, through January 23, 1994.

SUPPLEMENTARY INFORMATION: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the course comprised of Bureau of Land Management lands, roads, and ways is south of the Bill Williams River. East and north of Highway 72 and west of Wenden Road is closed to public vehicle use from 6 p.m. Wednesday, January 19, 1994, to 12 p.m. (noon) Sunday, January 23, 1994 (Mountain Standard Time).

2. Vehicles are prohibited from the following four Wilderness Areas and one Wilderness Study Area (WSA):

a. AZ–050–12 (Gibraltar Mountain).
b. AZ–050–15A (Swansea).
c. AZ–050–71 (Buckskin Mountains).
d. AZ–050–14A/B (Cactus Plain).
e. AZ–050–17 (East Cactus Plain, WSA).

3. The entire area encompassed by the designated Course and all areas within 1 mile outside the designated Course are closed to all vehicles except authorized and emergency vehicles. Access routes leading to the course are closed to vehicles. All closed routes will be posted throughout the closure period.

4. Vehicle parking or stopping along Bouse Road, Shea Road, and Swansea Road is prohibited except for the designated spectator areas.

5. Spectator viewing is limited to two designated spectator areas located at:

a. South of Shea Road, approximately 6 miles east of Parker, Arizona.

b. Bouse Road, also known as Swansea Road (about 1½ miles north of Bouse, Arizona).

6. The following regulations will be in effect for the duration of the closure. Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate or otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Be in possession of any alcoholic beverage unless that person has reached the age of 21 years.

f. Possess, discharge, or use firearms, other weapons, or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle, including an off-highway vehicle, which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

j. Take any vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier.

k. Fail to keep their site free of trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Arizona time (Mountain Standard Time).

m. Allow any pet or other animal in their care to be unrestrained at any time.

Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona, or to La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all La Paz County and Bureau of Land Management administered roads and ways. Authority for closure of public lands is found in 43 CFR 8340, subpart 8341, 43 CFR 8360, subpart 8364.1, and 43 CFR 8370, subpart 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Law Enforcement Ranger Mark Harris or Outdoor Recreation Planner Myron McCoy, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, telephone (602) 855–8017

Dated: December 17, 1993.

Michael A. Taylor,

Associate District Manager.

[FR Doc. 93–31583 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–32–M

[CA–068–94–4930–10–4503]

Emergency Closure of Public Lands; California; Correction

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Correction to an emergency closure of certain public lands to motorized vehicle use in the Juniper Flats Area of San Bernardino County, California for a period of two years.

Correction

In notice document 93–22712 beginning on page 48667 in the issue of Friday, September 17, 1993, make the following correction:

Insert an additional paragraph in the third column below paragraph (9), describing roads to be exempted from the closure, to read:

(10) Moss Hill Road, south of Moss Hill to Forest Service Road 3N59A, east of Bowen Ranch through public lands only in Sections 11 and 12 of T. 3 N., R. 3 W.

Dated: December 8, 1993.

Karla K.H. Swanson,

Area Manager

[FR Doc. 93–31433 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–40–M

[WY–060–93–4410–02]

Draft Environmental Impact Statement for Newcastle Resource Area, WY

AGENCY: Bureau of Land Management, Interior. Newcastle Resource Area Casper District, Wyoming.

ACTION: Notice of availability of the draft environmental impact statement for the Newcastle Resource Management Plan, for public review and comment.

SUMMARY: The draft environmental impact statement (ESI) for the Newcastle Resource Management Plan (RMP) describes and analyzes four alternative resource management plans (RMPs), including the BLM's preferred alternative, for managing the Wyoming portion of the Newcastle Resource Area. The planning area is located in Crook, Weston and Niobrara Counties, in northeastern Wyoming. When completed, the Newcastle RMP will provide the management direction for future land and resource management actions on approximately 291,000 acres

of public land surface and approximately 1,700,000 acres of Federal mineral estate administered by the BLM within this portion of the Newcastle Resource Area.

The draft EIS focuses on resolving three key issues that were identified with public involvement early in the planning process. These issues are: (1) Retention or disposal of public lands; (2) surface disturbance; and (3) special management area designations.

There is one designated area of environmental concern (ACEC) within the Newcastle RMP planning area, the Whoopup Canyon ACEC designation be retained and that the area of the ACEC be expanded in size. While the potential for new ACEC designation was explored, none were identified and none are proposed in the preferred alternative.

During development of the draft EIS, the BLM conducted a Wild and Scenic Rivers review of BLM administered public lands that lie along waterways within the planning area. There were no BLM administered public lands in the planning area that were found to meet the Wild and Scenic Rivers eligibility criteria to be given further consideration for inclusion in the Wild and Scenic Rivers System.

The coal screening process (including application of the coal unsuitability criteria under 43 CFR part 3461) was not conducted for the planning effort. Any interest in coal exploration or leasing will be handled on a case-by-case basis. If an application for a coal lease is received sometime in the future, an appropriate land use environmental analysis will be conducted (which will include conducting the coal screening process), to determine whether or not the coal areas applied for are acceptable for development and leasing consideration. The RMP will be amended as necessary. To date, there has been no interest expressed to the BLM for leasing and development of BLM-administered coal in the planning area.

Wilderness management and wild horse management were not addressed in the planning effort. There are no wilderness areas or wilderness study areas on BLM-administered public lands in the planning area. In addition, there have been no other areas with wilderness characteristics identified on public lands in the planning area. There are no known wild horses or wild horse herd management areas in the planning area.

DATES: Written comments will be accepted for 90 days following the date the Environmental Protection Agency (EPA) publishes the filing of the Newcastle RMP draft EIS in the **Federal Register**. This EPA notice was published on December 3, 1993. A public meeting, open house, or both will be held during the 90-day comment period. Notices of these public involvement activities will be sent to all those on the Newcastle RMP mailing list.

ADDRESSES: Copies of the draft EIS for the Newcastle RMP are available from the BLM Newcastle Resource Area Office at 1101 Washington Boulevard, Newcastle, Wyoming 82701, or the BLM Casper District Office at 1701 East "E" Street, Casper, Wyoming 82601. Comments, and requests to be placed on the Newcastle RMP mailing list, should be sent to the Newcastle Area Manager at the Newcastle Resource Area Office.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Newcastle Area Manager, or Gary Lebsack, Newcastle RMP Team Leader, at the above address or by telephone (307) 746–4453.

SUPPLEMENTARY INFORMATION: The Newcastle Resource Area is responsible for managing the BLM administered public lands in Crook, Niobrara, and Weston counties in Wyoming, and all BLM administered public lands in Nebraska. Management of the BLM administered public lands in Nebraska is covered under the Nebraska Resource Management Plan complete in 1992.

Within the Newcastle RMP planning area, there are varied and intermingled land surface ownerships and overlapping mineral ownerships. Therefore, the administrative jurisdictions for land use planning and for managing the land surface and minerals are also varied, intermingled, and sometimes overlapping. For this reason, it is important to understand that the Newcastle RMP draft EIS does not address management of lands or minerals within the planning area that are privately owned or owned by the State of Wyoming or local governments (about 1,000 acres). It also does not address those federally owned minerals within the planning area that are under federal land surface managed by other federal agencies (about 420,000 acres).

The draft EIS for the Newcastle RMP presents for alternative, multiple use resource management plans for managing the BLM administered public lands in the planning area. Alternative A (continuation of present management) and three other alternatives that suggest different combinations and emphases for managing the various resource and land uses on the BLM administered public lands, on the basis of needs, opportunities, and public demand. The four alternative plans focus on allocating public lands and resources among their valid uses and prescribing general management actions that would be taken. The Preferred Alternative is a combination of parts of alternatives, A, B, and C and represents what BLM believes is the best balance between the public land and resource uses and environmental protection in the planning area. The various impacts that would be expected from implementing each of the alternatives is also presented in the draft EIS.

Dated: December 13, 1993.

Ray Brubaker,

State Director.

[FR Doc. 93–31647 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–22–M

[AZ–040–5410–10–A111; AZ 28181]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Royben L. Lebrecht, Trustee, Pima County, Tucso, Arizona, has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 18 S., R. 15 E.,
Sec. 10, lots 3 and 4, N½SW¼;
Sec. 15, lots 3 and 4, S½NW¼, SW¼.
Containing 471.54 acres.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, September 24, 1993, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this application may be obtained from the Realty Specialist at the Tucson Resource Area Office, 12661 East Broadway, Tucson, Arizona 85748.

Dated: December 14, 1993.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 93–31532 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–32–M

[AZ-040-5410-10-A112; AZA 28280]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, San Gabriel Properties, an Arizona Limited Partnership, Pima County, Tucson, Arizona, has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 17 S., R. 13 E.,
SEC. 21, N½S½;
SEC. 22, W½.
Containing 480 acres.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, November 30, 1993, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this application may be obtained from the Realty Specialist at the Tucson Resource Area Office, 12661 East Broadway, Tucson, Arizona 85748.

Dated: December 14, 1993.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 93-31534 Filed 12-27-93; 8:45 am]

BILLING CODE 4310-32-M

[AZ-040-5410-10-A113; AZA 28294]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, The Dunne Family Trust, Alexander Dunne and Thomas Griffin Dunne, Santa Cruz County, Arizona, has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 23 S., R. 14 E.,
Sec. 27, S½;
Sec. 34, NE¼NE¼, W½NE¼, W½.
T. 24 S., R. 14 E.,
Sec. 3, lots 3 and 4, S½NW¼.
Containing 924.65 acres.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, December 10, 1993, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this application may be obtained from the Realty Specialist at the Tucson Resource Area Office, 12661 East Broadway, Tucson, Arizona 85748.

Dated: December 15, 1993.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 93-31535 Filed 12-27-93; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-4210-05; N-57387]

Realty Action: Lease/Purchase for Recreation and Public Purposes; Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The County of Clark, a political subdivision of the State of Nevada, proposes to use the land for a Metropolitan Police Substation.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 17: SE¼SW¼SE¼
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 50.00 feet in width along the south boundary, with 20.00 foot radius spandrel at the east and west corners, in favor of Clark County for roads, public utilities and flood control purposes.

2. An easement 30.00 feet in width along the west boundary, with 15.00 foot radius spandrel at the northerly corner, in favor of Clark County for roads, public utilities and flood control purposes.

3. An easement 30.00 feet in width along the north boundary, with 15.00 foot radius spandrel at the easterly corner in favor of Clark County for roads, public utilities and flood control purposes.

4. An easement 30.00 feet in width along the east boundary in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for power project purposes which have been granted to the Federal Energy Regulatory Commission by Permit No. N-56078 under the Act of March 3, 1879 (43 U.S.C. 31).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The

lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: December 16, 1993.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 93–31545 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR 36783; OR–080–04–4210–05: G4–052]

Realty Action; Proposed Recreation and Public Purposes Act Lease

December 16, 1993.

The following described public land has been examined and determined to be suitable for classification for lease to Linn County under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Willamette Meridian, Oregon,

T. 11 S., R. 3 E.,
Sec. 35, SW¼NE¼SW¼,
N½SE¼NE¼SW¼,
SW¼SE¼NE¼SW¼, W½ Lot 3,
W½SE¼ Lot 3.

The above-described parcel contains 42.65 acres in Linn County.

Linn County has requested that Recreation and Public Purposes Lease OR 36783 be substituted with a new lease, as provided in 43 CFR 2912.3. The only change requested is to add the above-described parcel to its 459.15-acre existing lease. The lease is for the "Quartzville Creek Recreation Area", an area that has become popular for recreational gold panning. Lease of the parcel is consistent with current BLM land use planning and will be in the public interest.

The lease, when issued, will be subject to the following:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except the mineral leasing laws and for lease under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed classification and lease to the Santiam Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Paul Jeske,

Santiam Area Manager.

[FR Doc. 93–31543 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–33–M

[UT–942–04–5700–11; UTU–67340 to UTU–67342, UTU–67344, UTU–67346]

Realty Action; Noncompetitive (Direct) Sale of Public Land in Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, UTU–67340 to UTU–67342, UTU–67344, UTU–67346, Noncompetitive (Direct) Sale of public land in Emery County, Utah.

SUMMARY: Notice is given that the following described parcels of public land have been examined, and through the development of local land-use planning decisions, based upon public input, resource, considerations, regulations, and Bureau policies, the parcels have been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct) sale procedures (43 CFR 2711.3–3):

Salt Lake Meridian, Utah

T. 22S., R. 6E.,
Section 4, Lots 11–16.

The above land aggregates 3.85 acres in Emery County, Utah.

Also, classification of the following land pursuant to the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869, et seq.), is hereby modified to allow for disposal of the land through sale under section 203 of FLPMA (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct) sale procedures (43 CFR 2711.3–3):

Salt Lake Meridian, Utah

T. 22S., R. 6E.,
Section 4, Lots 11–16.

The above land aggregates 38.14 acres in Emery County, Utah.

The parcels are difficult and uneconomic to manage as part of the public lands, are not needed for any resource programs, and are not suitable for management by the Bureau or any other Federal department or agency.

The parcels will not be offered for sale until at least sixty (60) days after publication of this notice in the Federal Register. These parcels will be sold at no less than the appraised fair market value (FMV).

The Bureau proposes to sell the surface estate only as follows:

UTU–6740, Dermus Jensen, Lots 12 & 16 (0.36 & 1.17 acres respectively, totalling 1.53 acres), FMV $1,000;

UTU–6741, Roger Clark, Lot 11 (1.47 acres), FMV $1,000;

UTU–6742, Russell Jensen, Lot 13 (0.47 acre), FMV $500;

UTU–6744, Randy Anderson, Lots 14 & 15 (0.18 & 0.20 acre, total 0.38 acre), FMV $500.

The above direct sales are being conducted to resolve unauthorized use and occupancy of the public lands. The sales to the adjoining land owners would assure land use compatibility with adjoining lands and protect investments in improvements made to the lands.

UTU–67346, Emery County School District (ECSD), Lot 10 (38.14 acres), FMV $7,650. The land was leased to ECSD under REcreation and Public Purposes (R&PP) lease UTU–48777 with the right to purchase following construction of a public school within five years. The school was not constructed but ECSD desires to purchase the land for future development.

Publication of this notice in the Federal Register segregates the public land from the operation of the public land laws and the mining laws. The segregative effective will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The terms and conditions applicable to the sale are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

2. A right-of-way will be reserved for ditches and canels constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. Road right-of-way UTU–70142, issued in the Town of Emery, will be reserved in the patents (45 feet from appropriate side of the centerline) under the authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

4. The sale of the parcels will be subject to all valid existing rights,

reservations, and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to the following:

Parcels UTU–67340, UTU–67342, and UTU–67344

a. A right-of-way, Serial Number UTU–53807, to Emery Telephone, its successors or assignees, for a buried telephone line located in SLM, Utah, T. 22 S., R. 6E., Section 4, Lots 12–15, under the authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

b. A right-of-way, Serial Number UTU–53813, to PacifiCorp dba UP & L, its successors or assignees, for a powerline located in SLM, Utah, T.22 S. R. 6E., Section 4, Lots 12–15, under the authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

SALE PROCEDURES: The buyer will be required to submit the appraised fair market value of the property on the date of the sale. The lands will be offered for sale at the San Rafael Resource Area Office. If the lands are not sold on the same date, they will remain for sale over-the-counter until sold or withdrawn from the market. Over-the-counter bidder qualifications are noted below.

BIDDER QUALIFICATIONS: Bidders must be U.S. citizens 18 years of age or over, a State or State instrumentatlity authorized to hold property; a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

BID STANDARDS: The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

COMMENTS: For a period of forty-five (45) days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 94532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands and the terms and conditions of the sale may be obtained from Laurelle Hughes, Area Realty Specialist, San Rafael Resource Area, 900 North East, Price, Utah 84501, (801) 637–4584 or From Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532 (801) 259–6111.

Dated: December 17, 1993.

Roger Zortman,

District Manager.

[FR Doc. 93–31521 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–DQ–M

[CO–070–04–3110–02]

Intent To Consider Amendment of the Grand Junction Resource Area, Resource Management Plan, 1987

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to consider amendment of the Grand Junction Resource Area Resource Management Plan, 1987, to address changes proposed in the Grand Mesa Slopes Special Management Area Management Plan, 1993, and Notice of Public Comment Period to identify issues to be addressed in an Environmental Assessment on the proposed amendment.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Resource Area, will consider an amendment of the Grand Junction Resource Area Resource Management Plan, 1987, and will prepare an Environmental Assessment on the proposed amendment.

SUPPLEMENTARY INFORMATION: The Plan Amendment and Environmental Assessment are being developed to consider changes that have been proposed in the Grand Mesa Slopes Special Management Area Management Plan, 1993. The Grand Mesa Slopes Special Management Area is approximately 80 square miles of mixed ownership lands in Mesa County, Colorado, immediately southeast of Grand Junction, Colorado. A cooperative management plan for the area has been developed involving over 30 government and private entities. The primary goals of the plan are to protect municipal watersheds, manage critical wildlife habitat, provide for managed public recreational uses, protect scenic open space values, and coordinate management of other natural resource programs.

Proposed changes to the Grand Junction Resource Area Resource Management Plan, 1987 involve: (1) Changing the classification of approximately 7,600 acres of BLM land immediately southeast of Grand Junction, Colorado from "suitable for disposal" to "retention as BLM land or suitable for exchange"; (2) Classifying approximately 1,200 acres of BLM land 10 miles southeast of Grand Junction, Colorado as suitable for exchange; (3) Designating approximately 20,000 acres of BLM land immediately southeast of Grand Junction, Colorado as limited to motor vehicle travel only on designated routes, and; (4) Designating approximately 500 acres of BLM land four miles south of Grand Junction, Colorado as open for off-highway-vehicle use.

A public meeting to accept comments on the Grand Mesa Slopes Special Management Area Management Plan, 1993, and the related actions in the proposed Grand Junction Resource Area Resource Management Plan, 1987 Plan Amendment will be held January 27, 1994 at 7 p.m. in the City/County Auditorium, 250 North 5th Street, Grand Junction, Colorado. For a period of 30 days from the date of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado, 81506.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this proposal is available for review at the Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506, or by contacting Carlos Sauvage, Realty Specialist, at (303) 244–3022.

Tim Hartzell,

District Manager.

[FR Doc. 93–31538 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–JB–M

[ES–960–4350–10–4600: ES–046618, Group 2, Washington, DC]

Filing of Plat of Dependent Resurvey

The plat, in one sheet, of a portion of the boundary of U.S. Reservation No. 501, Washington, DC, has been officially filed in Eastern States, Springfield, Virginia, at 7:30 a.m., on December 15, 1993.

The survey was made upon request submitted by the National Park Service.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Dated: December 15, 1993.

Carson W. Culp, Jr.,

State Director.

[FR Doc. 93–31649 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–GJ–M

[OR-942-00-4730-02: G4-049]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 9 S., R. 3 E., accepted November 24, 1993
T. 40 S., R. 6 E., accepted November 16, 1993
T. 33 S., R. 35 E., accepted October 19, 1993
T. 9 S., R. 41 E., accepted November 3, 1993
T. 20 S., R. 2 W., accepted November 15, 1993
T. 20 S., R. 2 W., accepted November 15, 1993
T. 21 S., R. 5 W., accepted November 22, 1993
T. 18 S., R. 6 W., accepted October 28, 1993
T. 20 S., R. 7 W., accepted November 3, 1993

Washington

T. 32 N., R. 41 E., accepted October 28, 1993
T. 18 N., R. 12 W., accepted November 27, 1993

If the protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 N.E. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision. **FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 15, 1993.

William E. Bliesner,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-31537 Filed 12-27-93; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Enforce Existing Off-Road Motor Vehicle Closure on Bureau of Reclamation Lands Below American Falls Dam, Idaho

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Reclamation (Reclamation) is enforcing a 1972 off-road motor vehicle closure on the lands within the American Falls Natural Resource Area. Current public off-road vehicle activity requires active enforcement of the closure. This action is necessary to protect and preserve archeological sites located in the area.

ADDRESSES: Maps are available for review at:

- American Falls Dam, 2881 Highway 39, American Falls, Idaho 83211;
- Minidoka Project Office, 1359 Hansen Avenue, Burley, Idaho 83318;
- Pacific Northwest Regional Office, 1150 N. Curtis Rd., Boise, Idaho 83706

EFFECTIVE DATE: The off-road vehicle closure has been in effect since 1972, but not actively enforced. The closure will be enforced effective December 28, 1993 and will continue to be enforced until a decision is made on the future use and management of the area.

FOR FURTHER INFORMATION CONTACT: Eileen R. Salenik, Resource Management Planner, Bureau of Reclamation, Pacific Northwest Region, 1150 N. Curtis Rd., Boise, Idaho 83706, (208) 378-5314

SUPPLEMENTARY INFORMATION: American Falls Natural Resource Area, approximately 3,000 acres, is located just below American Falls Dam in southeastern Idaho. The general location is described below:

Reclamation withdrawn and acquired lands along the Snake River (between American Falls dam and the Minidoka National Wildlife Refuge) located in:

T. 8 S., R. 30 E., Boise Meridian: portions of Sections 15, 21, 22, 38, 29, 31, and 32
T. 9 S., R. 30 E., B.M.: portions of Section 6
T. 9 S., R. 29 E., B.M.: portions of Sections 1, 9-12, 14-17, and 19-21
T. 9 S., R. 28 E., B.M.: portions of Section 24

A 1992 Cultural Resource Class III survey verified this area has over 150 archeological sites dating back as far as 10,000 years. Pursuant to the authority granted by section 9(b) of Executive Order 11644, Feb. 8, 1972, 3 CFR 1971-1975 Comp., p. 666, as amended by Executive Order 11989, May 24, 1977, 3 CFR 1977 Comp., p. 120, Reclamation in 1972 closed to off-road vehicles the land administered by Reclamation downstream of American Falls Reservoir along the Snake River in southeastern Idaho. Previously limited enforcement resources and increasing off-road vehicle use by the public in contravention of the previous closure require reiteration of the closure notice. Reclamation will begin enforcing the closure immediately. Additional information concerning the closure and enforcement is available at Reclamation's Pacific Northwest Regional Office located at 1150 N. Curtis Road in Boise, Idaho, 83706.

The Shoshone-Bannock Tribes indicate this area has traditional cultural values and may consider the entire area to qualify for protection under the American Indian Religious Freedom Act.

In 1992, Reclamation worked with an agency/citizen task force to develop a feasible range of alternatives for the American Falls Resource management Plan Environmental Assessment. The Environmental Assessment, prepared in accordance with the National Environmental Policy Act and the National Historic Preservation Act, is available for public review and comment until December 31, 1993. The closure will be enforced until a decision for public use in the American Falls Natural Resource Area is made in 1994.

Dated: December 17, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 93-31622 Filed 12-27-93; 8:45 am]

BILLING CODE 4310-94-P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-780716

Applicant: Exotic Animals, Tarzana, CA.

The applicant requests a permit to import one male captive-born tiger (*Panthera tigris*) from the Bahamas. This tiger is progeny of the applicant's own tigers that are currently performing in

the Bahamas. The tiger will be imported for the purpose of enhancement of survival through conservation education.

PRT–783786

Applicant: San Antonio Zoological Gardens, San Antonio, TX.

The applicant requests a permit to purchase in interstate commerce one captive-held female gavial (*Tomistoma schlegeli*) from the Buffalo Zoo for the purpose of enhancement of survival through conservation education and zoological exhibition.

PRT–785126

Applicant: University of Nevada, Reno, NV.

The applicant requests a permit to import blood and tissue samples taken from wild black-faced impala (*Aepyceros melampus petersi*) for DNA analysis to enhance the propagation and survival of the species.

PRT–785148

Applicant: Ogden Environmental and Energy, Services, Co., Inc., San Diego, CA.

The applicant requests a permit to take endangered Riverside fairy shrimp (*Streptocephalus woottoni*) from vernal pools using hand and/or plankton nets to determine the presence or absence of the species on Miramar Naval Air Station, California.

PRT–770279

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to import blood and tissue samples from live animals and carcasses, respectively, obtained opportunistically from wild origin deer (*Cervidae*), tapirs (*Tapiridae*), crocodiles (*Crocodilidae*), falcons (*Falconidae*), psitticines (*Psittacidae*), ibises (*Ciconidae*), and vultures (*Cathartidae*) in Bolivia for the purpose of scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 22, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–31675 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–55–P

Polar Bear Habitat Protection Strategy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a polar bear habitat protection strategy, conduct public meetings, and request information.

SUMMARY: The U.S. Fish and Wildlife Service (Service) intends to develop and implement a strategy for the identification and protection of important polar bear habitats. Development of the strategy for Alaska will be achieved as part of the Service's on-going polar bear conservation planning process and in cooperation with the State of Alaska, Alaska Natives, oil and gas industry, conservation organizations, and others. The Service is requesting information, suggestions, and participation in the development of this strategy.

DATES: Comments and information should be received by February 11, 1994. Public meetings on the strategy are schuduled as follows:

1. January 20, 1994, 7:30 p.m., Wilda Marston Theater, 1st floor, Loussac Library, 3600 Denali Street, Anchorage, Alaska.
2. January 25, 1994, 7:30 p.m. North Slope Borough Assembly Chambers, Barrow, Alaska.

ADDRESSES: Written comments should be submitted to Supervisor, Marine Mammals Management, U.S. Fish and Wildlife Service, 4230 University Drive, suite 310, Anchorage, AK 99508. Comments may also be hand delivered to the same address or sent by FAX (907) 271–2381. Comments and materials received in response to this action will be available for public inspection at this address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Scott Schliebe at the U.S. Fish and Wildlife Service, Marine mammals Management, 4230 University Drive, suite 310, Anchorage, AK 99508, (800) 362–5148 or (907) 271–2394.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, the Service issued a proposed rule that would authorize the incidental take of small numbers of polar bear and Pacific walrus during oil and gas industry operations year round in the Beaufort Sea and adjacent northern coast of Alaska (57 FR 62283). The final rule to authorize incidental take was issued on Tuesday, November 16, 1993.

The final rule contains a provision that the U.S. Fish and Wildlife Service will develop and begin implementing a polar bear habitat protection strategy within 18 months. This provision is in response to public comments on the proposed rule and in agreement with the 1973 International Agreement on the Conservation of Polar Bears.

Information Solicited

The Service requests interested persons to submit comments, information, and suggestions concerning the development and implementation of an Alaska Polar Bear Habitat Protection Strategy. A draft Polar Bear Habitat Protection Strategy will be developed based upon comments received, information generated from polar bear research, and local knowledge of the indigenous people. A Federal Register notice will announce the development of the draft Alaska Polar Bear Habitat Protection Strategy. Once the draft Strategy is developed, opportunities for public review and comment will be provided.

Date: December 16, 1993

Walter O. Stieglitz,

Regional Director.

[FR Doc. 93–31530 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 18, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 12, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Conecuh County

New Evergreen Commercial Historic District, Roughly bounded by Mill, Cooper, Rural,

Court, Liberty, E. Front. Cary and Despious Sts., Evergreen, 93001542

Houston County

Atlantic Coastline Railroad Passenger Depot, Jct. of Powell St. and Headland Ave., Dothan, 93001519

Monroe County

Dellet Plantation, Along US 84 on W bank of Alabama R., Monroeville vicinity, 93001517

ARKANSAS

Miller County

Crenshaw Site, Address Restricted, Hervey vicinity, 93001521

CALIFORNIA

San Diego County

Harris, C. W., Site Archeological District, Address Restricted, Rancho Santa Fe, 93001520

DELAWARE

Kent County

Thomas' Methodist Episcopal Chapel, Rt. 206 W of Chapeltown, West Dover Hundred, Chapeltown vicinity, 93001516

New Castle County

Newport Railroad Station, James St. at Penn Central RR tracks, N side, Newport, 93001515

GEORGIA

Jefferson County

Louisville Commercial Historic District, Area surrounding Broad St. between Peachtree and Screven Sts., including parts of Walnut, Mulberry and Green Sts., Louisville, 93001469

IOWA

Page County

White, W. T. S., House and Carriage House, 400 N. 16th St., Clarinda, 93001544

Wright County

Quasdorf Blacksmith and Wagon Shop, Jct. of Train and W. Railroad Sts., Dows, 93001545

KANSAS

Reno County

Graber, John P. O., House, 208 E. 6th St., Hutchinson, 93001518

KENTUCKY

Woodford County

Ayres House (Northwest Woodford County MPS), US 421 S side, less than 3/10 mi. E of Drucker's Rd., Midway vicinity, 93001522

Big Sink Rural Historic District (Northwest Woodford County MPS), W of Midway off I–64, Midway vicinity, 93001523

Broadhead, Lucas, House (Northwest Woodford County MPS), Jct. of Midway Pike and Aiken Rd., SW corner, Versailles vicinity, 93001524

Cole, Richard, Homestead (Northwest Woodford County MPS), Leestown Rd., S side, NW of Midway, Midway vicinity, 93001525

Cooper House (Northwest Woodford County MPS), Leestown Rd., N side, 9/10 mi. E of I–64 Midway exit, Midway vicinity, 93001526

Elkwood (Northwest Woodford County MPS), 158 Leestown Pike W., Midway vicinity, 93001527

Leavy Tobacco Barn (Northwest Woodford County MPS), Georgetown Rd. E side, 4/5 mi. N of I–64 Midway exit, Midway vicinity, 93001528

Nuckols, Claiborne W., Farmstead (Northwest Woodford County MPS), US 60 N side, 1½ mi. N of jct. with Midway Pike, Versailles vicinity, 93001529

Nugent's Crossroad Historic District (Northwest Woodford County MPS), Jct. of Old Frankfort Pike and Midway Pike, Midway vicinity, 93001530

Taylor, E.W., House (Northwest Woodford County MPS), Midway Pike E side, about ½ mi. N of jct. with Old Frankfort Pike, Midway vicinity, 93001531

Wallace Station Historic District (Northwest Woodford County MPS), Wallace Station, Old Frankfort Pike, Midway vicinity, 93001534

Wallace, Samuel, House (Northwest Woodford County MPS), Old Frankfort Pike N side, E of Wallace, Midway vicinity, 93001532

Wallace-Alford Farmstead (Northwest Woodford County MPS), S.S. Weisenberger (Craig's) Mill Rd. E of Lansing Ln., Midway vicinity, 93001533

LOUISIANA

Caddo Parish

B'Nai Zion Temple, 802 Cotton St., Shreveport, 93001547

Iberville Parish

St. John Baptist Church, 31925 Lacroix Rd., Dorseyville, 93001549

St. John The Baptist Parish

Reserve Plantation House (Louisiana's French Creole Architecture MPS), 1628 LA 44, Reserve, 93001548

NEW YORK

Albany County

New Scotland Avenue (Troop B) Armory (Army National Guard Armories in New York State MPS), 130 New Scotland Ave., Albany, 93001536

Erie County

Tonawanda (25th Separate Company) Armory (Army National Guard Armories in New York State MPS), 79 Delaware Ave., Tonawanda, 93001539

Montgomery County

First Baptist Church, Polin Rd., Charleston, 93001546

New York County

369th Regiment Armory (Army National Guard Armories in New York State MPS), 2366 Fifth Ave., New York, 93001537

69th Regiment Armory (Army National Guard Armories in New York State MPS), 68 Lexington Ave., New York, 93001538

NORTH CAROLINA

Buncombe County

Jarrett, Thomas, House (Northwest Woodford County MPS), 46 Louisiana Ave., Asheville, 93001535

Perquimans County

Fletcher-Skinner-Nixon House and Outbuildings, NC 1301 NE side, 0.45 mi. SE of jct. with NC 1300, Hertford vicinity, 93001541

Rockingham County

Reidsville High School, Former, 116 N. Franklin St., Reidsville, 93001540

Yadkin County

Davis Brothers Store, E. Main St. N side, just E of jct. with Flint Hill Rd., East Bend, 93001543

NORTH CAROLINA

Morton County

Rehm, Louis, Barn, 2.5 mi. N of Hebron, Hebron vicinity, 93001550

OREGON

Clackamas County

Lewthwaite-Moffatt House, 4891 Willamette Falls Dr., West Linn, 93001501

Smith, R.S., Motor Company Building, 39150 Pioneer Blvd., Sandy, 93001502

Coos County

Koski Building, 241 N. Broadway, Coos Bay, 93001509

Seelig-Byler House, 1920 N. Fourteenth St., Coos Bay, 933001510

Hood River County

Mt. Hood Hotel Annex, 102–108 Oak St., Hood River, 93001511

Jackson County

Madden-McCaskey House, 3347 Old Stage Rd., Central Point vicinity, 93001506

Medford Geneva—Minnesota Historic District, Geneva and Minnesota Sts., from E. Main to Crater Lake Ave., Medford, 93001508

Lincoln County

Mt. Hood Railroad Linear Historic District, Mt. Hood RR right-of-way from Hood River to Parkdale, Hood River, 933001507

Marion County

Hinkle-Reid House, 525 NE. Adler St., Mill City, 93001503

Multnomah County

Clyde Hotel, 1022 SW. Starke St., Portland, 93001498
Salmon, W.S., House, 923 SE. Thirteenth Ave., Portland, 93001496
Yeon Building, 522 SW. Fifth Ave., Portland, 93001497

Umatilla County

Ireland, Sarah E., House, 311 S. Main St., Milton—Freewater, 93001500

Wallowa County

Gotter Hotel, 301 W. Main St., Enterprise, 93001499

Washington County

First Church of Christian Scientist, 1904 Pacifica Ave., Forest Grove, 93001505
Ray, Harold Wass. House, 5611 NE. Elam Young Pkwy., Hillsboro, 9300154

SOUTH CAROLINA

Charleston County

Ashley River Historic District, Roughly, along the Ashley R. from just E of SC 165 to the Seaboard Coast Line RR bridge, Charleston vicinity, 93001514
Boone Hall Plantation House and Historic Landscape, Long Point Rd. W of jct. with US 17/701, Mount Pleasant vicinity, 93001512
Towles Farmstead, 4595, 4611 Towles Rd., Meggett vicinity, 93001513

[FR Doc. 93–31589 Filed 12–27–93; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in United States versus California State University et al., Civil Action No. CV–S–93–1910 LKK GGH was lodged on December 7, 1993 with the United States District Court for the Eastern District of California. The proposed decree settles an action brought pursuant to section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b) and the National Emission Standards for Hazardous Air Pollutants for Asbestos ("NESHAP"), promulgated under sections 112 and 114 of the Act, 42 U.S.C. 7412 and 7414, and codified at 40 CFR part 61, subpart M. The complaint alleges that the defendants are liable for conducting a demolition of a facility owned by California State University without (1) adequately wetting the friable asbestos materials exposed during cutting and disjointing, in violation of 40 CFR 61.147(b) (1989) and section 112 of the Act, 42 U.S.C. 7412, and (2) ensuring that the friable asbestos materials stripped or removed from pipes were kept adequately wet until collected for disposal, in violation of 40 CFR 61.147(e)(1) (1989) and section 112 of the Act, 42 U.S.C. 7412. Under the terms of the decree, ACG agrees to pay a civil penalty of $35,000, and CSU and Bender will be subject to an injunction to comply with the asbestos NESHAP in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States versus California State University, et. al., DJ# 90–5–2–1–1491. The proposed consent decree may be examined at the office of the United States Attorney, 555 Capitol Mall, 15th Floor, Sacramento, California 95814; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–31639 Filed 12–27–93; 8:45 am]
BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States and the State of Ohio* v. *City of Middletown, Ohio*, Civil Action No. C–1–93–861, was lodged on December 10, 1993 with the United States District Court for the Southern District of Ohio. The Consent Decree resolves claims of the United States for civil penalties arising from alleged violations of Sections 301, 402 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1342 and 1344 by the City of Middletown, Ohio. The Consent Decree requires defendant Middletown to pay a civil penalty of $288,000 for its past violations of the Clean Water Act.

The Department of Justice will receive, for a period of thirty (3)) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Ohio* v. *City of Middletown, Ohio*, DOJ Ref. ι90–5–1–1–3779.

The proposed consent decree may be examined at the office of the United States Attorney, 602 Federal Building, 200 West Second Street, Dayton, Ohio, 45402; the Region Five Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.25 (25 cents per page reproduction costs,), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–31636 Filed 12–27–93; 8:45am]
BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

In accordance with Department policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Nabisco, Inc., et al.*, Civil Action No. 93–5611, was lodged on December 10, 1993, with the United States District Court for the Eastern District of New York. The Consent Decree addresses the hazardous waste contamination at the Rowe Industries Superfund Site ("Rowe Site") in the Town of Sag Harbor, New York. The Consent Decree requires the defendants to implement the remedial action selected by the Environmental Protection Agency in the Record of Decision dated September 30, 1992. Additionally, $493,561 in U.S. EPA past costs at the Rowe Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed

consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nabisco, Inc., et al.*, DOJ Ref. # 90–11–3–112A.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of New York, 1 Pierrpont Plaza, Brooklyn, New York, 11201; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278 (contact Assistant Regional Counsel Beverly Kolenberg); and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $56.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–31638 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 As Amended

In accord with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Wheaton Industries*, Civil Action No. 90–3880 (CSF), was lodged on December 15, 1993 with the United States District Court for the District of New Jersey. The decree resolves claims of the United States against defendant *Wheaton Industries* ("Settling Defendant") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Williams Property Superfund Site in Middle Township, New Jersey (the "Site"). In the proposed consent decree the Settling Defendant agrees to pay the United States $3,554,400.00 in settlement of the United States' claims for response costs incurred and to be incurred by the Environmental Protection Agency at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Wheaton Industries*, DOJ Ref. # 90–11–2–288.

The proposed consent decree may be examined at the Office of the United States Attorney, 970 Broad Street, Newark, New Jersey; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–31637 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—"Petroleum Environmental Research Forum Project No. 93–07: Tertiary Treatment Options for Reducing the Toxicity of Refinery Effluents"

Notice is hereby given that, on November 9, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Chevron Research and Technology Company, acting on behalf of the Petroleum Environmental Research Forum ("PERF") Project No. 93–07: "Tertiary Treatment Options for Reducing the Toxicity of Refinery Effluents" filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and its general areas of planned activity are Amoco Oil Company, Naperville, IL; ARCO Products Company, Anaheim, CA; Chevron Research and Technology Company, Richmond, CA; Marathon Oil Company, Littleton, CO; this venture was created to investigate three tertiary treatment options for reducing the toxicity of refinery effluents, specifically: sampling and testing of effluent treated by granular activated carbon, wetlands and a fluidized bed reactor.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–31644 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Fuel Cell Commercialization Group

Notice is hereby given that, on November 30, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Fuel Cell Commercialization Group ("FCCG") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, New England Electric System, Westborough, MA; Northern States Power, Minneapolis, MN; Oglethorpe Power Corporation, Tucker, GA; and Washington Water Power Company, Spokane, WA have become members of the FCCG. In addition, Pacific Gas & Electric Company has resigned from the FCCG.

No other changes have been made in either the membership or planned activity of the FCCG. Membership in the FCCG remains open subject to certain adjustments in the membership benefits available to members joining hereafter. The FCCG intends to file additional written notification disclosing all future changes in membership.

On September 21, 1990, the FCCG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice to the **Federal Register** pursuant to section 6(b) of the Act on October 25, 1990, 55 FR 43050. The last notification was filed with the Department on August 12, 1992. A notice was published in the **Federal Register** pursuant to section

6(b) of the Act on October 13, 1992, 57 FR 46879.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–31643 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Underwater Welding Research and Development Program

Notice is hereby given that, on October 26, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Global Industries, Ltd. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new members of the project: U.S. Department of the Interior Mineral Management Services, Herndon, VA; Health and Safety Executive, Offshore Safety Division, London, England; and Chevron Research and Technology Company, Richmond, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Global Industries, Ltd. intends to file additional written notification disclosing all changes in membership.

On January 25, 1993, Global Industries, Ltd. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 9, 1993, 58 FR 13091.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–31641 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Information Technology Center of Maryland, Inc.

Notice is hereby given that, on December 2, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Information Technology Center of Maryland, Inc. ("NITC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of NITC: Bechtel Corporation, Gaithersburg, MD; Intermax CD–ROM, Rockville, MD; Montgomery College, Rockville, MD. The following has withdrawn from membership in NITC: Federal Information Exchange.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NITC intends to file additional written notification disclosing all changes in membership.

On September 12, 1991, NITC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 22, 1991 (56 FR 54,586).

The last notification was filed with the Department on September 3, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 8, 1993 (58 FR 52,508).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–31642 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—"Texas School District Cooperative Research Project: Cost Effectiveness of Alternative Fuels Using Life-Cycle Cost Benefit Analysis"

Notice is hereby given that, on July 15, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Southwest Research Institute ("SwRI") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the "Texas School District Cooperative Research Project: Cost Effectiveness of Alternative Fuels Using Life-Cycle Cost Benefit Analysis." The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following party has become a new member of the project: Wichita Falls Independent School District, Wichita Falls, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the members intend to file additional written notification disclosing all changes in membership.

On August 28, 1992, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 27, 1992, 57 FR 48636.

The last notification was filed with the Department on May 25, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 22, 1993, 58 FR 33955.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–31640 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 5, 1993, High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
Normorphine (9313)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

High Standard Products plans to procure or manufacture small quantities from 10 to 20 grams annually for manufacturing standards and deuterated analytical standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 27, 1994.

Dated: December 21, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–31611 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 9, 1993, Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II basic class of controlled substance Methadone (9250).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 27, 1994.

Dated: December 21, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–31612 Filed 12–28–93; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 2, 1993, The Binding Site, Inc., 5889 Oberlin Drive, Suite 101, San Diego, California 92121, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamid (7315)	I
Tetrahydrocannabinols (7370)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Ethylmorphine (9190)	II
Methadone-intermediate (9254)	II

The firm plans to import the above listed substances in milligram quantities for labelling with enzymes, fluorophores and radioisotopes for immunoassays.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 27, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to improt a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 21, 1993.

Gene R. Haislip,

Director, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 93–31613 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated October 18, 1993, and published in the **Federal Register** on October 26, 1993 (58 FR 57623), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146 7, State Road 2, Mayaguez, Puerto Rico 00680, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments of objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 21, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–31614 Filed 12–27–93; 8:45am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated October 18, 1993, and published in the **Federal Register** on October 26, 1993, (58 FR 57624), Sanofi Winthrop L. P., DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Meperidine (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 21, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–31615 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated April 27, 1992, and published in the Federal Register on May 1, 1992, (57 FR 18909), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium, poppy (9650)	II
Poppy Straw Concentrate (9670)	II

Two registered manufacturers did file objections with respect to the continued registration of Penick Corporation, however, no written request for a hearing was filed. The DEA has considered the comments and has concluded that the registration of Penick Corporation as an importer is in the public interest.

Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: December 21, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–31617 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated November 4, 1993, and published in the Federal Register on November 12, 1993, (58 FR 60061), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: December 21, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–31616 Filed 12–27–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and/or Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Bureau of Labor Statistics

Pricing Collective Bargaining Settlements—Private Sector

Businesses or other for-profit

396 respondents; 35.1 minutes per response; 232 total hours; 2 forms

The Bureau of Labor Statistics will use the information collected in Pricing Collective Bargaining Settlements to compile quarterly measures of collective bargaining settlements. As a Primary Federal Economic Indicator, the series are used by Federal policymakers to help set economic policy. In addition, company officials and labor groups request the data for collective bargaining negotiations and researchers use the data for compensation and unionization analyses.

New

Assistant Secretary for Administration and Management
Customer Satisfaction Survey Generic Clearance
One-time surveys
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
40,000 respondents; 15 minutes per response; 10,000 total hours

The Department of Labor is seeking a generic clearance for Customer Satisfaction Surveys in accordance with the requirements of Executive Order 12862, Setting Customer Service Standards.

New

Employment and Training Administration
Employment Service Performance Measures Pilot Self-Definition Profile
One-time survey
State or local governments
52 respondents; 1 hour per response; 52 total hours

As part of the effort to pilot test a variety of Employment service performance measures, State Employment Service Agencies are being invited to participate in voluntarily testing a limited number of performance measures. Given the broad range of operating environments, the Self-Definition Profile provides background information for use in analysis of results.

Extension

Bureau of Labor Statistics
Pricing Collective Bargaining Settlements—Public Sector
1220–0048; BLS 3116B, BLS 3116C
Other (usually every 2 or 3 years)
State or local governments
250 respondents; .6 hours per response; 150 total hours; 2 forms

The Bureau of Labor Statistics' series on State and local government collective bargaining agreements provides data on the size or negotiated changes in wages and compensation. This series covers about half of the unionized non-Federal public sector workforce. The data are used by Federal policymakers, State and local government officials, and labor groups.

Extension

Employment Standards Administration
Agreement and Undertaking
1215–0034; OWCP–1
On occasion
Businesses or other for-profit
300 respondents; .25 hr. per response; 75 total hours; 1 form.

The OWCP–1 (Office of Workers Compensation Programs) is a joint use form (Longshore and Black Lung programs) completed by employers to provide the Secretary of Labor with authorization to sell securities, or to bring suit under indemnity bonds deposited by the self-insured employers in the event there is a default in the payment of benefits.

Extension

Employment and Training Administration
Characteristics of the Insured Unemployed
1205–0009; ETA 203
Monthly
State or local governments
53 respondents; .34 average hours per response; 212 total hours; 1 form

The Characteristics of the Insured Unemployed report is the only source of current, consistent demographic information (age, race/ethnic, sex, occupation, industry) of the unemployment insurance claimant population. These characteristics identify important claimant cohorts for legislative, economic and social planning purposes and evaluation of the UI program on the Federal and State levels.

Extension

Employment and Training Administration
Annual Plans for State Employment Service Activities
1205–0209
Annually
State or local governments
54 respondents; 90 hours per response; 4,860 total hours

The Wagner-Peyser Act, P.L. 97–300, Section 8 requires that States desiring to receive the benefits of the Act submit to the Secretary of Labor detailed plans for carrying out the provision of the Act. The details of the plans are described in 20 CFR 652.4, 652.6 and 652.7.

Extension

Employment and Training Administration
Attestation by Facilities Temporarily Employing Nonimmigrant Aliens as Registered Nurses
1205–0305; ETA 9029
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
1,024 respondents; 11 hours 8 minutes per response; 11,415 total hours; 1 form

The information provided on this form by health care facilities will permit the Department to meet Federal responsibilities for program administration, management, and oversight.

Extension

Mine Safety and Health Administration
Roof Control Plans
1219–0004
Annually
Businesses or other for-profit; Small businesses or organizations 2,000 respondents, 7.565 average hours per response; 15,130 total hours

All underground coal mine operators are required to develop and submit roof plans to the Mine Safety and Health Administration for evaluation and approval. These plans are evaluated to determine if they are adequate for prevailing mining conditions.

Extension

Mine Safety and Health Administration
Ground Control Plan
1219–0026
On occasion
Businesses or other for-profit; Small businesses or organizations 300 respondents; 40 hours per response; 12,000 total hours
Requires operators of surface coal mines to establish and follow a ground control plan to ensure safe working conditions around highwalls and spoil banks. The plan is used to ensure that highwalls and spoil banks are based on sound engineering design and excavated and maintained with suitable equipment.

Extension

Occupational Safety and Health Administration
1218–0064
Notice of Alleged Safety and Health Hazards
On occasion
Individuals or households
16,500 respondents; .28 hours per response; 4,686 total hours; 1 form

The OSHA–7 form can be used by an employee or employee representative to notify the Occupational Safety and Health Administration if he/she believes that there is a violation of a safety or health standard or if imminent danger to an employee exists. The Occupational Safety and Health Administration uses the form's information to determine if there are reasonable grounds to believe that a violation or danger exists and to determine appropriate agency action. The form is also used to provide an employer with a copy of any complaints as required by the Occupational Safety and Health Act, and to provide local magistrates with evidence of just cause for obtaining a warrant for those cases

in which an employer has not allowed the Occupational Safety and Health Administration to investigate a complaint.

Extension

Occupational Safety and Health Administration
Coke Oven Emissions
1218–0128
On occasion
Businesses or other for-profit; Small businesses or organizations 2 respondents; 1 hour per response; 2 total hours

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with the occupational exposure to coke oven emissions. The standard requires employers to allow the Occupational Safety and Health Administration to have access to various records to ensure that employers are complying with disclosure provisions of the standard. The standard also requires that employers contact the National Institute of Occupational Safety and Health (NIOSH) when there is no successor to receive or retain the records for the prescribed period of time. Employers may be required to submit their records to NIOSH.

Extension

Occupational Safety and Health Administration
Inorganic Arsenic
1218–0104
On occasion
Businesses or other for-profit; Small businesses or organizations 42 respondents; 2.05 hours per response; 86 total hours

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to inorganic arsenic. The standard requires employers to notify the Occupational Safety and Health Administration Area Office of regulated areas and changes to regulated areas. The standard also requires that the Occupational Safety and Health Administration have access to various records to ensure that employers are complying with disclosure provisions of the inorganic arsenic standard.

Revision

Bureau of Labor Statistics
Standard Industrial Classification (SIC) Forms 1220–0032

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 3023VS	Service industries	1,630,815	Every 3 yrs	.083 hours.
BLS 3023VM	Service industries	106,146	Every 3 yrs	.25 hours.
BLS 3023CA	All industries	45,359	Every 3 yrs	.167 hours.
BLS 3023V	Service industries	121,940	Every 3 yrs	.083 hours.
179,591 total hours.				

Accurate industrial coding based on the 1987 Standard Industrial Classification Manual is needed by many Federal, State, and local government officials and private researchers. This extension will permit the use of previously approved forms to gather this information.

Revision

Employment and Training Administration

Program Monitoring Report and Job Service Complaint Form 1205–0039; ETA 8429 and 5148

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 8429 Recordkeeping	Local Offices	168	15	25 minutes.
ETA 8429	Local Offices	2,520	One-time	8 minutes.
Outreach Log Recordkeeping	Local Offices	150	130 times	12 minutes.
ETA 5148	State Gov.	52	Quarterly	1 hour 10 min.
5,530 total hours.				

Job Service forms are necessary as part of Federal regulations at 20 CFR parts 651, 653 and 658 published as a result of the NAACP v. Brock. The forms allow the United States Employment Service to track regulatory compliance of services provided to Migrant Seasonal Farmworkers by the State Employment Service Agencies.

Revision

Pension Welfare and Benefits Administration
Annual Report/Form 5500 Series
1210–0016; Form 5500
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
832,000 respondents; 1.2 hours per response; 998,400 total hours

Section 104(a) of the Employee Retirement Income Security Act (ERISA) requires plan administrators to file an annual report containing the information described in section 103 of ERISA. The Form 5500 Series provides a standard format for filing that requirement.

Reinstatement

Employment and Training Administration
Statement of Selected Workloads and Expenditures of Federal Funds for Unemployment Compensation for Federal Employees and Ex-servicepersons
1205–0162; ETA 191
Quarterly
State or local governments
53 respondents; 6 hours per response; 1,272 total hours; 1 form

Federal and military agencies must reimburse the Federal Employees Compensation Account for the amount expended for benefits to former Federal (civilian) employees (UCEF) and ex-servicemembers (UCX). The report informs the Employment and Training Administration of the amount to bill each such agency.

Signed at Washington, DC this 21st day of December, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–31665 Filed 12–27–93; 8:45 am]

BILLING CODE 4510–28–P; 4510–30–P

Employment and Training Administration

[ETA–W–28,854]

Goulds Pumps, Inc., Lubbock, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Goulds Pumps, Incorporated, Lubbock, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,854; Goulds Pumps, Incorporated
Lubbock, TX (December 15, 1993)

Signed at Washington, DC this 20th day of December, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–31660 Filed 12–27–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,496]

Jones and Lamson Waterbury Farrell Corp. a/k/a Waterbury Farrell Technologies, Cheshire, CT. Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reopening on December 2, 1993 for workers of Jones & Lamson Waterbury Farrell Corporation in Cheshire, Connecticut. The certification notice was published in the **Federal Register** on December 13, 1993 (58 FR 65195).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Waterbury Farrell Technologies in Cheshire, Connecticut meets all the requirements of a successor-in-interest firm for Jones & Lamson Waterbury Farrell Corporation.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–28,496 is hereby issued as follows:

All workers and former workers of Jones & Lamson Waterbury Farrell Corporation, Cheshire, Connecticut also known as (a/k/a) Waterbury Farrell Technologies, Cheshire, Connecticut who became totally or partially separated from employment on or after March 17, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC., this December 20, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–31658 Filed 12–27–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,939]

Radiometer Technology, Inc., Westlake, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of Radiometer Technology, Inc., Westlake, Ohio. The notice was issued on October 7, 1993 and published in the **Federal Register** on October 21, 1993 (58 FR 54377).

At the request of one of the workers, the Department reviewed the certification for workers of the subject firm. New findings from the company show that some workers were separated a few weeks prior to the July 1, 1993 impact date set in the certification. The workers were laid off in anticipation of company imports.

Accordingly, the Department is amending the certification to show the correct impact date.

The amended notice applicable to TA–W–28,939 is hereby issued as follows:

"All workers Radiometer Technology, Inc., Westlake, Ohio engaged in employment related to the production of arterial blood samplers who became totally or partially separated from employment on or after May 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 17th December, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–31662 Filed 12–27–93; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,037; Simonds Industries, Inc., Newcomerstown, OH
TA–W–29,087; Charles E. Gillman Co., Rio Rico, AZ
TA–W–29,063; Virginia Apparel Corp., Blackstone, VA
TA–W–29,096; Nelbro Packing Co., Anacortes, WA
TA–W–28,997; AGIP Petroleum Co., Inc., Houston TX
TA–W–29,071; Midcon Cables Co., Joplin, MO
TA–W–29,086; Sunstrand Electrical Power Systems, Lima, OH
TA–W–28,692; Continental Electric Co., Inc., Newark, NJ
TA–W–29,157; Loranger Manufacturing Corp., Warren, PA
TA–W–29,046; George Newman & Co., Biddeford, ME
TA–W–29,103; Greenleaf Corp., Saegertown, PA
TA–W–29,160; Benteler Industries, Grand Rapids, MI

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–28,993; Brown & Root Industrial Service, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,967; Lyondell Petrochemical Co., Houston, TX

The workers' firm does not produce an article as required for certification

under section 222 of the Trade Act of 1974.

TA–W–29,146; GTE North, Inc., Westfield, IN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,007; The Standard Products Co., Port Clinton Div., Port Clinton, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,097; FD Services, Inc., Casper, WY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,100; Intratex Gas Co., (An Affiliate of Enron Corp), Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,220; Spot-Bilt, Inc., Bangor, ME

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,091; UVC Corp., Irvine, CA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,151; Brown Shoe Co/Pagoda Trading Co., St. Louis, MO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,207; Kerr-McGee Refining, Wynnewood, OK

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the revelant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–29,208; Kerr-McGee Pipeline, Wynnewood, OK

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the revelant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations

TA–W–29,187; E.I. Dupont & Co., Inc., Martinsville, VA

A certification was issued covering all workers separated on or after October 20, 1992.

TA–W–29,013; Lincoln Brass Works, Inc., Detroit, MI

A certification was issued covering all workers separated on or after August 16, 1992.

TA–W–29,092; Great Northern Paper, Inc., Millinocket East & West Operations, Millinocket, ME

A certification was issued covering all workers separated on or after May 22, 1993.

TA–W–28,976; RNH Corp., Canastota, NY

A certification was issued covering all workers separated on or after July 1, 1993.

TA–W–28,977; The People Pool, Inc., Canastota, NY

A certification was issued covering all workers separated on or after July 1, 1993.

TA–W–29,254; Reed & Barton, Silversmiths, Taunton MA

A certification was issued covering all workers separated on or after November 5, 1992.

TA–W–29,249; MG Products, Inc., Independence, OH

A certification was issued covering all workers separated on or after November 8, 1992.

TA–W–29,118; Linden Sportswear, Linden, AL

A certification was issued covering all workers separated on or after September 30, 1992.

TA–W–29,165; American Precision Industries (API), Delevan Div., East Aurora, NY and

TA–W–29,166; American Precision Industries (API), Surface Mount Div., Arcade, NY

A certification was issued covering all workers separated on or after October 4, 1992.

TA–W–29,268; Mount Olive Sportswear Corp., Mount Olive, NC

A certification was issued covering all workers separated on or after November 16, 1992.

TA–W–29,026; IBM Adstar, Rockester, MN

A certification was issued covering all workers separated on or after September 1, 1993.

TA–W–29,038; Saha-Union International (GA), Inc., Tallapoosa, GA

A certification was issued covering all workers separated on or after September 8, 1992.

TA–W–29,039; Develco, Inc., Houston, TX

A certification was issued covering all workers separated on or after September 5, 1992 and before January 1, 1993.

TA–W–29,109; Titanium Metals Corp., Toronto, OH

A certification was issued covering all workers separated on or after September 28, 1992.

TA–W–29,128 & TA–W–29,129; Hitchcock, Industries, Inc., Bloomington, MN and Lakeville, MN

A certification was issued covering all workers separated on or after September 29, 1992.

I hereby certify that the aforementioned determinations were issued during the month of December, 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 20, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–31659 Filed 12–27–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 7, 1994.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 7, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington DC this 13th day of December, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Wyman Gordon Co, Aerospace Forging (USWA).	North Grafton, MA ..	12/13/93	11/29/93	29,312	Aerospace Forgings.
Thom McAn Manufacturing, Inc. (Wkrs)	Wilkesboro, NC	12/13/93	11/01/93	29,313	Men's Leather Shoes.
Sterling Abrasive Products (USWA)	Tiffin, OH	12/13/93	11/18/93	29,314	Grinding Wheels.
S&S Fashions (ILGWU)	Pittston, PA	12/13/93	11/29/93	29,315	Cutting Room.
Sir. Bros. Nursery, Inc (Co/Wkrs)	East Palo Alto, CA .	12/13/93	11/30/93	29,316	Miniature Carnations.
Rexham Graphics (AWPP)	Portland, OR	12/13/93	11/30/93	29,317	Coating Specialty Papers.
National Steel Corp (USWA)	Keewatin, MN	12/13/93	12/04/93	29,318	Taconite Pellets.
Koch Gathering System, Inc (Wkrs)	Duncan, OK	12/13/93	12/01/93	29,319	Pipeline Operation.
Gibbs Ellison, Inc (Co)	Houston, TX	12/13/93	12/02/93	29,3320	Engineering Consultants.
Frigidaire Co (UAW)	Connersville, IN	12/13/93	11/17/93	29,321	Washer and Dryer.
Dudley Sports (Wkrs)	Sellersville, PA	12/13/93	11/11/93	29,322	Softball Leather Covers.
Digital Equipment Corp. (Wkrs)	Albuquerque, NM ...	12/13/93	11/30/93	29,323	Printed Circuit Boards.
Berwick Knitwear, Inc. (Wkrs)	Holdenville, OK	12/13/93	12/03/93	29,324	Cotton Sweaters.
Ameripex International, Inc. (Wkrs)	Denver, CO	12/13/93	12/01/93	29,325	Oil and Gas Drilling, Exploration.
Rockwell International, NAA (Wkrs)	El Segundo, CA	12/13/93	11/11/93	29,326	Aerospace Products and Services.

[FR Doc. 93–31661 Filed 12–27–93; 8:45 am]
BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Enlow Fork Mining Company

[Docket No. M–93–314–C]

Enlow Fork Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to Enlow Fork Mine (I.D. No. 36–07416) located in Greene County, Pennsylvania. The petitioner proposes to maintain a minimum clearance of 4 feet along the development and retreat section in the primary escapeway. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Buck Mountain Coal Company No. 2

[Docket No. M–93–315–C]

Buck Mountain Coal Company No. 2, R.D. 2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Buck Mountain Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use bar and pin or link and pin couplers on underground haulage equipment instead of automatic couplers. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Costain Coal, Inc.

[Docket No. M–93–316–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459–0289 has filed a petition to modify the application of 30 CFR 77.1911(b)(1) (ventilation of slopes and shafts) to its Baker Mine (I.D. No. 15–14492) located in Webster County, Kentucky. The petitioner proposes to operate its ventilation fan at an underground location and ventilate further slope development by using the existing return entries; to install a fire suppression system above the fan; and to install a carbon monoxide monitoring device down wind of the fan to show both a visual and audible alarm within sight of the excavation area and at the mouth of the slope when carbon monoxide reaches 10 ppm above the ambient. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Richland Coal Company

[Docket No. M–93–317–C]

Richland Coal Company, P.O. Box 340, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine No. 36 (I.D. No. 15–13873) located in Knox County, Kentucky. The petitioner proposes to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Consolidation Coal Company

[Docket No. M–93–318–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.343(b) (underground shops) to its Humphrey No. 7 Mine (I.D. No. 46–01453) located in Monongalia County, West Virginia. Due to deteriorating conditions in the air course, traveling the entire area would be unsafe. The petitioner proposes to ventilate the underground motor barn with intake air that is coursed through the affected air

course directly into a return air course and that is not used to ventilate working places; and to establish check points to monitor for methane and the quantity of air in the affected area on a weekly basis. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Raven Mining Company

[Docket No. M–93–319–C]

Raven Mining Company, P.O. Box 1409, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.333(b)(3) (ventilation controls) to its No. 2 Mine (I.D. No. 15–16832) located in Martin County, Kentucky. The petitioner proposes to stack 8″ x 8″ x 16″ concrete blocks without mortered joints on the intake side of the belt in short panels, 800 feet or less, off the mains with return side stopping line left intact, and to remove the intake side stopping line as each short panel is completed. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Consol Pennsylvania Coal Company

[Docket No. M–93–320–C]

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Bailey Mine (I.D. No. 36–07230) located in Greene County, Pennsylvania. Due to deteriorating roof conditions, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to establish check points and to have a certified person test for methane and the quantity of air at each check point on a weekly basis and record test results in a record book which would be kept on the surface and made available for inspection for interested persons. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Energy West Mining Company (formerly Utah Power & Light Mining Company)

[Docket No. M–93–321–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Deer Creek Mine (I.D. No. 42–00121); its Cottonwood Mine (I.D. No. 42–01944); and its Trail Mountain Mine (I.D. No. 42–01211) all located in Emery County, Utah. The petitioner request that previously granted petition, docket number M–85–49–C, be amended. The petitioner proposes to protect all belt drives in these mines with water sprinkler systems; to use upright type sprinkler heads instead of the previously approved pendant type sprinkler heads; and to include an optional 2-inch outlet at the end of the 2-inch sprinkler pipe to extend the circuit to provide optional coverage of remote headrollers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Energy West Mining Company

[Docket No. M–93–322–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner proposes to use belt entries as return entries during two entry longwall panel development mining to provide miners with maximum protection under deep cover. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same protection as would the mandatory standard.

10. Jersey Miniere Zinc

[Docket No. M–93–12–M]

Jersey Miniere Zinc, P.O. Box 359, Gordonsville, Tennessee 38563 has filed a petition to modify the application of 30 CFR 75.11050(a) (escapeways and refuges) to its Elmwood/Gordonsville Mine (I.D. No. 40–00864) located in Smith County, Tennessee. The petitioner proposes to remove the Stonewall No. 6 Shaft from its designation as a secondary escapeway and delete it from the Mine Evacuation Plan, due to ground problems in the shaft area. The petitioner states that using the No. 6 Shaft for escape would result in a diminution of safety to the miners.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 27, 1994. Copies of these petitions are available for inspection at that address.

Dated: December 21, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–31663 Filed 12–27–93; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–094]

NASA Advisory Council, Space Science Advisory Committee; Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Space Physics Subcommittee.

DATES: January 5–7, 1994, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–5m 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. George L. Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1544.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Space Physics Division Overview: Budget, Ongoing Program, Future Activities
—Program Reports for Magnetospheric, Cosmic and Heliospheric Physics, Solar Physics, and Ionosphere—Thermosphere—Mesophere
—Space Physics Research and Analysis Program
—Strategic Planning
—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: December 21, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–31601 Filed 12–27–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* January 24, 1994
Time: 8:30 to 5 p.m.
Room: 415
Program: This meeting will review applications for the National Heritage Preservation Program Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1994.

2. *Date:* January 31, 1994
Time: 8:30 to 5 p.m.
Room: M–07
Program: This meeting will review applications for the National Heritage Preservation Program Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1994.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 93–31549 Filed 12–27–93; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel; Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Licensing Support System Advisory Review Panel (LSSARP) for a period of three months.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has determined that renewal of the charter for the LSSARP for a period of three months commencing December 9, 1993 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Commission Management Secretariat, General Services Administration.

The purpose of the LSSARP is to provide advice to (1) the Department of Energy on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and (2) the Nuclear Regulatory Commission on the operation and maintenance of the system. This electronic information management system is known as the Licensing Support System (LSS).

Membership of the Panel is drawn from those interests that will be affected by the use of the LSS, including the Department of Energy, the NRC, the State of Nevada, Tribal interests, affected units of local governments in Nevada, and the nuclear industry. Federal agencies with expertise and experience in electronic information management system also participate on the Panel.

Further information regarding the LSS Advisory Review Panel may be obtained from John Hoyle, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 504–1968.

John C. Hoyle,

Advisory Committee Management Officer.

Dated: December 21, 1993

[FR Doc. 93–31600 Filed 12–27–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co., Pilgrim Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the approval of an exemption, pursuant to 10 CFR 20.2301, from the requirements of 10 CFR part 20, Appendix B, Table 1, to Boston Edison Company, for the Pilgrim Nuclear Power Station (PNPS) located in Plymouth, Massachusetts. The requested exemption would allow the use of a derived air concentration (DAC) of 10^{-6} for krypton-89 and a DAC of 10^{-5} xenon-137, instead of using the generic value DAC of 10^{-7} μCi/ml that is specified in Appendix B to 10 CFR 20.1001–20.2402 for these two radionuclides, when determining when an area is, and requires posting as, an airborne radioactivity area in accordance with the requirements of 10 CFR part 20.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve the use of the requested DAC values for posting airborne radioactivity areas at PNPS. Posting of airborne radioactivity areas is required by 10 CFR part 20 as one means of controlling occupational radiation exposure.

The Need for the Proposed Action

The Boston Edison Company (BECo) states the requested exemption is needed because krypton-89 and xenon-137 are a significant fraction of the noble gas radioactivity in a boiling water reactor (BWR) and the DAC of 10^{-7} μCi/ml specified in Appendix B to 10 CFR 20.1001–20.2402 is too small for these particular radionuclides. BECo further states that the use of the 10^{-7} μCi/ml value for the krypton-89 and xenon-137 DACs would cause over posting of airborne radioactivity areas, which erodes the significance of the posting and consumes resources. BECo also states that the use of the 10^{-7} μCi/

ml value for the krypton-89 and xenon-137 DACs would result in undue hardship and would overburden operational staff by posting areas that are normally not required to be posted while providing little to no benefit.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed action and has concluded that the use of the proposed DACs for posting airborne radioactivity areas will not result in any significant increase in individual or cumulative occupational radiation exposure. The radiation doses corresponding to the DAC values requested by BECo for krypton-89 and xenon-137 are within the radiation dose limits that were used to calculate the DAC values for the other radioisotopes of krypton and xenon that are listed in Appendix B to 10 CFR 20.1001–20.2402. The staff has determined that this exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released. Accordingly, the Commission has concluded that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed approval would not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant nonradiological environmental impact associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impact attributable to this facility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Pilgrim Nuclear Power Station, dated May 1972.

Agencies and Persons Consulted

The NRC staff consulted with Dr. Keith Eckerman, Oak Ridge National Laboratory, to obtain calculations of relevant radiation dose conversion factors for krypton-89 and xenon-137.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for exemption dated September 13, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, and at the local public document room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 21st day of December 1993.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–3, Division of Reactor Project—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 93–31608 Filed 12–27–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Environmental Assessment and Finding of No Significant Impact; GPU Nuclear Corp., Three Mile Island Nuclear Station, Unit No. 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Possession Only License (POL) DPR–73 issued to GPU Nuclear Corporation (the licensee or GPUN). The amendment would substantially change and reissue the Appendix A and B Technical Specifications for the Three Mile Island Nuclear Station Unit 2 (TMI–2), located in Dauphin County, Pennsylvania.

The licensee has requested by letter dated August 16, 1988, as amended by submittals dated September 19, 1988, February 9, 1989, March 31, 1989, June 26, 1989, October 10, 1989, November 22, 1989, June 21, 1990, October 15, 1990, November 7, 1990, February 19, 1991, April 19, 1991, June 21, 1991, August 28, 1991, October 9, 1991, January 13, 1992, January 18, 1993, May 28, 1993, October 24, 1993, and November 12, 1993, that the technical specifications for TMI–2 be amended to permit long term storage of the facility.

Environmental Assessment

Identification of the Proposed Action

The POL allows the licensee to possess but not operate TMI–2 and establishes requirements that are applicable to the facility in its post accident, inoperable, and essentially defueled condition. The proposed amendment to the facility technical specifications would permit the licensee to place the TMI–2 facility in long-term monitored storage, termed Post-Defueling Monitored Storage (PDMS) by the licensee.

The Need for the Proposed Action

The licensee has completed the current phase of the cleanup effort. The licensee has determined that the facility should be maintained in the PDMS condition until the time Three Mile Island Nuclear Station Unit 1 (TMI–1) is ready for decommissioning, at which time both TMI–1 and TMI–2 will be decommissioned simultaneously. In order to permit and facilitate long term storage of TMI–2, the licensee has proposed a number of changes to the technical specifications. The licensee has determined that many of the requirements contained in the current technical specifications are inappropriate and not required to ensure the safety of a post-accident, inoperable, and essential defueled facility possessing a POL.

Background

In March 1981, the NRC staff issued NUREG–0683, "Programmatic Environmental Impact Statement Related to Decontamination and Disposal of Radioactive Wastes Resulting from the March 28, 1979 Accident at TMI–2" (PEIS). The PEIS has been supplemented by the staff three times. In August 1989, the NRC staff issued PEIS Final Supplement 3, which assessed, in part the environmental impacts associated with the licensee plans to place the facility into PDMS. Seven alternatives to the licensee proposal were also evaluated in PEIS Supplement 3.

The staff concluded in PEIS Supplement 3 that the licensee proposal:

(1) Is within the applicable regulatory limits, and could be implemented without significant environmental impact since the health impact on both the workers and the offsite public is very small;

(2) Would result in a radiological dose to the public that are fractions of the dose received from background radiation;

(3) Would result in substantial occupational dose savings and reduced transportation impacts over several of the alternatives considered; and

(4) Is environmentally acceptable and will not significantly affect the quality of the human environment.

The staff evaluation of the licensee proposal was based principally on the licensee description of PDMS contained in the 1987 licensee submittal entitled "Technical Plan, TMI–2, Cleanup Program Post-Defueling Monitored Storage" and on the licensee submittal of August 1988, entitled "Post-Defueling Monitored Storage Proposed License Amendment and Safety Analysis Report." The 1988 submittal by the licensee provided the detailed system by system description of the facility during PDMS and provided the safety analysis necessary to assess the potential for environmental impact during storage. Since August 16, 1988 submittal, the licensee has updated the PDMS proposed license amendment and Safety Analysis Report (SAR) 19 times (September 19, 1988 through November 12, 1993). Since issuance, by the NRC staff, of the August 1989, PEIS Supplement 3, the PDMS proposed license amendment and SAR have been updated 15 times (October 10, 1989 through November 12, 1993).

The purpose of this environmental assessment is to determine if the August 1989, PEIS Supplement 3 dealing with PDMS remains valid after a review of the 15 amendments to the August 16, 1988 SAR, as well as other significant submittals, issued since publication of PEIS Supplement 3.

Environmental Assessment

The staff has reviewed the licensee amendments to the August 16, 1988 submittal that have been submitted to the NRC staff since issuance of the August 1989, PEIS Supplement 3. The staff also reviewed the licensee Defueling Completion Report dated February 22, 1990, the results of the post lower head sampling program cleanup in a letter dated April 12, 1990, the post-defueling survey reports, the initial report dated September 30, 1988 and final report dated Febraury 1, 1993, and the results of the independent staff analyses done for the staff by Battelle Pacific Northwest Laboratory. The purpose of this reviews was to determine if the licensee proposal and the subsequent assessment of environmental impact is still within the scope of the August 1989 PEIS Supplement 3.

The amendments to the August 16, 1988 submittal, sent to the staff after the publication of the August 1989, PEIS Supplement 3, consist primarily of written respnses to detailed staff questions, updates to the descriptive information in the SAR, and changes in the proposed PDMS Technical Specifications. Some of the changes to the SAR resulted in physical changes to the facility that were not considered during the preparation of PEIS Supplement 3 (e.g. a closure mechanism for the atmospheric breather, and containment penetration overpressurization limits). The staff has reviewed these changes and has determined that there is no significant change in potential environmental impact due to these modifications. Some of the changes identified in the amendments to the SAR deal with changes in values of measurements, estimates, or monitoring programs (e.g. residual fuel in the facility, level of contamination, unfiltered leak rate test for the reactor building). These revised values or tests do not alter the conclusions in the PEIS Supplement 3. Finally, some of the changes in the SAR revise analyses of potential accidents (e.g. fire in containment). Review of these revised analyses did not reveal any significant changes in predicted impact.

The staff reviewed the licensee-submitted Defueling Completion Report, the Post-Defueling Survey Reports (PDSR, particulary the PDSR of February 1, 1993 related to the reactor vessel, and the licensee submittal of December 18, 1992 entitled "TMI–2 Reactor Vessel Criticality Safety Analysis". The principal issue in this review was the potential for inadvertent recriticality of the fuel remaining at the facility. The staff found that the feul remaining at the facility was in a configuration that precluded criticality. This condition was assumed by the staff in PEIS Supplement 3; therefore, the finding is consistent with the earlier evaluation by the staff.

The staff reviewed the results of independent analyses done while preparing the PDMS Safety Evaluation (SE). These analyses were done by both the NRC staff and their contractor, Battelle Pacific Northwest Laboratory. In one case, the results of an analysis of a different fire scenario in the reactor containment building showed offsite doses in excess of those evaluated for the fire analysis in PEIS Supplement 3. PEIS Supplment 3 predicted the consequences of a fire in the containment stairwell as a 50-year dose commitment to the maximally exposed member of the public of 1.6 mrem to the whole body. The staff PDMS SE evaluated the consequences of a fire inside the D-rings in the containment. The predicted 50-year dose commitment to the maximally exposed member of the public for this accident scenario is 49 mrem to the whole body.

For an accident situation, the guidance provided in 10 CFR part 100 limits the total radiation dose to a member of the public to less than 25 rem to the whole body. The U.S. Environmental Protection Agency (EPA) Protective Action Guidelines (PAG) trigger actions on the part of the licensee, local and state governments to limit public exposure in the range of 1 to 5 rem to the whole body. Although the predicted 50-year dose commitment to the maximally exposed member of the public in the revised accident analysis presented in the staff-issued PDMS SE is greater than that predicted in PEIS Supplement 3, the revised whole body dose of 49 mrem to the maximally exposed member of the public is still a small fraction (lses than 0.2 percent) of the 10 CFR Part 100 guidance and well below the EPA PAG.

This small increase (from 1.6 to 49 mrem) in the 50-year whole body dose commitment to the maximally exposed member of the public does not change the conclusions of PEIS Supplement 3. Specifically, the calculated dose to the public are fractions of the dose received by a member of the public from background radiation (≈ 300 mrem annually), are within the applicable regulatory limits (<25 rem), and the potential health impact on the public is very small. Based on the above evaluation, the staff concludes that the proposed changes to the Appendix A and B Technical Specifications for TMI–2 will result in environmental impacts that are still within the scope of the August 1989, PEIS Supplement 3.

Alternatives to the Proposed Action

Alternatives to the proposed action are evaluated in PEIS Supplement 3. The staff concludes in PEIS Supplement 3 that the licensee proposal, and the seven NRC staff-identified alternatives (with the exception of the no-action alternative which was found not to be viable because it would be contrary to regulations) could each be implemented without significant environmental impact. The staff has not identified any new alternatives or any new information, since issuance of PEIS Supplement 3, that would change its evaluation and conclusions on impacts for the licensee proposal or any of the alternatives. Therefore, any reasonable alternative to this action would not have a significant environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered by the NRC staff in the March 1981, PEIS (NUREG–0683) as supplemented.

Agencies and Persons Consulted

The staff widely distributed PEIS Draft Supplement 3 and received comments from a number of Federal, State, and local agencies, the licensee, local citizens and citizen organizations. These comments were incorporated in PEIS Final Supplement 3, issued in August 1989. On April 25, 1991, the staff published a notice of opportunity for a prior public hearing regarding, in part, the license amendment request for the changes to the technical specifications (56 FR 19128). In response to the staff notice of opportunity for a prior public hearing, a member of the public petitioned to intervene. A settlement agreement, between the petitioner, the licensee, and the NRC staff, was filed on September 25, 1992, before the Atomic Safety and Licensing Board (ASLB), assigned to this docket. Based on the settlement agreement, the ASLB dismissed the proceedings on October 16, 1992. The NRC staff consulted with a representative of the Commonwealth of Pennsylvania regarding the environmental impact of the proposed action on December 21, 1993. The State representative contacted had no comment.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment and the impacts of this action remain within the scope of those evaluated in the August 1989, PEIS Supplement 3. Therefore, the Commission has determined that the PEIS Final Supplement 3 (NUREG–0683) need not be supplemented.

PEIS Final Supplement 3 (NUREG–0683), the staff Safety Evaluation, the licensee amendments to their August 16, 1988 submittal, as amended by submittals dated September 19, 1988, February 9, 1989, March 31, 1989, June 26, 1989, October 10, 1989, November 22, 1989, June 21, 1990, October 15, 1990, November 7, 1990, February 19, 1991, April 19, 1991, June 21, 1991, August 28, 1991, October 9, 1991, January 13, 1992, January 18, 1993, May 28, 1993, October 24, 1993, November 12, 1993, and the licensee February 22, 1990 Defueling Completion Report, the Post-Defueling Survey Reports (PDSR), particularly the PDSR of February 1, 1993 related to the reactor vessel, and the licensee submittal of December 18, 1992 entitled "TMI–2 Reactor Vessel Criticality Safety Analysis" are available for public inspection at the Commission Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and the local public document room at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 21st day of December 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–31609 Filed 12–27–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Long Island Power Authority, Shoreham Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of 10 CFR 50.54(w) to the Code of Federal Regulations to the Long Island Power Authority (LIPA or the licensee) for the Shoreham Nuclear Power Station (SNPS), Unit 1, pursuant to the requirements of 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant LIPA an exemption from the requirements of 10 CFR 50.54(w) to maintain on-site property insurance for the Shoreham Nuclear Power Station, pursuant to the requirements of 10 CFR 50.12. By letter dated August 2, 1993, the licensee requested this exemption.

The Need for the Proposed Action

The exemption is needed to eliminate the requirements of 10 CFR 50.54(w) that are appropriate for an operating plant but are not needed at a defueled plant that is being dismantled. Granting the proposed exemption would remove the requirements to comply with 10 CFR 50.54(w) to maintain on-site property insurance for an accident of a type that cannot occur at SNPS.

Environmental Impact of the Proposed Action

The proposed exemption would eliminate the requirements to have in effect, and to continue to maintain, on-site property insurance. Granting the exemption will have no environmental impact because SNPS is permanently shutdown, defueled, 75 percent decommissioned, and the risk of an accident that would require reactor stabilization or extensive decontamination as defined in 10 CFR 50.54(w) does not exist at Shoreham. In addition, there are no credible accident scenarios that could result in offsite doses greater than a small fraction of the U.S. Environmental Protection Agency's "Protective Action Guidelines."

The requested exemption would not authorize a change in licensed activities and would not effect changes in the permitted types or amounts of radiological effluent. Accordingly, the NRC staff concludes that this proposed action would result in no significant radiological environmental impact. With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alaternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement" for SNPS.

Agencies and Persons Consulted

The licensee initiated this exemption request. The NRC staff is reviewing this request. The State of New York was notified of the proposed exemption and provided no comments.

Finding of No Significant Impact

Based upon this environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff will not prepare an environmental impact statement for the proposed exemption.

A copy of the licensee's request for exemption and supporting

documentation dated August 2, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20037, and at the local public document room at the Shoreham Wading River Public Library, Shoreham Wading River High School, Route 25A, Shoreham, NY 11792.

Dated at Rockville, Maryland, this 14th day of December, 1993.

For The Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–31607 Filed 12–27–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Revision of Forms RI 30–2, and RI 30–44

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In acordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form RI 30–2, Annuitant's Report of Income, is used by disability annuitant's under age 60 to report their earnings annually to the Office of Personnel Management. RI 30–44, Report of Income is Not Usable, is used to report earnings when the information from the RI 30–2 is unusable.

There are estimated to be 60,000 respondents for RI 30–2, and 780 for RI 30–44. It takes approximately 30 minutes to complete RI 30–2, and 5 minutes to complete RI 30–44. The combined annual burden is 30,065 hours.

For copies of this proposal, call C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before January 27, 1994.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E. Street, NW., room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis and Design (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–31430 Filed 12–27–93; 8:45 am]

BILLING CODE 6325–01–M

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the thirty-first meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings are open to the public.

DATES: January 18, 1994, at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415-0001. Telephone number: (202) 606–2838.

For the President's Pay Agency.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–31429 Filed 12–27–93; 8:45 am]

BILLING CODE 6325–01–M

Privacy Act of 1974: Computer Matching Program Between the Office of Personnel Management and the Social Security Administration

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a computer matching program between OPM and the Social Security Administration (SSA) for public comment.

SUMMARY: OPM is publishing notice of its computer matching program with SSA to meet the reporting and publication requirements of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988. In this match, SSA records are used in redetermining and recomputing certain annuitants' benefits where computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and for annuitants under the Federal Employees' Retirement System (FERS) who have a CSRS component in their FERS annuity computation. The purpose of this match is to identify these beneficiaries.

DATES: This proposed action will become effective 40 days after the agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, unless either the Congress or the Office of Management and Budget objects thereto. Any public comments on this matching program must be submitted within the 30-day public notice period, which begins on the publication date of this notice.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW, room 4351, Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joy Anderson, (202) 606–2099.

SUPPLEMENTARY INFORMATION: OPM and SSA have concluded an agreement to conduct a computer matching program between the two agencies. The purpose of the agreement is to establish the conditions under which SSA agrees to the disclosure of Social Security Benefit and/or tax return information to OPM. OPM, as specified in 5 U.S.C. 8332(j)(1), has an obligation to use post-1956 earnings data in redetermining and recomputing annuities for certain CSRS and FERS annuitants. Section 1106 of the Social Security Act (42 U.S.C.) requires that SSA disclose the needed data to OPM.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Report of Computer Matching Program Between the Office of Personnel Management and the Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

Chapters 83 and 84 of title 5, United States Code (U.S.C.), provide the basis for computing annuities under the Civil Service Retirement System and the Federal Employees' Retirement System

respectively, and require release of information by SSA in order to administer post-1956 data exchanges. In this match, SSA records are used in redetermining and recomputing certain annuitants' benefits where computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and for annuitants under the Federal Employees' Retirement System (FERS) who have a CSRS component in their FERS annuity computation. The purpose of this match is to identify these beneficiaries.

C. Authority for Conducting the Match Program

Chapters 83 and 84, title 5, United States Code, section 1106 of the Social Security Act (42 U.S.C. 1306), and the Internal Revenue Code (26 U.S.C. 6103).

D. Categories of Records and Individuals Covered by the Match

SSA will disclose data from its Master Beneficiary Record and Master Earnings Files, and manually extract post-1956 military wage information from SSA's "1086" microfilm file when required. SSA has published routine uses for these systems of records, published at 58 FR 35025, June 30, 1993, and also at 58 FR 45895, August, 31, 1993.

OPM's records consist of annuity data from its system of records entitled OPM/Central–1—Civil Service Retirement and Insurance Records, last published in the **Federal Register** at 58 FR 19154 on April 12, 1993, and revised at 58 FR 41300, August 3, 1993.

E. Description of Matching Program

OPM provides a monthly magnetic tape to SSA containing data on those individuals for whom OPM requests post-1956 military service benefit information. These elements will be matched against SSA records. SSA furnishes OPM by magnetic tape benefit information on these individuals, including the amount of the SSA benefit attributable to the post-1956 military service (which constitutes the CSRS or FERS annuity reduction amount).

F. Privacy Safeguards and Security

The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's "Guidance Interpreting the Provisions of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988." Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe from access by authorized personnel during duty hours as well as nonduty hours or when not in use. Records used in this exchange and any records created by this exchange will be processed under the immediate supervision and control and authorized personnel in a manner which will protect the confidentiality of the records.

Both SSA and OPM have the right to make onsite inspections or make other provisions to insure that adequate safeguards are being maintained by the other agency.

F. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Congress and the Office of Management and Budget. OPM's report to these parties must be received at least 40 days prior to the initiation of any matching activity. If no objections are raised by either Congress or OMB, and the mandatory 30-day public notice period for comment for this **Federal Register** notice expires with no significant receipt of adverse public comments resulting in a contrary determination, then this computer matching program becomes effective. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

[FR Doc. 93–31428 Filed 12–27–93; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employer's Quarterly Report of Contributions Under the RUIA.

(2) *Form(s) submitted:* DC–1.

(3) *OMB Number:* 3220–0012.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* Quarterly.

(7) *Respondents:* Businesses or other for-profit, Small businesses or organizations.

(8) *Estimated annual number of respondents:* 550.

(9) *Total annual responses:* 2,200.

(10) *Average time per response:* .4168 hours.

(11) *Total annual reporting hours:* 917.

(12) *Collection description:* Railroad employers are required to make contributions to the RUI fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–31536 Filed 12–28–93; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Prior Service Reports.

(2) *Form(s) submitted:* AA–15, AA–2P(R), G–86.

(3) *OMB Number:* 3220–0003.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the

substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, Businesses or other for-profit.

(8) *Estimated annual number of respondents:* 410.

(9) *Total annual responses:* 410.

(10) *Average time per response:* .358 hours.

(11) *Total annual reporting hours:* 147.

(12) *Collection description:* Railroad service prior to 1937 which can be used to determine entitlement to and amount of annuity under the RRA is not carried on Railroad Retirement Board records. The reports obtaiin verification of such records, or in the absence of such records, obtain information from the applicant to support the claim.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–31540 Filed 12–27–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 19964; 811–7722]

High Rollers Gaming Sector Fund, Inc.; Notice of Application

December 20, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: High Rollers Gaming Sector Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on December 13, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 14, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, D.C. 20549. Applicant, 400 Park Place, suite 2C, Fort Lee, N.J. 07024.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized under the laws of the State of New Jersey. On May 13, 1993, applicant filed a Notification of Registration pursuant to section 8(a) of the Act on Form N–8A. Applicant did not file a registration statement pursuant to section 8(b) of the Act. Applicant has never made any sales of securities of which it is the issuer.

2. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not engaged, and does not propose to engage in any business activities, other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–31566 Filed 12–27–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19968; No. 812–8663]

Protective Life Insurance Company, et al.

December 20, 1993.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Protective Life Insurance Company ("Protective Life"), Protective Variable Annuity Separate Account ("Variable Account"), and Investment Distributors, Inc. ("IDI") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) from the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of Sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Variable Account of mortality and expense risk charges in connection with the offer and sale of certain flexible premium deferred variable and fixed annuity contracts.

FILING DATE: The application was filed on October 28, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 14, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Protective Life Insurance Co., 2801 Highway 280 South, Birmingham, Alabama 35223.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Michael Wible, Special Counsel (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. Protective Life, a wholly-owned subsidiary of Protective Life Corporation ("PL–Corp.") is licensed to conduct business in the District of Columbia, Puerto Rico, Guam, and in all states except New York. Protective Life engages in the sale of life and health insurance and annuities. As of December 31, 1992, Protective Life had assets of over $3.7 billion.

2. The Variable Account is a separate account of Protective Life. On October 28, 1993, the Variable Account filed on Form N–8A (File No. 811–8108) a notice of registration as a unit investment trust under the 1940 Act. The Variable Account also filed a registration statement on Form N–4 (File No. 33–70984) under the Securities Act of 1933 in connection with a flexible premium deferred variable annuity contract ("Contract") and under section 8(b) of the 1940 Act in connection with the Variable Account. The Variable Account has six sub accounts: Money Market, Select Equity, Small Cap Equity, International Equity, Growth and Income and Global Income ("Sub-Accounts"). Each Sub-Account invests in shares of the corresponding investment portfolio of Protective Investment Company ("PIC"). Other portfolios of PIC or other mutual funds also may be made available for investment in the future through additional sub-accounts.

3 IDI, a wholly owned subsidiary of PL-Corp., is the principal underwriter of the Contracts, a registered broker-dealer under the Securities Exchange Act of 1934, as amended, and a member of the National Association of Securities Dealers, Inc. Registered representatives of IDI and licensed agents of Protective Life will offer the Contracts on a continuous basis. IDI also will contract with other broker-dealers for their services in connection with the distribution of the Contract.

4. The Contract will be offered in connection with certain retirement plans that receive special federal income tax treatment and to individuals and entities that do not qualify for special tax treatment. The Contracts require certain minimum initial payments, permit certain additional payments, and restrict the maximum aggregate payments, unless otherwise approved by Protective Life (collectively, "Payments"). Contractowners may allocate Payments, and later transfer accumulated Contract Value, among and between the different Sub-Accounts or to Protective Life's general account ("General Account") prior to the Annuity Commencement Date. A Guaranteed Death Benefit will be payable.

5. Various fees and expenses are deducted from each Contract. While no sales charges are deducted from premium payments, a 7% contingent deferred sales charge ("CDSC") is deducted for full or partial surrenders during the Contract's first year. Beginning in the Contract's second year, the CDSC will be a maximum of 6% of each payment for deductions or surrenders within a year after such payment is made, thereafter declining by 1% per year to 0% at the end of the sixth year. The aggregate CDSC applicable to any Contract, however, will not exceed 8.5% of total Payments. Under certain circumstances, up to 10% of the initial Payment will not be subject to the CDSC, and the CDSC may be waived under certain circumstances. If the CDSC is insufficient to pay the cost of distributing the Contracts, the deficiency will be met from General Account assets, which may include amounts derived from the mortality and expense risks charge discussed below.

6. An Administration Charge of .15% of the daily value of net assets in the Variable Account is deducted on an annual basis prior to the Annuity Commencement Date. This charge is guaranteed not to increase for the duration of the Contract.

7. An annual Contract Maintenance Fee of $35 will be deducted from the Variable Accounts Value attributable to each Sub-Account in proportion to the amounts invested in each Sub-Account. This fee also will be deducted upon surrenders, other than on a Contract anniversary, in order to partially compensate Protective Life for administrative services. The fee may be waived under certain circumstances.

8. Currently, there is no charge for transfers ("Transfer Fee"). Protective Life, however, reserves the right to charge a $25 Transfer Fee for each transfer after the first 12 transfers in any Contract Year. The Transfer Fee will be deducted, either from the Payment when received, upon partial or full surrenders, or from the amount applied to effect an annuity, for payment of a premium tax in states that impose this tax. No other charges currently are made against the Variable Account for federal, state or local taxes, but these charges may be imposed in the future.

9. Each Fund will pay all its operating expenses. Each Fund also pays a monthly fee from its daily net assets to its investment manager for managing its investments and business affairs. The investment management fees vary among the Funds and range from an annual rate of .60% for the Protective Money Market Fund to 1.10% for each of the Protective International Equity and Protective Global Income Funds.

10. The charges for administration of the Contracts are deducted in reliance on Rule 26a–1 of the 1940 Act and are not greater than the cost of the administrative services to be provided over the life of the Contract. Protective Life does not expect or intend to make a profit from the Administration Charge, the Contract Maintenance Fee, or any Transfer Fee.

11. An annual charge of 1.25% of the Variable Account's assets will be deducted for mortality and expense risks assumed by Protective Life, of which approximately .50% is for mortality risks and .75% for expense risks. The 1.25% rate is guaranteed not to increase for the duration of the Contract. If the charge is insufficient to cover the assumed risks, the loss will be assumed by Protective Life. Conversely, the charge may be a source of profit for Protective Life which will be added to Protective Life's surplus. Protective Life currently anticipates a profit from this charge. Any profits which may result from this charge may be used by Protective Life for, among other things, the payment of distribution, sales and other expenses.

12. The mortality risk assumed by Protective Life under the Contracts arises from its contractual obligation to make periodic annuity payments in accordance with annuity tables and other contract provisions regardless of how long all Annuitants or any one Annuitant may live. Thus, Protective life assumes the risk that Annuitants, as a class, may live longer than has been estimated by its actuaries, and Contractowners are assured that neither longevity nor an improvement in life expectancy, generally, will have an adverse effect on annuity payments. Protective Life also incurs a mortality risk in connection with the Guaranteed Death Benefit.

13. The expense risk assumed by Protective Life is that the actual expenses involved in administering the Contracts and the Variable Account in connection with the Contracts will exceed the amounts recovered from the Administration Charge, the Contract Maintenance Fee, and, if applicable, the Transfer Charge.

Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is "necessary or appropriate

in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act."

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from assets of the Variable Account of the 1.25% charge for the assumption of mortality and expense risks. Applicants represent that the charge is consistent with the protection of investors because it is a reasonable and proper insurance charge to compensate Protective Life for assuming the mortality and expense risks. Protective Life represents that the 1.25% per annum mortality and expense risks charge is within the range of industry practice for comparable annuity products. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, any death benefit guarantees, guaranteed annuity rates, and other policy options. Protective Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. The charge of mortality and expense risks may be a source of profit which would increase Protective Life's general assets available to pay distribution expenses not reimbursed by a sales charge. There is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract Owners. The basis for that conclusion will be set forth in a memorandum which will be maintained by Protective Life at its administrative offices and made available to the Commission upon request.

5. The Variable Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not interested persons, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–31564 Filed 12–27–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25953]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 17, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 10, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–7622)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Resources, Inc. ("Resources") (collectively, "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment pursuant to sections 6, 7, 9(a), 10, 12(b), 13(b), 32, and 33 of the Act and Rules 45, 53, 87, 90, and 91 thereunder to their application-declaration filed pursuant to sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and Rules 43, 45, 50(a)(5), 87, 90, and 91 thereunder.

By orders dated June 6, 1989 and October 8, 1993 (HCAR Nos. 24898 and 25905), AEP was authorized to invest in Resources up to $7.5 million per year through December 31, 1996 for preliminary development activities related to qualifying cogeneration facilities or small power production facilities (collectively, "QFs"), as defined in the Public Utility Regulatory Policies Act of 1978 and rules thereunder.

The Applicants now propose to expand the scope of Resources's preliminary development activities to include activities related to independent power production facilities ("IPPs"), exempt wholesale generators ("EWGs"), and foreign utility companies ("FUCOs"). AEP also proposes to issue guarantees and assume liabilities of Resources owed to third parties in connection with development activities. The arrangements would take the form of direct contractual obligations of AEP, and would not involve the interposition of unaffiliated third parties, such as a letter of credit bank. The Applicants state that these arrangements can provide them with opportunities to participate in power opportunities on a favorable basis without expending funds. The Applicants represent that, until such time as there is no possibility of a claim against AEP or Resources, the full contingent amount of any guarantee or assumption of liability would be counted as part of the $7.5 million authorized development activities limit described above.

The Applicants would not acquire an interest in a QF or IPP without prior Commission approval. In addition, the Applicants would not organize any intermediate subsidiary that would acquire an interest in a FUCO without prior Commission approval. No associate company of AEP would provide services to an EWG or FUCO in which it has an interest without prior Commission approval. In addition, in no

event will Resources provide services to an EWG or FUCO.

Resources' preliminary development activities include the investigation of sites, preliminary engineering and licensing activities, acquiring options and rights, contract drafting and negotiating, preparation of proposals and other necessary activities to identify and analyze feasible investment opportunities and to initiate the commercialization of a project. Authorized administrative activities will include the ongoing personnel, accounting, engineering, legal, financial and other support activities necessary for Resources to manage its preliminary development activities related to Power Projects, and potential investments therein.

Resources will undertake development activities on its own and in conjunction with third parties through cost sharing contractual arrangements which will not involve the formation of corporations, partnerships, joint ventures or other business entities. Resources states that, by its participation in these informal and unincorporated consortia, it intends to diversify its risk, access skills and relationships that it may require, and access more of a diversity of projects than it could if it concentrated on developing such project by itself.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–31563 Filed 12–27–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19965; International Series Release No. 623; (812–8668)]

Standard Chartered Bank; Notice of Application

December 20, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Standard Chartered Bank ("SCB").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: SCB seeks an order to permit the maintenance of foreign securities and other assets of registered investment companies other than investment companies registered under section 7(d) of the Act (an "Investment Company"), and custodians of such investment companies, with Standard Chartered Bank Malaysia ("SCBM"), a subsidiary of SCB located in Malaysia.

FILING DATE: The application was filed on November 5, 1993, and amended on December 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Daniel L. Goelzer, Esq., Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations and Legal Analysis

1. SCB seeks an order to exempt it, any Investment Company, any custodian for an Investment Company, and SCBM, from section 17(f) of the Act to permit SCB, such Investment Company, and such custodian to maintain foreign securities, cash, and cash equivalents (collectively, "Assets") in custody of SCBM. For purposes of this application, "foreign securities" includes (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country, and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities. Rule 17f–5 under the Act expands the group of entities located outside the United States that are permitted to serve as custodians for the Assets of registered management investment companies. Rule 17f–5 defines the term "eligible foreign custodian" to include a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of US$200,000,000.

3. SCB is a wholly-owned subsidiary of Standard Chartered PLC, an English public limited company. SCB is an "eligible foreign custodian" under the requirements of rule 17f–5 since it has shareholders' equity well in excess of the pound sterling equivalent of US$200,000,000; it is organized and existing under the laws of England and Wales; and it is authorized and regulated as a bank in the United Kingdom by the Bank of England. In the United States, SCB is regulated as a bank holding company and is subject to the International Banking Act of 1978. Standard Chartered PLC, with its subsidiaries, including SCB, set up a division known as the "Equitor Group," which maintains a network of custodial and sub-custodial services for Investment Companies and their custodians at various locations throughout the world through SCB, it branches and subsidiaries. Although the Equitor Group currently offers custodial services in Malaysia through SCB's Kuala Lumpur branch, under new legislation in Malaysia, SCB may continue doing business in Malaysia only through a locally incorporated entity. To comply with Malaysian law, SCB proposes to transfer all the activities of its branch, as well as its personnel, to SCBM, when SCBM obtains a Malaysian banking license.

4. SCBM, a wholly-owned subsidiary of SCB, was incorporated in Malaysia in 1984 but has been inactive since then and has only nominal capital. Its application for a banking license in Malaysia is pending and is expected to issue in the near future. Pending the issuance of the order requested herein, SCB's Kuala Lumpur branch will continue to perform custodian services

for Investment Company Assets. When licensed, SCBM will assume the assets, liabilities, and business of the Kuala Lumpur Head Office and other branches of SCB in Malaysia and become subject to the supervision of the Malaysian Central Bank under the Banking and Financial Institutions Act.

5. Where custodial services are required in Malaysia, SCB will hold the Assets of Investment Companies and their custodians and will deposit the Assets with SCBM in the manner contemplated by the agreement described in condition 2 below.

6. SCBM satisfies the requirements of rule 17f–5 insofar as it is a banking institution or trust company incorporated or organized under the laws of a country other than the United States and will be regulated as such by that country's government or an agency thereof upon issuance of its banking license. Applicant will not offer the custodial services of SCBM to Investment Companies until the license is issued. SCBM, however, does not meet the shareholders' equity requirement of the rule.

7. SCBM is well-qualified to provide custodial and sub-custodial services for Investment Company Assets. SCB's Kuala Lumpur branch is experienced in providing custodial services, and SCBM, as the successor to the business of the branch, will subsume the personnel and functions of SCB's branches in Malaysia. Under the proposed foreign custody arrangements, the protection afforded the assets of Investment Companies held by SCBM would not be diminished from the protection afforded the assets held directly by SCB.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief may be conditioned upon the following:

1. The foreign custody arrangements proposed regarding SCBM satisfy the requirements of rule 17f–5 in all respects other than SCBM's level of shareholders' equity.

2. SCB will deposit Assets with SCBM only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which SCBM fails to satisfy all the requirements of rule 17f–5. Each Agreement will be a three-party agreement among SCB, SCBM, and the Investment Company or the custodian for an Investment Company pursuant to which SCB will undertake to provide specified custodial or sub-custodial services and will delegate to SCBM such of the duties and obligations of SCB as will be necessary to permit SCBM to hold in custody in Malaysia Assets of the Investment Company or custodian. The Agreement will further provide that the delegation by SCB to SCBM will not relieve SCB of any responsibility to the Investment Company or custodian for an Investment Company for any loss due to such delegation, and that SCB will be liable for any loss or claim arising out of or in connection with the performance by SCBM of its responsibilities under the Agreement to the same extent as if SCB had itself been required to provide custody services under the Agreement.

3. SCB currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–31565 Filed 12–27–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Interest Rate Policy Change

The current Small Business Administration (SBA) maximum interest rate for fixed rate section 7(a) loans is 2.75 percentage points over the Wall Street Journal Prime Rate for loans with a maturity of seven years or longer and 2.25 percentage points over the Prime Rate for loans with a maturity of less than seven years. SBA has received requests to modify the fixed rate policy. Lenders have indicated to SBA that the permitted spreads are not sufficient to induce them to make fixed rate loans.

SBA is proposing a new maximum interest rate policy for fixed rate loans. The new policy will permit lenders to add up to 3.75 percentage points to the Wall Street Journal Prime Rate to establish the interest rate on a fixed rate loan. There will be no change in the manner in which the interest rate is determined. The rate will be established on the date that the loan application is received by the SBA field office or the date the loan number is given to the lender for a loan approved under the Preferred Lenders Program.

The purpose of this change is to encourage lenders to make fixed rate loans. SBA's fixed rate lending has dropped from 30% of activity in the mid 1980s to about 20% presently. The Agency wishes to give its small business clientele the opportunity to lock in the favorable rates that presently exist in the market place.

Previously, SBA approved an increase in the spread that may be added to the base interest rate for loans of $50,000 and less. After this change, small lending increased from approximately 14% to about 16% of approvals. This 14% increase in small loans cannot be completely attributed to the interest rate increase, but SBA is of the opinion that the increase was a significant factor. We hope that the increase in the maximum rate for fixed rate loans will have a similar effect.

Respondents are asked to comment on whether the proposed increase in the maximum rate will encourage lenders to make fixed rate loans. For further information write to James W. Hammersley, Deputy Director, Office of Financing, Small Business Administration, 8th floor, 409 3rd St. SW., Washington, DC 20416, or call 202–205–6493.

Dated: December 21, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–31597 Filed 12–27–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 1917]

Finding of No Significant Impact: Boise Cascade Corporation Pipeline at International Falls, MN

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to change the use of an existing pipeline across the U.S.-Canada border.

SUMMARY: The Department of State has conducted an environmental assessment of a change in use of an existing Boise Cascade Corporation water pipeline across the International Falls Bridge at International Falls, Minnesota. Based on the environmental assessment and after reviewing all comments, the Department of State has concluded that issuance of a new Presidential Permit authorizing the proposed change in use of the pipeline will not have a significant effect on the human environment.

FOR FURTHER INFORMATION ON THE PIPELINE CHANGE OF USE APPLICATION, CONTACT: Donald E. Grabenstetter, Office of International Energy Policy, room 3535, U.S. Department of State, Washington DC, 20520, (202) 647–4557.

FOR FURTHER INFORMATION ON THE ENVIRONMENTAL ASSESSMENT, CONTACT: Evelyn Wheeler, Office of Ecology, and Terrestrial Conservation, room 4325,

U.S. Department of State, Washington DC 20520, (202) 647–3367.

SUPPLEMENTARY INFORMATION: Boise Cascade Corporation has applied for a Presidential Permit authorizing a change in the use of an existing 10-inch pipeline routed across the International Bride between Fort Francis, Ontario and International Falls, Minnesota. The pipeline currently transports water and the proposed change in use would add up to 300 dry tons a day of wood pulp to the water. The purpose of the proposed change is to eliminate dual waste water treatment facilities in the two Boise Cascade factories on either side of the border.

The Department of State, Bureau of Oceans and International Environmental and Scientific Affairs and Bureau of Economic and Business Affairs, has concluded that issuance of the permit will not have a significant effect on the quality of the human environment within the United States. This finding is based on an environmental assessment conducted by the Department of State which included review and comments by the following federal agencies: the Department of Defense, Department of the Treasury, Department of the Interior, Department of Commerce, Department of Justice, Department of Transportation, Interstate Commerce Commission and Federal Emergency Management Agency.

The proposed change in use of the pipeline will require no physical construction or alteration of the existing pipeline. The proposed change will eliminate the need to construct, operate and maintain duplicate water treatment facilities on both ends of the pipeline. The treatment of waste water by Boise Cascade is subject to regulation by the Environmental Protection Agency.

Dated: December 6, 1993.

Joan E. Spero,

Under Secretary of State for Economic and Agricultural Affairs.

[FR Doc. 93–31576 Filed 12–27–93; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Southcentral Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway reconstruction project in southcentral Alaska.

FOR FURTHER INFORMATION CONTACT: Phillip A. Smith, Field Operations Engineer, Federal Highway Administration, P.O. Box 21648, Juneau, Alaska, 99802–1648, Telephone (907) 586–7428; and Rodney R. Platzke, P.E., Director, Alaska Department of Transportation and Public Facilities, Division of Design and Construction, Northern Region, 2301 Peger Road, Fairbanks, Alaska, 99709–5316, Telephone (907) 451–2215.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF) will prepare an Environmental Impact Statement (EIS) on a proposed project to reconstruct the existing gravel road from Chitina to McCarthy in southcentral Alaska. The purpose and need for the proposed project is to accommodate the increasing number of visitors to the Wrangell-St. Elias National Park and Preserve, the town of McCarthy, and the historical Kennecott Mines. The number and size of recreational vehicles has increased to the point that it becomes dangerous to drive the existing one-lane road. The proposed project would increase the safety and accessibility for both the recreational visitors and the local area residents whose homes are scattered along the length of the road.

The McCarthy Road is accessed via the Edgerton Highway approximately 31 miles from the Richardson Highway. It begins at Chitina on the banks of the Copper River and follows the historic Copper River and Northwestern Railway corridor (which is eligible for the National Register of Historic Places) for approximately 60 miles, ending at McCarthy. Approximately 4.5 miles beyond McCarthy are the historic remains of the Kennecott mining operations.

About 1/2 mile before reaching McCarthy, the Kennecott River crosses the alignment. The bridges over this river washed out about 20 years ago and were replaced with hand-operated trams for pedestrian access. Vehicle access ends on the western bank of the river.

Alternatives that will be investigated in the EIS include: (1) No-action, and (2) upgrading the existing highway to current design standards that meet both the Federally approved State standards and the National Park Service guidelines for park access roads. Alternatives will range from the current situation (vehicle access only to Kennecott river and pedestrian access on to McCarthy) to full vehicle access to McCarthy. The alternative of completely realigning the highway is neither necessary nor considered a feasible nor prudent alternative.

In addition to merely considering alternatives for the safe passage of increased traffic, the EIS will consider highway amenities. These could include scenic turnouts, waysides, traveler rest areas, picnic areas and camping facilities, and interpretive areas for historic and geological interest. Historical aspects of the proposed action will be considered. The potential for discovering historic and prehistoric remains will also be investigated.

Letters describing the proposed action and soliciting input will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed, or are known to have an interest in this proposal. Scoping activities will also include meetings with the appropriate agencies at a convenient location. Public meetings will be held in potentially affected communities. In addition, public hearings will be held following publication of the Draft EIS in late 1995. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are requested from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the ADOT&PF at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 16, 1993.

Robert E. Ruby,

Division Administrator, Juneau, Alaska.

[FR Doc. 93–31542 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 21, 1993

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980,

Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0007.
Form Number: SF 1199A.
Type of Review: Extension.
Title: Direct Deposit Form.
Description: The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. This information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have processed the form.
Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents: 3,850,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 654,500 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf (202) 395–6880,Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 93–31572 Filed 12–27–93; 8:45 am]

BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

December 16, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0021.
Form Number: None.
Type of Review: Extension.
Title: Loan Application Register.
Description: Reporting is required to assist the Office of Thrift Supervision (OTS) in monitoring compliance with fair lending laws.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1,500.
Estimated Burden Hours Per Respondent: 55 hours, 36 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 83,430 hours.
Clearance Officer: Colleen Devine (202) 906–6025,Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW.,Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–31573 Filed 12–27–93; 8:45 am]

BILLING CODE 4810–25–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 247
Tuesday, December 28, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 3, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on December 15, 1993.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

DATED: December 23, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–31771 Filed 12–23–93; 11:18 am]

BILLING CODE 6210–01–P

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: December 11, 1994, 2:00 p.m.–4:00 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open except for the portions specified as closed session as provided in 22 CFR Part 1004.4(b).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the July 12, 1993, Board Meeting
2. Chairman's Report
3. President's Report
4. Staff Assessment of Management Program and Learning Improvements
5. Audit Committee Report
6. Proposal to hold a Board Meeting one week prior to Submission of Foundation Budget to OMB
7. Proposal to Re-establish a Board Budget Committee
8. Performance Plans and Process (Closed Session)

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: December 23, 1993.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 93–31829 Filed 12–23–93; 2:56 pm]

BILLING CODE 7025–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: January 4, 1994 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 406–TA–13 (Final) (Honey from China)—briefing and vote on remedy.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Dated: December 22, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–31740 Filed 12–23–93; 9:06 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting; Notice

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on January 7, 1994. The meeting will commence at 9 a.m. It is anticipated the substantive, open portion of the meeting (i.e., deliberation of agenda item number 4) will commence at approximately 10 a.m.

PLACE: The Legal Services Corporation, 750 First Street NE., the Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, and the Office of Administration and Human Resources/Equal Opportunity, the three offices of the Corporation under the Committee's purview. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. 552b(c) (2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 CFR 1622.5 (a), (e), and (h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.

Closed Session

2. Consider and Act on General Counsel's Report on Litigation to Which the Corporation Is or May Become a Party.
3. Consider and Act on Internal Personnel and Operational Matters.

Open Session (Resumed)

4. Approval of Minutes of December 4, 1993 Meeting.
5. President's Report.
6. General Counsel's Report.
7. Office of Administration and Human Resources Director's Report.
8. Development of Mission Statement to Guide the Committee in Its Rulemaking Activities.
9. Development of Process to Guide the Committee in Its Rulemaking Activities.
10. Development of Mission Statement to Guide the Corporation in Its Reauthorization-Related Activities.
11. Consider and Act on Report on Finalized Grant Assurances for 1994.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individual who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Dated: December 22, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–31741 Filed 12–23–93; 9:17 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting Notice

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on January 6–7, 1994. The meeting of January 6, 1994 will commence at 5:30 p.m., and on January 7, 1994, the meeting will commence at 9:00 a.m. The meeting will be held at the following location on both days.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., the Sagamore Hill Room, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

January 6, 1994, Agenda

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of December 19–20, 1993 Meeting.
3. Consider and Act on Proposed Fiscal Year 1994 Consolidated Operating Budget for the Corporation.
4. Consider and Act on Staff Recommendations on Fiscal Year 1995 Budget for the Management and Administration Line of the Corporation's Budget.

January 7, 1994, Agenda

MATTERS TO BE CONSIDERED:

Open Session

5. Receipt and Consideration of Public Comment Regarding Funding for the Provision of Legal Services to Migrants by the Corporation.
6. Receipt and Consideration of Public Comment Regarding Whether and How the Corporation Should Assist Grantees With the Recruitment of Staff Attorneys.
7. Receipt and Consideration of Public Comment Regarding Whether and How the Corporation Should Assist Grantees Defray the Cost of Law School Loans Incurred by Grantee Staff Attorneys.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Dated: December 22, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–31742 Filed 12–23–93; 9:07 am]

BILLING CODE 7050–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 2:30 p.m., Wednesday, January 5, 1994.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., 8th Floor Board Room, Washington, DC 20005.

STATUS: Open except for personnel matters in item VI.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 376–2441.

Agenda

I. Call to Order
II. Approval of Minutes, September 17, 1993, Regular Meeting
III. Budget Committee Report: a. Proposed FY '94 Revisions
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Personnel Committee Report: November 12, 1993, Closed Meeting
VII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 93–31770 Filed 12–23–93; 11:20 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 27, 1993, January 3, 10, and 17, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 27

There are no meetings scheduled for the Week of December 27.

Week of January 3—Tentative

There are no meetings scheduled for the Week of January 3.

Week of January 10—Tentative

Monday, January 10

10:30 a.m.
Briefing on Status of NRC's Agreement States Program (Public Meeting)
(Contact: Richard Bangart, 301–504–3340)
2:00 p.m.
Briefing on NRC Research Program on Low Level Wage (Public Meeting)
(Contact: Nick Constanzi, 301–492–3760)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 17—Tentative

Wednesday, January 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: December 22, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–31772 Filed 12–23–93; 8:45 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 247
Tuesday, December 28, 1993

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.

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meetings

Correction

In sunshine notice document 93-30924 appearing on page 66073 in the issue of Friday, December 17, 1993, in the third column, in the first line, "Friday" should read "Saturday".

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1834 and 1870

Interim Changes to NASA FAR Supplement Streamlining the Major System Acquistion Process by Eliminating the Requirement for a Formal Solicitation Between Each Phase of the Procurement

Correction

In rule document 93-26910 beginning on page 58791 in the issue of Thursday, November 4, 1993 make the following corrections:

1. On page 58792, in the 1st column, in the 43rd line, "agreement" should read "agreed" and in the 58th line, "classes" should read "clauses".

1834.005-1 [Corrected]

2. On page 58793, in section 1834.005-1(b)(3), "design" should read "Design".

1870.503 [Corrected]

3. On page 58795, in section 1870.503, under **Appendix I**, 1.(b), in the third column, in the third line from the bottom of the paragraph, "an" should read "and" and in 1.(c), in the third line from the bottom of the paragraph, "solicitation" should read "solicitations".

BILLING CODE 1505-01-D

federal register

Tuesday
December 28, 1993

Part II

Department of Education

Federal Direct Student Loan Program; Notice.

DEPARTMENT OF EDUCATION

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education issues a notice announcing the schools selected for participation in the first year of the Federal Direct Student Loan Program (Direct Loan Program), which is the academic year beginning July 1, 1994.

EFFECTIVE DATE: This notice is effective on December 28, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Ragon, U.S. Department of Education, 400 Maryland Ave. SW., (room 4310, ROB–3), Washington, DC 20202–5162. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), established a new loan program under title IV, part D of the Higher Education Act of 1965, as amended (HEA). Under this program, known as the Federal Direct Student Loan Program (Direct Loan Program), loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

In a notice published in the **Federal Register** on September 10, 1993, 58 FR 47816, the Secretary invited applications by schools to participate in the Direct Loan Program for the academic year beginning July 1, 1994. The notice outlined the requirements for participation in this program and the criteria for school selection. Over 1,100 schools applied.

For the first academic year during which the Direct Loan Program is operational, the year beginning July 1, 1994, the Secretary has selected 104 schools to participate from those that applied. The Secretary believes that the selection of these schools will result in the Direct Loan Program making up 5 percent of the new student loan volume for the 1994–95 academic year. The Secretary also believes the selection of these schools will ensure as smooth an implementation of the program as possible and provide a solid base of experience for the increase in Direct Loan volume. The goals for the percentage of new student loan volume made under this program increase significantly in subsequent years. See section 453(a)(2) of the HEA. Schools selected to participate in the Direct Loan Program in the 1994–95 academic year are expected to continue to participate and will not be required to reapply.

The Secretary will publish rules regarding the administration and operation of the Direct Loan Program for the 1994–1995 academic year in the **Federal Register** in January 1994. Schools that have been selected to participate in the Direct Loan Program will be allowed to withdraw within 30 days of the date of publication of the rules. If a school wishes to withdraw, it must submit a written request to that effect within that period. The written request should be submitted to the Direct Loan Task Force, U.S. Department of Education, room 4034, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202.

(Catalog of Federal Domestic Assistance Number has not been assigned.)

Dated: December 21, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

SCHOOLS SELECTED FOR PARTICIPATION IN THE FEDERAL DIRECT STUDENT LOAN PROGRAM—1994–1995

FFEL ID No.	School name	City and State
011484	ADVANCED INSTITUTE OF HAIR DESIGN	MILWAUKEE, WI.
030361	AERO MECHANICS SCHOOL	RIVERSIDE, MO.
021105	AMERICAN BUSINESS & FASHION INST	CHARLOTTE, NC.
001434	AMERICAN UNIVERSITY	WASHINGTON, DC.
002115	AMHERST COLLEGE	AMHERST, MA.
002911	BENNETT COLLEGE	GREENSBORO, NC.
001641	BRADLEY UNIVERSITY	PEORIA, IL.
025673	BRAXTON SCHOOL	RICHMOND, VA.
024503	BROWN UNIVERSITY	PROVIDENCE, RI.
007164	BRYAN COLLEGE OF COURT REPORTING	LOS ANGELES, CA.
025590	CAD INSTITUTE	PHOENIX, AZ.
023519	CALIFORNIA ACADEMY OF MERCHANDISING	SACRAMENTO, CA.
001131	CALIFORNIA INSTITUTE OF TECHNOLOGY	PASADENA, CA.
001909	CLOUD COUNTY COMMUNITY COLLEGE	CONCORDIA, KS.
003428	COLLEGE OF CHARLESTON	CHARLESTON, SC.
007297	COLORADO AERO TECHNOLOGY	BROOMFIELD, CO.
001350	COLORADO STATE UNIVERSITY	FT. COLLINS, CO.
010217	COMPUTER TECHNOLOGY	PITTSBURGH, PA.

SCHOOLS SELECTED FOR PARTICIPATION IN THE FEDERAL DIRECT STUDENT LOAN PROGRAM—1994–1995—Continued

FFEL ID No.	School name	City and State
021344	CONNECTICUT INSTITUTE OF ART	GREENWICH, CT.
002711	CORNELL UNIVERSITY	ITHACA, NY.
003040	CUYAHOGA COMMUNITY COLLEGE	CLEVELAND, OH.
030260	DALFORT AIRCRAFT TECHNOLOGY	DALLAS, TX.
021449	DELAWARE TECHNICAL & COMMUNITY COLLEGE	NEWARK, DE.
022966	DEVRY INSTITUTE OF TECHNOLOGY	ADDISON, IL.
012346	DOVER BUSINESS COLLEGE	DOVER, NJ.
001793	EARLHAM COLLEGE	RICHMOND, IN.
022625	FAUST INSTITUTE OF COSMETOLOGY	STORM LAKE, IA.
001480	FLORIDA AGRICULTURAL & MECHANICAL UNIV	TALLAHASSEE, FL.
025228	FOX COLLEGE	OAK LAWN, IL.
002973	GASTON COLLEGE	DALLAS, NC.
001574	GEORGIA STATE UNIV	ATLANTA, GA.
002353	GUSTAVUS ADOLPHUS COLLEGE	ST. PETER, MN.
025830	GWINNETT COLLEGE OF BUSINESS	LILBURN, GA.
002155	HARVARD UNIVERSITY	CAMBRIDGE, MA.
002076	HOOD COLLEGE	FREDERICK, MD.
002273	HOPE COLLEGE	HOLLAND, MI.
003464	HURON UNIVERSITY	HURON, SD.
003938	INTER AMERICAN UNIV. OF PUERTO RICO	SAN JUAN, PR.
025203	INTERIOR DESIGNERS INSTITUTE	NEWPORT BEACH, CA.
025329	INTERNATIONAL BUSINESS COLLEGE, LAS CRUCES	LAS CRUCES, NM.
004847	INTERSTATE BUSINESS COLLEGE	FARGO, ND.
001869	IOWA STATE UNIV. OF SCIENCE & TECHNOLOGY	AMES, IA.
004553	ITT TECHNICAL INSTITUTE	BOISE, ID.
023610	ITT TECHNICAL INSTITUTE	MURRAY, UT.
021519	KEISER COLLEGE OF TECHNOLOGY	FT. LAUDERDALE, FL.
024911	KENTUCKY CAREER INSTITUTE	FLORENCE, KY.
008441	KEYSTONE SECRETARIAL & BUSINESS ADMIN. SCH	SWARTHMORE, PA.
003856	LAWRENCE UNIVERSITY	APPLETON, WI.
006810	LEHIGH COUNTY COMMUNITY COLLEGE	SCHNECKSVILLE, PA.
003509	MEMPHIS STATE UNIVERSITY	MEMPHIS, TN.
003076	MIAMI JACOBS JUNIOR COLLEGE OF BUSINESS	DAYTON, OH.
020603	MICHIGAN INSTITUTE OF AERONAUTICS	BELLEVILLE, MI.
010618	MID AMERICA COLLEGE OF FUNERAL SERVICE	JEFFERSONVILLE, IN.
002488	MISSOURI SOUTHERN STATE COLLEGE	JOPLIN, MO.
025391	MODERN TECHNOLOGY SCHOOL OF XRAY	NORTH HOLLYWOOD, CA.
002532	MONTANA STATE UNIVERSITY	BOZEMAN, MT.
009038	MR. BERNARD'S SCHOOL OF HAIR FASHION	LEWISTON, ME.
026020	NEON ART & TUBE BENDING SCHOOL	PORTLAND, OR.
007303	NEW ENGLAND TECH INSTITUTE OF CONNECTICUT	NEW BRITAIN, CT.
002655	NEW MEXICO JUNIOR COLLEGE	HOBBS, NM.
011745	OHIO AUTO DIESEL TECHNICAL INSTITUTE	CLEVELAND, OH.
003100	OHIO UNIVERSITY	ATHENS, OH.
003170	OKLAHOMA STATE UNIVERSITY	STILLWATER, OK.
003728	OLD DOMINION UNIVERSITY	NORFOLK, VA.
002791	PACE UNIVERSITY	NEW YORK, NY.
002792	PACE UNIVERSITY, PLEASANTVILLE BRIARCLIFF	NEW YORK, NY.
024723	PHILADELPHIA COLLEGE OF PHARMACY & SCIENCE	PHILADELPHIA, PA.

SCHOOLS SELECTED FOR PARTICIPATION IN THE FEDERAL DIRECT STUDENT LOAN PROGRAM—1994–1995—Continued

FFEL ID No.	School name	City and State
003630	PRAIRIE VIEW A & M UNIVERSITY	PRAIRIE VIEW, TX.
005732	RED RIVER TECHNICAL COLLEGE	HOPE, AR.
007649	ROCKY MOUNTAIN COLLEGE OF ART & DESIGN	DENVER, CO.
003410	ROGER WILLIAMS COLLEGE	BRISTOL, RI.
002609	ROWAN COLLEGE OF NEW JERSEY	GLASSBORO, NJ.
002629	RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY	NEW BRUNSWICK, NJ.
002091	SALISBURY STATE COLLEGE	SALISBURY, MD.
002632	SETON HALL UNIVERSITY	SOUTH ORANGE, NJ.
023342	SOUTHEASTERN ACADEMY	KISSIMMEE, FL.
003615	SOUTHWEST TEXAS STATE UNIVERSITY	SAN MARCOS, TX.
020714	ST. LOUIS TECHNICAL	ST. ANN, MO.
002217	STONEHILL COLLEGE	NORTH EASTON, MA.
002841	SUNY COLLEGE, BROCKPORT	BROCKPORT, NY.
002868	SUNY HUDSON VALLEY COMMUNITY COLLEGE	TROY, NY.
003626	TARRANT COUNTY JUNIOR COLLEGE	FT. WORTH, TX.
002439	TOUGALOO COLLEGE	TOUGALOO, MS.
001052	UNIVERSITY OF ALABAMA, BIRMINGHAM	BIRMINGHAM, AL.
001314	UNIVERSITY OF CALIFORNIA, IRVINE	IRVINE, CA.
001370	UNIVERSITY OF COLORADO, BOULDER	BOULDER, CO.
001535	UNIVERSITY OF FLORIDA	GAINESVILLE, FL.
001626	UNIVERSITY OF IDAHO	MOSCOW, ID.
001775	UNIVERSITY OF ILLINOIS	URBANA, IL.
002033	UNIVERSITY OF MAINE, PRESQUE ISLE	PRESQUE ISLE, ME.
002325	UNIVERSITY OF MICHIGAN	ANN ARBOR, MI.
002388	UNIVERSITY OF MINNESOTA, DULUTH	DULUTH, MN.
003223	UNIVERSITY OF OREGON	EUGENE, OR.
001441	UNIVERSITY OF THE DISTRICT OF COLUMBIA	WASHINGTON, DC.
003696	UNIVERSITY OF VERMONT	BURLINGTON, VT.
003798	UNIVERSITY OF WASHINGTON	SEATTLE, WA.
007501	UNIVERSAL TECHNICAL INSTITUTE	OMAHA, NE.
004947	WEST TENNESSEE BUSINESS COLLEGE	JACKSON, TN.
003827	WEST VIRGINIA UNIVERSITY	MORGANTOWN, WV.
001380	WESTERN CONNECTICUT STATE COLLEGE	DANBURY, CT.
002330	WESTERN MICHIGAN UNIVERSITY	KALAMAZOO, MI.
002625	WILLIAM PATERSON COLLEGE OF NEW JERSEY	WAYNE, NJ.
002229	WILLIAMS COLLEGE	WILLIAMSTOWN, MA.
024774	XAVIER UNIVERSITY OF LOUISIANA	NEW ORLEANS, LA.

[FR Doc. 93–31570 Filed 12–27–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
December 28, 1993

Part III

Department of the Interior

Bureau of Indian Affairs
Distribution of Fiscal Year Contract Support Funds; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Distribution of Fiscal Year 1994 Contract Support Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of method for distribution and use of FY 1994 Contract Support Funds.

SUMMARY: The purpose of this Announcement is to provide information to Indian tribes and tribal organizations contracting under the Indian Self-Determination and Education Assistance Act, as amended, about the distribution and use of Contract Support Funds (CSF) Fiscal Year (FY) 1994.

FOR FURTHER INFORMATION: Please contact the Bureau of Indian Affairs, Division of Self-Determination Services, 1849 C Street, NW., MS–4627–MIB, Washington, DC 20240, or (202) 208–3708.

This Notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.1.

SUPPLEMENTARY INFORMATION: The information detailed herein has been developed to comply with the following language in the Appropriation Act for the Department of the Interior and related agencies for FY 1994, Public Law 103–138:

"* * * Provided further, that not to exceed $91,223,000 of the funds in this Act shall be available for payments to tribes and tribal organizations for indirect costs associated with contracts or grants or compacts authorized by the Indian Self-Determination Act of 1975, as amended, for FY 1994 and previous years, * * *"

In addition, the Conference Report accompanying the FY 1994 Interior Appropriation Act states:

"The managers have agreed to a total of $91,223,000 for contract support, which includes $6,415,000 for the self-governance tribes. Bill language proposed by the Senate earmarking the total amount available in 1994 has been modified to authorize payments of contract support shortfalls from previous years, based on amounts agreed to by tribes and the Inspector General's Office. Since making these prior year payments will reduce the amount of funds available for FY 1994 contract support costs, the Bureau is directed to allocate funding in such a manner throughout the year that all tribes will be treated the same if there is a shortfall in contract support funds by the end of the year. The managers remain very concerned about the continued growth in contract support costs, and caution that it is unlikely that large increases for this activity will be available in future years' budgets. It is also a concern that significant increases in contract support will make future increases in tribal programs difficult to achieve. The managers believe the Bureau should look at establishing a self-determination fund for new or expanded contracting in the 1995 budget. The Bureau should also work with the tribes on possible methodologies for establishing advance notification requirements for new contracting."

The above language limits the amount of CSF to ($91,223,000) that the Bureau can pay in FY 1994 to Public Law 93–638 contractors for indirect costs. The language also authorizes payment, to be taken from this amount, of prior year shortfall and implies that the prior year shortfall amount should be paid before payment is made for current year contracts. It further states that all tribes should be treated the same if there is a shortfall in CSF.

Prior Year Shortfall

Based on the above language the Bureau will pay the prior year shortfall "off the top" from the amount available for CSF. At this time, approximately $15,365,000 has been identified as prior year shortfall need. After payments are made to cover the prior year shortfall, the amount remaining to meet FY 1994 contractor indirect cost rates will be $75,858,000.

Using FY 1993 experience which resulted in a total CSF need of approximately $85,000,000, we project a shortfall of at least $10,000,000 in FY 1994 and possibly a shortfall as high as $25,000,000. It is important to restate that the Bureau can only utilize the amount appropriated for the CSF account to meet indirect cost needs. That is, the Bureau can no longer reprogram funds from other Bureau accounts to cover CSF shortfalls.

In order to satisfy the Congressional language to treat all tribes the same in the event of a shortfall in CSF this year, the Bureau will institute the following procedures.

FY 1994 Contracts and Compacts

1. A cutoff date of May 1, 1994, has been established for funding of any new CSF needs as a result of higher or new indirect cost rates. Any new or renewal contracts or compacts executed after May 1, 1994, through the end of the Fiscal Year will not receive CSF in the event of the anticipated shortfall. Consequently, areas are directed to obligate all CSF based on the above procedures for legitimate needs received and verified by each area prior to May 1.

2. There will be two distributions of CSF from the Central Office to each area office. The first distribution will be made immediately upon publication of this Notice and the second will be made as close to May 1, 1994 as possible.

3. The amount of CSF allotted in the first distribution to the areas will include; (a) the prior year shortfall amount that has been identified; and (b) a total of $56,893,500 to cover FY 1994 needs. The $56,893,500 will be distributed to each area based on our FY 1993 experience.

4. Each area director is directed to first fully fund identified prior year shortfalls. Secondly, each area director shall fund not more than fifty percent of FY 1994 indirect cost requirements for contracts or compacts based on the current approved indirect cost rate, for Bureau programs being contracted or compacted as shown in the negotiated rate agreement.

5. In determining legitimate FY 1994 indirect cost requirements each area director should fund only those contracting or compacting tribal organizations that have current approved indirect cost rates or current indirect cost proposals being considered by the Bureau or to be negotiated by the Inspector General. After determining legitimate costs, each area should then fund eligible tribal organizations at fifty percent of the identified need. Current proposals mean proposals scheduled for active consideration which are submitted to the Inspector General prior to May 1, 1994.

Additional Reports

In early Spring 1994 each area will be asked to provide the Central Office with a report showing the amounts provided to cover prior year shortfalls, the amounts and percentages funded for current year contracts and a revised detailed need request. As mentioned above, the second distribution of CSF will be made around May 1, and will be based on the revised need request submitted by each area. At the time the second distribution is made to the areas, instructions will be provided advising each area of the level to be applied to each contract.

Dated: December 17, 1993.

Marshall M. Cutsforth,

Acting Assistant Secretary.

[FR Doc. 93–31524 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Tuesday
December 28, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs
Small Tribes Grant Program; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Small Tribes Grant Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of discretionary grant funds for small federally recognized Indian tribes.

SUMMARY: The Bureau of Indian Affairs invites applications from small Indian tribes within the contiguous 48 United States and Alaska, population 1500 or less Indian people residing on or near the applicant tribe's reservation or community, for a grant program. The purpose of this grant program is to permit small tribes to improve their capabilities to manage and administer tribal governmental affairs as well as federal and tribal programs. Grant awards will be made on a competitive basis under criteria, terms, and conditions set forth in this Announcement. Grants awarded under this Announcement are authorized by Section 103 of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended by Public Law 100–472, Public Law 101–301, and Public Law 101–644. This Notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.I.

DATES: The closing date for submission of applications under this Announcement is February 28, 1994.

ADDRESSES: Applications should be sent to the appropriate Bureau of Indian Affairs Area Office listed below.

Aberdeen Area Office

Diane Turgeon, 115 4th Avenue, SE, Aberdeen, SD 57401–4382, Telephone: (605)226–7426

Albuquerque Area Office

Karen Foster, 615 1st Street, NW., Box 26567, Albuquerque, NM 87125–6567, Telephone: (505)766–3172 or 766–2559

Minneapolis Area Office

Stuart Mani, 331 South 2nd Avenue, Minneapolis, MN 55401–2241, Telephone: (612)373–1031

Muskogee Area Office,

Edward L. Lowery, 5th & West Okmulgee, Muskogee, OK 74401–4898, Telephone: (918)687–2447

Anadarko Area Office

Terry Bruner, WCD Office Complex, Box 368, Anadarko, OK 73005–0368, Telephone: (405)247–6673 ext. 209

Portland Area Office

Timothy R. Brown, 911 N. E. 11th Avenue, SQ, Portland, OR 97232–4169, Telephone: (503)231–6702

Sacramento Area Office

Joan Burcell, 2800 Cottage Way, Sacramento, CA 95825–1884, Telephone: (916)978–4690

Phoenix Area Office

Wilson Gillette, P.O. Box 10, Phoenix, AZ 85001–0010, Telephone: (602)379–6760

Eastern Area Office

Larry Blair, 3701 N Fairfax Dr, MS–260–VA Arlington, VA 22203, Telephone: (703)235–2443

Juneau Area Office

Regina Parot, P.O. Box 25520, Juneau, AK 99802–5520, Telephone: (907)586–7453

SUPPLEMENTARY INFORMATION:

A. Purpose of the Grant Program

The purpose of this grant program is to provide financial support to enable small Indian tribes to meet the administrative needs necessary to develop, improve, and/or maintain tribal government functions as well as tribal service delivery systems. To accomplish this purpose, the Bureau of Indian Affairs announces the availability of up to $2.275 million for a Small Tribes Grant Program which is more responsive to the needs of small Indian tribes. The program is designed to meet the needs of three (3) categories of small tribes, as follows:

(1) Developmental Component

This program component is for small Indian tribes without basic management systems and without experience operating under such systems; small Indian tribes not heretofore contracting or applying for grants; tribes or villages in consortia which want to contract or receive grants on their own;

(2) Basic Small Tribes Component

This program component is for small Indian tribes experiencing problems operating programs and operating properly under basic management systems (this is the basic Core Management type program component);

(3) Expansion/Enhancement Component

This program component is for small Indian tribes which, for the most part, have eliminated their administrative and management problems and want to plan for the expansion or the enhancement of governmental functions as well as for the expansion or enhancement of service delivery systems but do not have the capability or the resources to do so.

B. Eligibility Criteria

(1) Developmental Component

Small tribes applying for a grant under this component shall meet the following criteria:

(a) Only the governing body of a small Indian tribe may apply for, or authorize a multi-tribal organization to apply for, a grant under this Announcement;

(b) Only a federally recognized Indian tribe with a population of 1500 or less who resides on or near the applicant tribe's reservation or community and has a leadership empowered under the tribe's system of government to act on behalf of the tribe may apply for a grant under this Announcement.

(c) In addition to the basic eligibility criteria in (a) and (b), above, to be eligible for a grant under this component a tribe must satisfy at least three (3) of the following:

(i) Have an active tribal government;

(ii) Have a tribal office;

(iii) Lack financial resources to meet its core administrative or management needs;

(iv) Have inadequate or ineffective management systems.

(2) Basic Small Tribes Component

Small tribes applying for a grant under this component shall meet all of the following criteria:

(a) Only the governing body of a small Indian tribe may apply for, or authorize a multi-tribal organization to apply for, a grant under this Announcement;

(b) Only a federally recognized Indian tribe with a population of 1500 or less who resides on or near the applicant tribe's reservation or community and has a leadership empowered under the tribe's system of government to act on behalf of the tribe may apply for a grant under this Announcement.

(c) The tribe must lack financial resources to meet its core administrative or management needs.

(d) The tribe must have inadequate management systems, or problems operating thereunder.

(3) Expansion/Enhancement Component

Small tribes applying for a grant under this component shall meet all of the following criteria:

(a) Only the governing body of a small Indian tribe may apply for, or authorize a multi-tribal organization to apply for, a grant under this Announcement;

(b) Only a federally recognized Indian tribe with a population of 1500 or less who resides on or near the applicant tribe's reservation or community and has a leadership empowered under the tribe's system of government to act on

behalf of the tribe may apply for a grant under this Announcement:

(c) In addition to the basic eligibility criteria in (a) and (b), above, tribes applying for a grant under this component must provide a copy of their current organization-wide Single Audit Report prepared in accordance with the Single Audit Act of 1984 (Pub. L. 98–502), as implemented through OMB Circular A–128. Such Audit Report must be free of any significant or material weaknesses.

C. Content of Application

(1) Applications for a grant in response to this Announcement shall follow the application requirements set forth in Office of Management and Budget Circular A–102, Uniform Requirements for Assistance to State and Local Governments (the Common Rule), and as implemented within the Department of the Interior in 43 CFR part 12. Under Part IV of Standard Form 424, Program Narrative Statement, applicants shall provide the following:

(a) Developmental Component

(i) In addition to the basic eligibility criteria in Section B(1), above, tribal applicants must provide a statement of specific needs or problems to be addressed under the proposed grants which may include, but not be limited to, the following:

(A) Staff

—Tribal Administrator
—Clerical/Bookkeeper

(B) Training of Tribal Officials and Staff

(C) Management Systems/includes Certification

(D) Funds to cover office costs, such as:

—Supplies
—Equipment/Furniture
—Telephone
—Utilities
—Space
—Postage

(ii) A description of how the grant funds will be used to overcome the problems or meet the needs which have been identified.

(iii) A schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems or meet needs identified under the proposed grants.

(iv) A description of the personnel required, if any, to carry out grant activities and/or objectives; also provide position descriptions which include qualifications for education and experience.

(v) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, grants and/or contracts or funds from other agencies.

(vi) A budget justification which indicates how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant.

(b) Basic Small Tribes Component

(i) In addition to the basic eligibility criteria in section B(2), above, to be eligible to receive a grant under this component a tribe must furnish documents such as audits, reports, and correspondence which indicate difficulties in the performance Federal and State grants, programs and contracts, examples include, but are not limited to the following:

(A) Current Audit Report indicates serious financial management problems;

(B) Delinquency in making progress or financial status reports;

(C) Failure to close-out program grants or contracts which are no longer in operation;

(D) Problems in achieving current or past grant or contract program goals or objectives.

(ii) Tribal applicants may propose to meet their respective core administrative or management needs in a variety of ways. Tribes must provide a statement of specific needs or problems to be addressed under the proposed grant which may include, but not be limited to, the following:

(A) Employ an administrator and/or necessary support staff;

(B) Employ a bookkeeper;

(C) Hire a "Circuit Rider" accountant, administrator, planner and/or other key staff position to meet the needs of a multi-tribal consortium;

(D) Employ staff to address specific managerial problems under a one-time only grant;

(E) Retain an accountant to prepare for the conduct of annual independent audits and/or to correct current or past audit deficiencies.

(iii) A statement of specific needs and/or problems to be addressed under the proposed grants.

(iv) A description of how the grant funds will be used to overcome the problems or meet the needs which have been identified.

(v) A schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems or meet needs identified under the proposed grants.

(vi) A description of the personnel required, if any, to carry out grant activities and/or objectives; also provide position descriptions which include qualifications for education and experience.

(vii) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, grants and/or contracts or funds from other agencies.

(viii) A budget justification which indicates how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant.

(c) Expansion/Enhancement Component

(i) Tribal applicants may propose to meet their respective expansion or enhancement needs in a variety of ways. Such grants may be used by a tribe to centralize or consolidate all of its administrative functions, to consolidate or integrate federal programs serving the tribe as well as formulate short and long range plans for tribal governmental development including enhancing a tribe's ability to exercise it's authority.

(ii) Expansion/enhancement grants permit, but are not limited to, the following:

(A) Monitor, evaluate, plan and design or redesign federal programs serving the tribe;

(B) Assume more control over programs designed to serve tribal populations, diminishing federal domination over programs serving Indians;

(C) To assist tribes in their efforts to reduce dependence on federal grants or contracts for services, income, and employment opportunities.

(iii) A work statement of how the applicant will accomplish the goals and objectives under the proposed grant.

(iv) A description of how the grant funds will be used to meet the goals and objectives identified under the proposed grant.

(v) A schedule for the start and projected completion dates for actions or efforts to be taken to meet the goals and objectives identified under the proposed grant.

(vi) A description of the personnel required, if any, to carry out grant activities and/or objectives; also provide position descriptions which include qualifications for education and experience.

(vii) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, grants and/or contracts or funds from other agencies.

(viii) A budget justification which indicates how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant.

(2) The applicant must indicate how other available resources such as tribal income, other Bureau grants or capacity

building grants from other agencies will be committed to complement or support this effort.

(3) The applicant must make a written commitment to incorporate and maintain the positive results expected from the grant and to maintain sound management systems.

(4) The applicant must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this Announcement.

(5) If a tribe's application is prepared by an outside consultant, the application must indicate the role of the grant preparer to the tribe during the grant period; e.g., will the preparer be funded through the proceeds of the grant as a consultant, full time employee, part time employee, etc.

(6) The grantee must agree in its application to submit quarterly financial status and progress reports;

(7) Progress and accomplishment reports for a prior year grant must be submitted with an application for a continuation grant. Reports will be used in the rating of continuation grant applications, appropriations permitting, since subsequent grants will include performance as a criteria for grant renewal.

(8) The applicant must complete a certification regarding drug-free workplace requirements.

(9) The grant funds awarded under this Announcement may be used as matching shares for any other federal or non-federal grant programs which contribute to the purposes for which these grants are made.

D. Application Review and Rating

Applications submitted in response to this Announcement will be received and rated as follows:

(1) Agency Office Responsibility

Applications shall initially be submitted to the appropriate agency Superintendent for review and comment, with a recommendation to approve or disapprove the application to insure that the application is consistent with the conditions set forth in Sections A, B, and C of this Announcement. The Superintendent upon receipt of the application shall:

(a) Acknowledge in writing receipt of the application within five (5) calendar days of its arrival at the agency office.

(b) Review the application for completion of information and, within ten (10) calendar days, request any additional information which may be required to conduct a review of the application.

(c) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations to approve or disapprove within fifteen (15) calendar days.

(d) In instances where disapproval of an application is recommended, the Superintendent shall provide detailed reasons for the recommendation.

(2) Area Office Responsibility

Upon receipt of the application the Area Director shall:

(a) Within fifteen (15) calendar days, conduct a review of each application for consistency with Sections A, B, and C of this Announcement, in this review the Area Director shall utilize the comments and recommendations from the agency Superintendent.

(b) Upon completion of the application review process, the Area Director shall rate each application based on the criteria set forth in Sections A, B, and C of this Announcement in accord with the following guidelines:

(i) Developmental Component

(A) Criteria—the applicant can document or demonstrate it satisfies 3 or more of the needs contained in Section B (1). Points: (0–35)

(B) Work Statement—the application work plan describes in detail how it will satisfy the goals and objectives of the proposed grant. The work plan contains a schedule of activities, which if executed properly will accomplish the goals and objectives of the proposed grant. Points: (0–35)

(C) Budget Justification—the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable. Points: (0–15)

(D) Management or Self-Monitoring System—the application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary. Points: (0–15)

(ii) Basic Small Tribes Component

(A) Purpose—applications most consistent with the purpose of this component of the program will receive higher ratings than those which are for the purpose of purchasing professional expertise or equipment. An application for staff with a sound position description would rate higher than one used to hire a consultant since a good staff person will enable the grantee to meet the grant objectives on a more permanent basis. Points: (0–10)

(B) Need/Problem Statement—the applicant can document or demonstrate it satisfies all of the criteria contained in Section B (2). Points: (0–30)

(C) Work Statement—the application work plan describes in detail how it will meet the needs or overcome problems cited in (B), above. The work plan contains a schedule of activities, which if executed properly will accomplish the objectives and goals of the proposed grant. Points: (0–35)

(D) Budget Justification—the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable. Points: (0–10)

(E) Management or Self-Monitoring System—the application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary. Points: (0–15)

(iii) Expansion/Enhancement Component

(A) Purpose—applications most consistent with the purpose of this component of the program and those with clearly stated developmental objectives will receive higher ratings than those which are for the purpose of purchasing professional expertise or equipment. Points: (0–25)

(B) Work Statement—the application work plan describes in detail how it will accomplish the purpose and objectives of the application cited in (A), above. The work plan contains a schedule of activities, which if executed properly will accomplish the objectives and goals of the proposed grant. Points: (0–40)

(C) Budget Justification—the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable. Points: (0–20)

(D) Management or Self-Monitoring System—the application indicates how grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary. Points: (0–15)

(c) Upon completion of the application review and rating process the Area Director shall, within fifteen (15) calendar days, initiate one of the following actions:

(i) Approve the application for funding based on the Superintendent's recommendation and the Area Office review and rating process.

(ii) Disapprove the application based on the Area Office review and rating process. Notify the applicant by explanatory letter of the decision to disapprove the application, advising the applicant of its appeal rights.

d. Within thirty (30) calendar days of notification of approval of a grant, the Area Director shall award the grant funds to the successful tribal applicant.

E. Other Conditions

(1) Appeals from administrative decisions made by the Bureau of Indian Affairs shall be made under provisions as set forth in 25 CFR, part 2. Send appeals to the appropriate Area Office. The Area Office will forward the appeals to: Office of Hearings and Appeals, Board of Indian Appeals, Attention: Kathryn A. Lynn, Chief Administrative Judge, 4015 Wilson Boulevard, MS–1103, Ballston Tower No. 3, Arlington, Va 22203.

(2) Unresponsive applications will not be reviewed or rated, and there shall be no appeal rights for non-funding of such applications. An unresponsive application is an application without a current tribal council or governing body resolution; an application requesting a grant where the anticipated grant outcomes have no relationship to the purposes of these grants; e.g., to fund and/or augment the funding of a wildlife and parks program grant, etc.

(3) Applicants should submit an original and two copies of their applications.

(4) No indirect cost funds shall be provided for grants under this Announcement.

(5) Tribal applicants may request grant funds up to a maximum of $35,000.

G. Submission of Applications

Applications submitted in response to this Announcement must be:

(1) Postmarked no later than midnight February 28, 1994, if mailed;

(2) Received in the agency office no later than the close of business February 28, 1994, if hand delivered. Send appeals to the appropriate area office.

Marshall M. Cutsforth,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–31525 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Tuesday
December 28, 1993

Part V

Department of the Interior

Bureau of Indian Affairs
Training and Technical Assistance Grant and Planning Grant Programs; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Training and Technical Assistance Grant and Planning Grant Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of discretionary grant funds for federally recognized Indian tribes.

SUMMARY: The Bureau of Indian Affairs invites applications from Indian tribes within the contiguous 48 United States and Alaska, for two (2) separate grant programs. The purposes of these grant programs are: (1) To allow tribes to address governmental and/or program operational problems through technical assistance grants; and, (2) to monitor, contract, plan, design or redesign programs serving the tribe under a planning grant. Grant awards will be made on a competitive basis under criteria, terms, and conditions set forth in this Announcement. Such grants are authorized by Section 103 of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended by Public Law 100–472, Public Law 101–301 and Public Law 101–644. This Notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.I.

DATES: The closing date for submission of applications under this Announcement is 60 days from the publication date of this Announcement in the **Federal Register**.

ADDRESSES: Applications should be sent to the appropriate Bureau of Indian Affairs Area Office listed below.

Aberdeen Area Office

Diane Turgeon, 115 4th Avenue, SE., Aberdeen, SD 57401–4382, Telephone: (605)226–7426

Albuquerque Area Office

Karen Foster, 615 1st Street, NW., Box 265, Albuquerque, NM 87125–6567, Telephone: (505)766–3172 or 766–2559

Minneapolis Area Office

Stuart Mani, 331 South 2nd Avenue, Minneapolis, MN 55401–2241, Telephone: (612)373–1031

Muskogee Area Office

Edward L. Lowery, 101 North 5th Street, Muskogee, OK 74401–6206, Telephone: (918)687–2447

Anadarko Area Office

Terry Bruner, WCD Office Complex, Box 368, Anadarko, OK 73005–0368, Telephone: (405)247–6673 ext. 209

Billings Area Office

Henry Graham, 316 North 26th Street, Billings, MT 59101, Telephone: (406)657–6313

Eastern Area Office

Larry Blair, 3701 N Fairfax Dr, MS–260–VA-SQ, Arlington, VA 22203, Telephone: (703)235–2443

Juneau Area Office

Regina Parot, P.O. Box 25520, Juneau, AK 99802–5520, Telephone: (907)586–7453

Phoenix Area Office

Wilson Gillette, P.O. Box 10, Phoenix, AZ 85001–0010, Telephone: (602)379–6760

Portland Area Office

Timothy R. Brown, 911 NE. 11th Avenue, Portland, OR 97232–4169, Telephone: (503)231–6702

Sacramento Area Office

Joan Burcell, 2800 Cottage Way, Sacramento, CA 95825–1884, Telephone: (916)978–4690

SUPPLEMENTARY INFORMATION:

A. Purpose of the Grant Programs

The purpose of the grant programs under this Announcement is twofold: (1) To allow tribes to address needs and/or problem areas associated with governmental affairs, program administration and operations, and/or service delivery; and, (2) to permit tribes to monitor, evaluate, plan and design or redesign the federal programs serving them.

Each of these grant initiatives has its own criteria and guidelines which are designed to accomplish specific objectives for a targeted subgroup of tribes. For instance, the criteria for training and technical assistance grants requires that the tribal applicants document specific needs and/or problems and devise step-by step strategies to satisfy the needs or resolve the problems which are impediments to their growth. Using the same principle, criteria for planning grants were formulated to specify that these grants would be awarded to the most capable tribes. These are tribes not normally in need of strategical technical assistance since they generally have clean audits, operate mature contracts and have the reputation of administering "good" programs and service delivery systems. Tribes most capable of planning and operating programs may receive planning grants for comprehensive program planning, program redesign, as well as planning for reservation resources development.

To accomplish these ends, the Bureau of Indian Affairs announces the availability of up to $2.0 Million for the two (2) grant programs.

B. Training and Technical Assistance Grant Program

(1) Purpose of the grant program

The purpose of this grant program is to allow tribes to address needs and/or problems associated with governmental affairs, program administration and operations, and/or service delivery. Such grants will enable tribes to resolve present and past problems thereby permitting grantee tribes to improve conditions, advance their movement toward self-sufficiency, and to exercise a greater degree of self-determination in the operation of programs designed to benefit their membership and/or other resident Indian peoples.

(2) Eligibility criteria

To receive a training and technical assistance grant, a tribe, including an authorized tribal organization, must be able to document and/or demonstrate its needs utilizing five (5) or more of the following identifying conditions or criteria:

(a) The current organization-wide, single audit report findings contain significant and/or material audit exceptions;

(b) Correspondence or other documentation that the tribe is not presently capable of withstanding an organization-wide single audit. This means that:

(i) The tribe's books or records are missing, incomplete or are not in reviewable condition and/or in a condition to sustain a full audit;

(ii) The tribe has not met specific audit requirements for a federal program it operates although the program is complete and an audit is due; and/or

(iii) The tribe has been notified it cannot receive an initial or continuation grant or contract from one (1) or more agencies due to outstanding audits and/or audit exceptions;

(c) The tribe has had debt collection notices and/or notification it cannot receive a grant or contract until an approved corrective action plan which has the potential to resolve current and/or past audit exceptions is formulated and is in place;

(d) The tribe is unable to accomplish current or past grant/contract objectives and/or is not capable of preparing successful grant/contract applications;

(e) The tribe is not able to operate properly under its management systems although the systems have been approved as satisfying regulatory requirements;

(f) The tribal government has little or no control over its various program operations, thus no control over service delivery, and cost overruns, etc.;

(g) The tribal government needs help but is in such a state it is unable to indicate the type or amount of assistance needed;

(h) The tribal government is experiencing serious internal strife and the tribe is paralyzed with political factionalism which results in the deterioration of its government as well as its program or service delivery systems.

(3) Continuation grants

In cases where a continuation grant is requested, documentation of the prior year's performance is an additional requirement. A continuation grant application must document that the applicant tribe has accomplished, or can demonstrate that it has made substantial progress toward accomplishing its prior year's grant objectives in order to receive a continuation grant. Prior year quarterly and annual progress and/or accomplishment reports must be submitted with the application for a continuation grant. To document continuing needs or problems, the applicant may furnish new Office of Management and Budget (OMB) Circular A–128 organization-wide single audit reports, OMB Circular A–123 internal control reviews, Area and/or Agency Office monitoring reports reflecting the existence of problems or poor program performance, and/or Office of the Inspector General (OIG) or General Accounting Office (GAO) reports. Further, evidence that one (1) or more federal agencies have initiated debt collection action against the applicant tribe and will not renew or award any new grants or contracts to the applicant tribe until the debt is cleared.

(4) Content of application

Applications for a training and technical assistance grant must:

(a) Contain a current tribal council resolution which specifically authorizes the preparation of an application for a training and technical assistance grant.

(b) Contain a written commitment to use the training and technical assistance grant to address the needs and/or problems cited in the section B(2) of this Announcement.

(c) Follow the application requirements set forth in Office of Management and Budget Circular A–102, Uniform Requirements for Assistance to State and Local Governments (The Common Rule), and as implemented within the Department of the Interior in 43 CFR part 12. Under Part IV of Standard Form 424, Program Narrative Statement, applicants shall provide the following:

(i) A statement of specific needs and/or problems to be addressed under the proposed grant along with the documentation used to support the needs or problems statement; e.g., OMB Circular A–128 Audit Reports;

(ii) A description of how the grant funds will be used to overcome the problems or meet the needs which have been identified;

(iii) A schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems or meet needs identified under the proposed grants;

(iv) A description of the personnel required, if any, to carry out grant activities and/or objectives; and provide position descriptions which include qualifications for education and experience;

(v) A line item budget, with narrative justification, to demonstrate how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant, and that costs associated with the grant application are reasonable, allowable and allocable to the program in terms of the cost principles found in OMB Circular A–87, Cost Principles for State and Local Governments.

(d) The applicant must indicate how other available resources such as tribal income, other Bureau grants or capacity building grants from other agencies will be committed to complement or support this effort.

(e) The applicant must make a written commitment to maintain the positive results expected from the grant.

(f) The applicant must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this Announcement.

(g) If a tribe's application is prepared by an outside consultant, the application must indicate the role of the grant preparer to the tribe during the grant period; e.g., will the preparer be funded through the proceeds of the grant as a consultant, full-time employee, parttime employee, etc.

(h) The grantee must agree in its application to submit quarterly financial status and progress reports.

(i) The applicant must complete a Certification regarding drug-free workplace requirements.

(j) No indirect cost funds shall be provided for grants under this Announcement.

(5) Other conditions

(a) Contain the vitae or resumes of project staff and/or third party technical assistance providers or, if the project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience necessary for project staff and/or third party technical assistance providers to accomplish the tribe's grant objectives;

(b) A tribe making application for the purchase of third party technical assistance must agree to develop a plan for delivery of technical assistance which contains a schedule of activities and clearly indicates the person(s) responsible for carrying out each of the grant activities;

(c) Deviation or non-adherence to the technical assistance plan by the technical assistance provider can result in nonpayment to the technical assistance provider.

(d) The funds awarded under this Announcement may be used as matching shares for any other federal or non-federal grant programs which contribute to the purposes for which these grants are made.

(6) Review, rating and approval of applications for training and technical assistance grants

An original and two (2) copies of the training and technical assistance grant application are to be submitted to the local Agency Office. Applications submitted in response to this Announcement will be received, reviewed, and rated as follows:

(a) Application Review Process

(i) Agency office responsibility. Applications shall be submitted to the appropriate Agency Superintendent for review and comment. The Superintendent upon receipt of the application shall:

(A) Acknowledge, in writing, receipt of the application within five (5) calendar days of its arrival at the Agency office.

(B) Review the application for completeness of information and to insure that the application is consistent with the conditions set forth in Sections B(1) through B(5) of this Announcement. Within ten (10) calendar days of its arrival in the Agency office, request any additional information which may be required to conduct a review of the application.

(C) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations for approval or disapproval within fifteen (15) calendar days of its receipt.

(D) In instances where disapproval of an application is recommended, the Superintendent shall provide detailed reasons for the recommendation.

(ii) Area office responsibility. Upon receipt of the application the Area Director shall:

(A) Within fifteen (15) calendar days, conduct a review of each application for consistency with Sections B(1) through B(5) of this Announcement. In this review the Area Director shall utilize the comments and recommendations from the Agency Superintendent.

(B) Exception in this application review process. An application for a technical assistance grant received from a tribe experiencing internal strife may be recommended for approval based on the Area Director's judgment that the applicant tribe is making a serious effort to resolve its internal problems. Further, it must be clearly documented in the application that the tribal factions will accept third party intervention in an attempt to resolve the problems causing the internal strife.

(b) Application Rating Process

(i) Upon completion of the application review process the Area Director shall rate each application based on the criteria set forth in Sections B(1) through B(5) of this Announcement.

(ii) Applications shall be rated in accordance with the following guidelines:

(A) *Criteria—Need/Problem:* the applicant can furnish documentation or demonstrate it has five (5) or more of the identifying conditions or criteria listed in section B(2) of the Training and Technical Assistance Grant program. *Points* (0–30)

(B) *Criteria—Work Statement:* the application work plan describes in detail how it will meet the needs or overcome problems cited in criteria (A). The work plan also contains a schedule of activities, which if executed properly, will accomplish the goals and/or objectives of the grant. *Points* (0–30)

(C) *Criteria—Applicant Capability:* the application contains the vitae or resumes of project staff and/or third party technical assistance providers or, if the project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience necessary for project staff and/or third party technical assistance providers to accomplish the grant objectives. *Points* (0–15)

(D) *Criteria—Budget Justification:* the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable. *Points* (0–10)

(E) *Criteria—Management or Self-Monitoring System:* the application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary. *Points* (0–15)

(c) Application Approval Process

Upon completion of the application review and rating process the Area Director shall, within fifteen (15) calendar days, initiate one of the following actions:

(i) Approve the application for funding based on the Superintendent's recommendation and the Area Office review and rating process.

(ii) Disapprove the application based on the Area Office review and rating process. Notify the applicant by letter of the specific reason for the disapproval of the application; advise the applicant of its appeal rights.

(d) Within thirty (30) calendar days of notification of approval of a grant, the Area Director shall award the grant funds to the successful tribal applicant.

(7) Schedule for the Receipt of Training/Technical Assistance Grant Applications

Area Offices are to formally notify Agency Offices and tribes that this program exists in FY 1994, immediately upon the receipt of this Announcement. Area Offices shall provide copies of the grant criteria and all other pertinent information to all Agency Offices and tribes in an Area Office's jurisdiction.

(8) Submission of applications for training and technical assistance grants

Applications submitted in response to this Announcement must be:

(a) Postmarked no later than midnight February 28, 1994, if mailed;

(b) Received in the Agency office no later than the close of business February 28, 1994, if hand delivered.

(9) Appeals

Appeals of administrative actions by the Bureau of Indian Affairs on training/technical assistance grant applications are governed by part 2 of 25 CFR.

C. Planning Grant Program

(1) Purpose of the grant program

To allow tribes to assume more control over programs designed to serve tribal populations, generally diminishing federal domination over programs serving Indians.

A planning grant may be used by a tribe to centralize or consolidate all of its administrative functions, to consolidate or integrate federal programs serving the tribe, as well as formulate short and long-range plans for reservation resources development.

(2) Eligibility criteria

Tribes receiving planning grants must not only be capable of developing plans, they must also be capable of successfully implementing the plans.

(a) To receive a planning grant a tribe must:

(i) Survey or inform its reservation or community population that the tribe wishes to plan, and carry out such plans as may be developed, to make significant changes in its programs and its service delivery to Indian beneficiaries;

(ii) Have no significant or material audit exceptions noted in any and all current cost audits and/or the current OMB Circular A–128 organization-wide single audit report;

(iii) Administer mostly "mature" contracts; i.e., those meeting the definitions of "mature" as found in Public Law 93–638, as amended;

(iv) Have a history of operating or administering federal programs and services in a sound manner;

(v) Have a stable tribal government as evidenced by a tribe's not having made radical, unplanned changes in program direction which have resulted in the diminishment of services to Indian beneficiaries and resulted in significant audit exceptions under criteria (ii), above;

(b) When a tribe is requesting a planning grant which encompasses activities identified as reservation resources development, the tribe must also satisfy one (1) or more of the following additional conditions:

(i) The tribe has successfully administered other developmental projects and has done so without governmental or political interference;

(ii) The tribe's plan reflects its willingness to accept guidance and assistance for the modification, if necessary, of its comprehensive development plans from subject matter experts; and/or

(iii) The tribe's plan reflects its willingness to accept monitoring and technical assistance as may be arranged by subject matter experts to ensure the best opportunity for success of the grant activity.

(3) Continuation grants

In cases where a continuation grant is requested, documentation of the prior year's performance is an additional requirement. A continuation grant Application must document that the applicant tribe has accomplished, or is able to demonstrate that it has made substantial progress toward

accomplishing, its prior year's grant objectives in order to receive consideration for approval of a continuation grant. Prior year quarterly and annual progress and/or accomplishment reports must be submitted with the application for a continuation grant.

(4) Application content

Applications for a planning grant must:

(a) Follow the application requirements set forth in Office of Management and Budget Circular A–102, Uniform Requirements for Assistance to State and Local Governments (The Common Rule), as implemented within the Department of the Interior in 43 CFR part 12. Under Part IV of Standard Form 424, Program Narrative Statement, the grant application must:

(i) Contain a current tribal council resolution which specifically authorizes the preparation of an application for a planning grant;

(ii) Contain a clear statement of the goals and objectives to be achieved through the proposed grant along with the rationale to support the goals and objectives proposed;

(iii) Contain a program narrative which describes, step-by-step how and by whom the goals and objectives of the grant project will be satisfied;

(iv) Contain the vitae or resumes of project staff and/or third party technical assistance providers or, if project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience necessary for project staff and/or third party technical assistance providers to accomplish the grant objectives; and,

(v) A line item budget, with narrative justification, to demonstrate that costs associated with the grant application are reasonable, allowable and allocable to the program in terms of the cost principles found in OMB Circular A–87, Cost Principles for State and Local Governments.

(b) Contain a schedule for the start and projected completion dates for actions or efforts to be taken to meet the goals and objectives identified under the proposed grant.

(c) A description of the personnel required, if any, to carry out grant activities and/or objectives and provide position descriptions which include qualifications for education and experience.

(d) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, other Bureau grants and/or contracts or other capacity building grants from other agencies.

(e) The applicant must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this Announcement.

(f) If a tribe's application is prepared by an outside consultant, the application must indicate the role of the grant preparer to the tribe during the grant period; e. g., will the preparer be funded through the proceeds of the grant as a consultant, full-time employee, part-time employee, etc.

(g) The grantee must agree in its application to submit quarterly financial status and progress reports.

(h) Progress and accomplishment reports for a prior year grant must be submitted with an application for a continuation grant which will be used for rating of the continuation grant applications, appropriations permitting, since subsequent grants will include performance as a criteria for grant renewal.

(i) The applicant must complete a Certification regarding drug-free workplace requirements.

(j) No indirect cost funds shall be provided for grants under this Announcement.

(5) Other Conditions

(a) A tribe's application for the purpose of planning must clearly outline a monitoring schedule for planning activities and clearly indicate the person(s) responsible for carrying out each of the grant activities;

(b) Deviation or non-adherence to the planning schedule by a technical assistance provider can result in nonpayment to the provider;

(c) The funds awarded under this Announcement may be used as matching shares for any other federal or non-federal grant programs which contribute to the purposes for which these grants are made.

(6) Review, Rating and Approval of Application for Planning Grants

An original and two (2) copies of the planning grant application are to be submitted to the local Agency Office. Applications submitted in response to this Announcement will be received, reviewed, and rated as follows:

(a) Application Review Process

(i) Agency office responsibility. Applications shall be submitted to the appropriate Agency Superintendent for review to determine if the application is consistent with the conditions set forth in sections C(1) through C(5) of this Announcement. The Superintendent upon receipt of the application shall:

(A) Acknowledge, in writing, receipt of the application within five (5) calendar days of its arrival at the Agency office.

(B) Review the application for completeness of information and, within ten (10) calendar days of its arrival at the Agency office, request any additional information which may be required to conduct a review of the application.

(C) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations for approval or disapproval within fifteen (15) calendar days of its receipt.

(D) In instances where disapproval of an application is recommended, the Superintendent shall provide detailed reasons for the recommendation.

(ii) Area office responsibility. Upon receipt of the application the Area Director shall within fifteen (15) calendar days, conduct a review of each application for consistency with sections C(1) through C(5) of this Announcement. In this review the Area Director shall utilize the comments and recommendations from the Agency Superintendent.

(b) Application Rating Process

(i) Upon completion of the application review process the Area Director shall rate each application based on the criteria set forth in Sections C(1) through C(5) of this Announcement.

(ii) Applications shall be rated in accordance with the following guidelines:

(A) *Criteria—Work statement:* the application work plan describes in detail how it will achieve the goals and objectives specified in the proposed Planning Grant. The work plan also contains a schedule of activities, which if executed properly, will accomplish the objectives and/or goals of the proposed Planning Grant. *Points* (0–40)

(B) *Criteria—Applicant capability:* (1) The applicant must furnish documentation of operating mostly mature contracts and an A–128 Audit Report; (2) application contains the vitae or resumes of project staff and/or third party technical assistance providers or, if project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience of project staff and/or third party technical assistance providers necessary to accomplish the grant objectives. *Points* (0–25)

(C) *Criteria—Budget justification:* the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable. *Points* (0–15)

(D) *Criteria—Management or self-monitoring system:* the application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary. *Points* (0–20)

(c) Application approval process

Upon completion of the application review and rating process the Area Director shall, within fifteen (15) calendar days, initiate one of the following actions:

(i) Approve the application for funding based on the Superintendent's recommendation and the Area Office review and rating process.

(ii) Disapprove the application based on the Area Office review and rating process. Notify the applicant by letter of the specific reasons for the decision to disapprove the application, advising the applicant of its appeal rights.

(d) Within thirty (30) calendar days of notification of approval of a grant, the Area Director shall award the grant funds to the successful tribal applicant.

(7) Schedule for the Receipt of Planning Grant Applications

Area Offices are to formally notify Agency Offices and tribes that this program exists in FY 1994, immediately upon the receipt of this Announcement. Area Offices shall provide copies of the grant criteria and all other pertinent information to all Agency Offices and tribes in an Area Office's jurisdiction.

(8) Submission of Applications for Planning Grants

Applications submitted in response to this Announcement must be:

(a) Postmarked no later than midnight February 28, 1994, if mailed;

(b) Received in the Agency office no later than the close of business February 28, 1994, if hand delivered.

Appeals: Appeals of Administrative actions by the Bureau of Indian Affairs on planning grant applications are governed by part 2 of 25 CFR.

Dated: December 17, 1993.

Marshall M. Cutsforth,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–31526 Filed 12–27–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Tuesday
December 28, 1993

Part VI

The President

Executive Order 12886—Adjustments of Rates of Pay and Allowances for the Uniformed Services

Executive Order 12887—Amending Executive Order No. 12878

Federal Register
Vol. 58, No. 247
Tuesday, December 28, 1993

Presidential Documents

Title 3—

The President

Executive Order 12886 of December 23, 1993

Adjustments of Rates of Pay and Allowances for the Uniformed Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 601 of Public Law 103–160, it is hereby ordered as follows:

Section 1. The rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are adjusted as set forth on the schedule attached hereto and made a part hereof.

Sec. 2. The adjustments in rates of monthly basic pay and allowances for subsistence and quarters set forth on the attached schedule are effective on January 1, 1994.

Sec. 3. Section 4 and Schedule 8 of Executive Order No. 12826 of December 30, 1992, are superseded.

William J. Clinton

THE WHITE HOUSE,
December 23, 1993.

Billing code 3195–01–P

SCHEDULE OF PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

(Effective on January 1, 1994)

PART I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10[1]	$6801.60	$7040.70	$7040.70	$7040.70	$7040.70	$7311.00	$7311.00	$7716.00	$7716.00	$8267.70	$8267.70	$8821.50	$8821.50	$8821.50	$9371.10*
O-9	6027.90	6185.70	6317.40	6317.40	6317.40	6478.20	6478.20	6747.60	6747.60	7311.00	7311.00	7716.00	7716.00	7716.00	8267.70
O-8	5459.70	5623.50	5756.70	5756.70	5756.70	6185.70	6185.70	6478.20	6478.20	6747.60	7040.70	7311.00	7491.30	7491.30	7491.30
O-7	4536.60	4845.00	4845.00	4845.00	5062.20	5062.20	5355.60	5355.60	5623.50	6185.70	6611.10	6611.10	6611.10	6611.10	6611.10
O-6	3362.40	3694.20	3936.30	3936.30	3936.30	3936.30	3936.30	3936.30	4070.10	4713.60	4954.20	5062.20	5355.60	5536.80	5808.60
O-5	2689.20	3157.50	3375.90	3375.90	3375.90	3375.90	3478.20	3665.40	3911.10	4203.90	4444.50	4579.50	4739.40	4739.40	4739.40
O-4	2266.80	2760.30	2944.50	2944.50	2999.10	3131.40	3345.00	3533.10	3694.20	3856.50	3962.70	3962.70	3962.70	3962.70	3962.70
O-3[2]	2106.30	2355.30	2517.90	2785.80	2919.00	3023.70	3187.50	3345.00	3427.20	3427.20	3427.20	3427.20	3427.20	3427.20	3427.20
O-2[2]	1836.90	2005.80	2410.20	2491.20	2542.80	2542.80	2542.80	2542.80	2542.80	2542.80	2542.80	2542.80	2542.80	2542.80	2542.80
O-1[2]	1594.80	1659.90	2005.80	2005.80	2005.80	2005.80	2005.80	2005.80	2005.80	2005.80	2005.80	2005.80	2005.80	2005.80	2005.80
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3	-	-	-	$2785.80	$2919.00	$3023.70	$3187.50	$3345.00	$3478.20	$3478.20	$3478.20	$3478.20	$3478.20	$3478.20	$3478.20
O-2	-	-	-	2491.20	2542.80	2623.50	2760.30	2866.20	2944.50	2944.50	2944.50	2944.50	2944.50	2944.50	2944.50
O-1	-	-	-	2005.80	2143.20	2222.10	2302.50	2382.60	2491.20	2491.20	2491.20	2491.20	2491.20	2491.20	2491.20

* Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

[1] While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $10,340.10*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

[2] Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE OF PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$3662.70	$3801.60	$3911.40	$4076.10
W-4	$2146.20	$2302.50	$2302.50	$2355.30	$2462.40	$2570.70	$2678.70	$2866.20	$2999.10	$3104.40	$3187.50	3290.40	3400.50	3506.40	3665.40
W-3	1950.60	2115.90	2115.90	2143.20	2168.10	2326.80	2462.40	2542.80	2623.50	2701.80	2785.80	2894.40	2999.10	2999.10	3104.40
W-2	1708.50	1848.30	1848.30	1902.00	2005.80	2115.90	2196.30	2276.70	2355.30	2438.10	2517.90	2597.10	2701.80	2701.80	2701.80
W-1	1423.20	1632.00	1632.00	1768.20	1848.30	1927.50	2005.80	2088.90	2168.10	2248.80	2326.80	2410.20	2410.20	2410.20	2410.20
ENLISTED MEMBERS															
E-9[1]	-	-	-	-	-	-	$2496.90	$2552.70	$2610.60	$2670.60	$2730.30	$2783.40	$2929.20	$3043.20	$3214.20
E-8	-	-	-	-	-	$2093.70	2153.70	2210.40	2267.70	2327.70	2381.10	2439.60	2582.70	2697.90	2870.40
E-7	$1461.60	$1578.00	$1636.20	$1693.80	1751.40	1807.20	1865.10	1923.30	2010.30	2067.30	2124.60	2152.20	2296.80	2411.10	2582.70
E-6	1257.60	1370.70	1427.70	1488.60	1544.40	1599.90	1658.70	1744.20	1798.80	1857.00	1885.20	1885.20	1885.20	1885.20	1885.20
E-5	1103.40	1201.20	1259.70	1314.30	1401.00	1458.00	1515.60	1571.40	1599.90	1599.90	1599.90	1599.90	1599.90	1599.90	1599.90
E-4	1029.30	1087.20	1151.10	1239.90	1288.80	1288.80	1288.80	1288.80	1288.80	1288.80	1288.80	1288.80	1288.80	1288.80	1288.80
E-3	969.90	1023.00	1063.80	1105.80	1105.80	1105.80	1105.80	1105.80	1105.80	1105.80	1105.80	1105.80	1105.80	1105.80	1105.80
E-2	933.30	933.30	933.30	933.30	933.30	933.30	933.30	933.30	933.30	933.30	933.30	933.30	933.30	933.30	933.30
E-1[2]	832.80	832.80	832.80	832.80	832.80	832.80	832.80	832.80	832.80	832.80	832.80	832.80	832.80	832.80	832.80
E-1[3]	770.10	-	-	-	-	-	-	-	-	-	-	-	-	-	-

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[1] While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,906.90, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

[2] Applies to personnel who have served 4 months or more on active duty.

[3] Applies to personnel who have served less than 4 months on active duty.

SCHEDULE OF PAY AND ALLOWANCES OF THE UNIFORM SERVICE (PAGE 3)

PART II--BASIC ALLOWANCE FOR QUARTERS RATES

Pay Grade	Without dependents Full rate[1]	Without dependents Partial rate[2]	With dependents
COMMISSIONED OFFICERS			
O-10	$730.50	$50.70	$899.10
O-9	730.50	50.70	899.10
O-8	730.50	50.70	899.10
O-7	730.50	50.70	899.10
O-6	670.20	39.60	809.70
O-5	645.30	33.00	780.30
O-4	598.20	26.70	687.90
O-3	479.40	22.20	569.40
O-2	380.10	17.70	486.30
O-1	320.10	13.20	434.40
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3	$517.50	$22.20	$611.70
O-2	440.10	17.70	552.00
O-1	378.30	13.20	510.00
WARRANT OFFICERS			
W-5	$607.50	$25.20	$663.90
W-4	539.70	25.20	608.70
W-3	453.60	20.70	558.00
W-2	402.60	15.90	513.30
W-1	337.20	13.80	444.00
ENLISTED MEMBERS			
E-9	$443.40	$18.60	$584.10
E-8	407.10	15.30	538.50
E-7	347.40	12.00	500.10
E-6	314.70	9.90	462.30
E-5	290.10	8.70	415.50
E-4	252.30	8.10	361.50
E-3	247.80	7.80	336.30
E-2	201.30	7.20	320.10
E-1	179.10	6.90	320.10

[1] Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by section 403 of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

[2] Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under section 403(b) or (c) of title 37, United States Code, are not entitled to the full rate of basic allowance for quarters, is authorized by section 1009(c)(2) of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

PART III--BASIC ALLOWANCE FOR SUBSISTENCE

	E-1 (less than 4 months of active duty)	All Other Enlisted
Officers (per month)		$142.46
Enlisted Members (per day):		
When on leave or authorized to mess separately	$6.28	$6.80
When rations in-kind are not available	7.08	7.67
When assigned to duty under emergency conditions where no messing facilities of the United States are available	9.39	10.16

PART IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $543.90.

[FR Doc. 93-31916
Filed 12-27-93; 11:57 am]
Billing code 3810-01-C

Presidential Documents

Executive Order 12887 of December 23, 1993
Amending Executive Order No. 12878

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1, subsection (a), of Executive Order No. 12878 (November 5, 1993) is amended—

1. in the second sentence, by deleting "30 members", and inserting "32 members"; and

2. in the fifth sentence, by deleting "Ten members", and inserting "Twelve members".

William J. Clinton

THE WHITE HOUSE,
December 23, 1993.

[FR Doc. 93–31917
Filed 12–27–93; 11:58 am]
Billing code 3195–01–P

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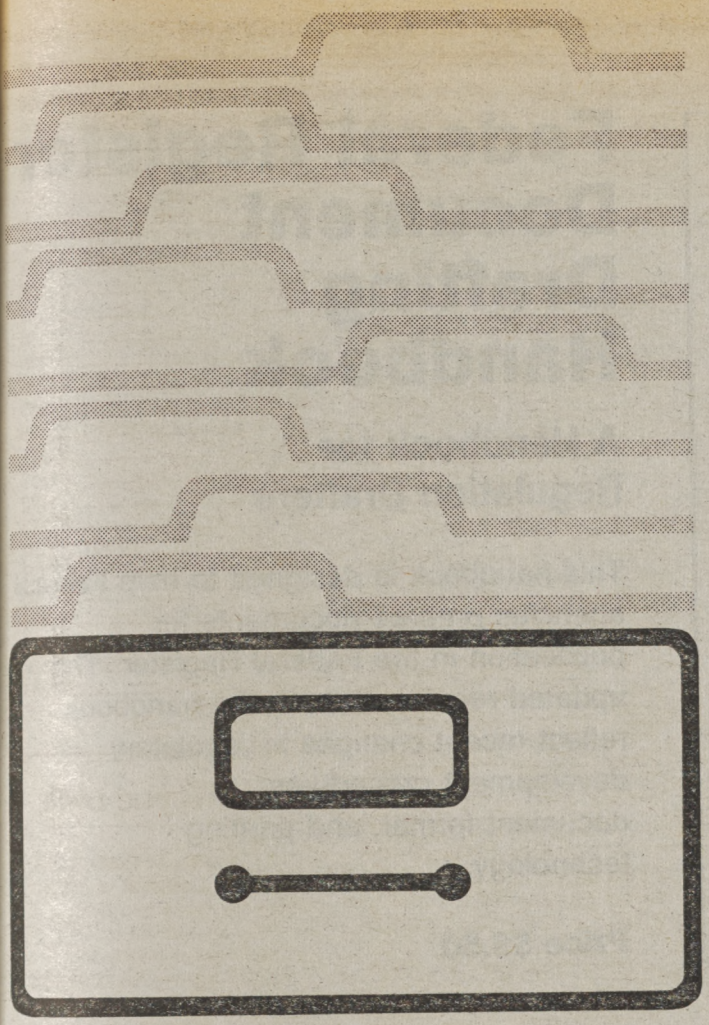

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

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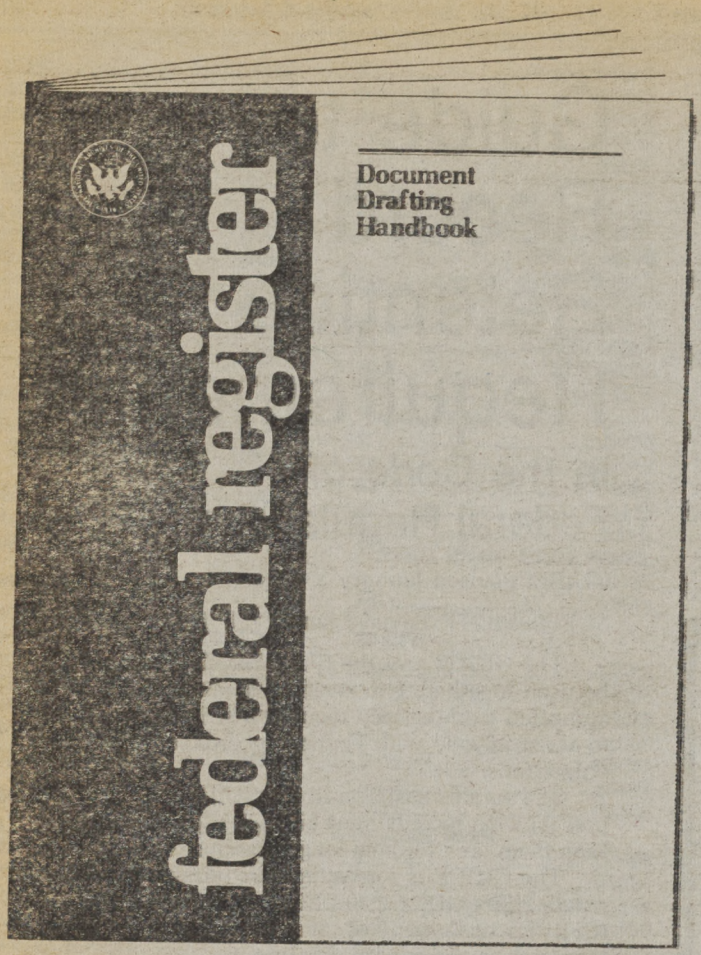

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