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RESERVATIONS: 202–523–4538

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AI09

Reduction in Force Service Credit

AGENCY: Office of Personnel Management.

ACTION: Correction to final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing a correction to the final regulations that were published on Wednesday, April 7, 1999. This correction covers service credit for reduction in force purposes.

DATES: These regulations are effective May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqui R. Yeatman at (202) 606–0960, FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1999, OPM published final regulations (64 FR 16797) that cover the crediting of civilian and uniformed service for purposes of reduction in force competition under part 351 of this title. These regulations are effective on May 7, 1999.

The final regulations contained a typographical error that resulted in the inadvertent omission of a cross-reference to § 351.504(e) in final § 351.503(c)(3), and in final § 351.503(e). These corrections do not make a substantive change in the procedures that agencies use in determining employees' retention standing.

Reason for Correction

1. Final § 351.503(c)(1) provides that the agency is responsible for determining an employee's retention service computation date. Final § 351.503(c)(2) provides that an employee's retention service computation date includes all actual creditable civilian and uniformed service, as authorized under final §§ 351.503 (a) and (b). Final § 351.503(c)(3) provides that an employee's adjusted retention service computation date includes both the employee's actual service creditable service, and additional retention service credit for performance. As published, final § 351.503(c)(3) contains a reference to § 351.504(d), which covers the amount of additional retention service credit awarded to competing employees covered by a single rating pattern. However, final § 351.503(c)(3) inadvertently omitted a reference to § 351.504(e), which covers additional retention reference credit awarded to competing employees covered by multiple rating patterns. This document corrects that omission.

2. Final § 351.503(e) covers how the agency calculates the adjusted retention service date. As published, final § 351.503(e) contains a reference to § 351.504(d), which covers the amount of additional retention service credit awarded to competing employees covered by a single rating pattern, but inadvertently omits a reference to § 351.504(e), which covers additional retention reference credit awarded to competing employees covered by multiple rating patterns. This document corrects that omission.

Correction

In rule document 99–8587 beginning on page 16797 in the issue of Wednesday, April 7, 1999, make the following corrections:

On page 16800, in the third column, correct § 351.503(c)(3) and § 351.503(e) to read as follows:

§ 351.503 Length of service.

* * * * *

(c) * * *

(3) The adjusted service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section, and additional retention service credit for performance authorized by §§ 351.504 (d) and (e).

* * * * *

(e) The adjusted service computation date is calculated by subtracting from the date in paragraph (d)(1) or (d)(2) of this section the additional service credit for retention authorized by §§ 351.504 (d) and (e).

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–10960 Filed 4–30–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI68

Prevailing Rate Systems; Change in Survey Cycle for the Southwestern Michigan Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule to change the full-scale survey cycle of the Southwestern Michigan appropriated fund Federal Wage System wage area from odd to even-numbered fiscal years. This change is being made to help even out the local wage survey workload of the Department of Defense (DOD), which recently assumed responsibility for conducting all Federal Wage System surveys.

DATES: This interim rule is effective on June 2, 1999. Comments must be received on or before June 2, 1999.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: The Department of Defense has requested that the Office of Personnel Management change the survey cycle for full-scale wage surveys in the Southwestern Michigan wage area from odd to even-numbered fiscal years. Under § 532.207 of title 5, Code of Federal Regulations, the scheduling of wage surveys takes into consideration the best timing in relation to wage

adjustments in the principal local private enterprise establishments, reasonable distribution of workload of the lead agency, timing of surveys for nearby or selected wage areas, and scheduling relationships with other pay surveys.

This request was made to even out DOD's wage survey workload and stems from DOD's recent acquisition of lead agency responsibility for 23 Federal Wage System (FWS) wage areas from the Department of Veterans Affairs. In October 2000 (FY 2001), DOD's Central Regional Office will conduct full-scale wage surveys in the Ft. Wayne-Marion, IN, Indianapolis, IN, and St. Louis, MO, wage areas. In the St. Louis wage area, the same office will also conduct a special printing and lithographic survey. In October 1999 (FY 2000), that office will conduct full-scale wage surveys in the Davenport and Dubuque, IA, wage areas. DOD requested that a full-scale wage survey for the Southwestern Michigan wage area be conducted in October 1999. A wage change survey would be conducted in October 2000. This change will help balance the number of full-scale wage surveys conducted each year. The timing of the Southwestern Michigan wage survey relative to private sector wage adjustments would remain unchanged.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Southwestern Michigan wage area from odd to even-numbered fiscal years.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of the urgent need for administrative procedures and planning to be completed by DOD and the local wage survey committee for the Southwestern Michigan wage area before a full-scale wage survey begins in October 1999 in the Southwestern Michigan wage area. Planning for the full-scale wage survey in the Southwestern Michigan wage area must begin by June 1999.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346, § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532—[Amended]

2. Appendix A to Subpart B is amended by revising under the State of Michigan the listing of fiscal year of full-scale survey from "odd" to "even" for the Southwestern Michigan wage area.

[FR Doc. 99–10959 Filed 4–30–99; 8:45 am]

BILLING CODE 6325–01–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1307 and 1308

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: The Northeast Dairy Compact Commission amends the method for determining the amount of the administrative assessment charged to milk handlers. The amended rule gives the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current rate of 3.2 cents, or less, per hundredweight of fluid milk. The Commission also promulgates a new rule that requires handlers to make payment to the Compact Commission by electronic funds transfer, if the total amount due is greater than $25,000.

EFFECTIVE DATES: The amendments to part 1308 are effective July 1, 1999. The amendments to part 1307 are effective May 13, 1999.

ADDRESSES: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 27, 1998, the Commission issued a notice of proposed rulemaking proceedings on several subjects and issues, including whether the amount of, or method for determining, the administrative assessment should be amended.[4] The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998.

On January 13, 1999, the Commission held its deliberative meeting, pursuant to 7 CFR 1361.8, to consider all oral and written comments received at the public hearing and the additional comments received by the Commission's published comment deadline of December 31, 1998, and to deliberate and act on the proposed subjects and issues rulemaking regarding whether the

[1] 62 FR 29626 (May 30, 1997).

[2] 62 FR 62810 (Nov. 25, 1997).

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

[4] 63 FR 65563 (Nov. 27, 1998).

amount of, or method for determining, the administrative assessment should be amended.[5]

Based on the oral testimony and written comments received in that proceeding, the Commission proposed to amend the method for determining the amount of the administrative assessment charged to milk handlers and also proposed to add a new rule that would require handlers to make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000.[6] The Commission held a public hearing in Concord, New Hampshire on March 3, 1999 and accepted written comments until March 17, 1999. The Commission held its deliberative meeting on April 7, 1999 to consider all the comments and testimony received regarding the administrative assessment regulation, including all testimony and comments previously received in the December 1998 proceeding.[7] Based on the December 1998 and March 1999 rulemaking records, the Commission amends the administrative assessment regulation, 7 CFR Part 1308, to give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current flat rate of 3.2 cents, or less, per hundredweight of fluid milk.

In addition to the amendments to the administrative assessment regulation, the Commission also promulgates a new rule at 7 CFR Part 1307, to require milk handlers to make payment to the Compact Commission by electronic funds transfer, if the total amount due is greater than $25,000.

Article V, Section 11 of the compact delineates the administrative procedure the Commission must follow in deciding whether to adopt or amend a price regulation. That section requires the Commission to conduct an informal rulemaking proceeding governed by section four of the federal Administrative Procedures Act ("APA"), as amended, 5 U.S.C. 553, to provide interested persons with an opportunity to present data and views. The informal rulemaking proceeding must include public notice and opportunity to participate in a public hearing and to present written comment. In addition, section 553(d) of the APA provides that "publication or service of a substantive rule shall be made not less than 30 days before its effective date," subject to several enumerated exceptions, including situations where the agency finds "good cause" for dispensing with this requirement. *See,* 5 U.S.C. 553(d)(3).

The Commission finds that there is good cause for dispensing with the 30-day waiting period of § 553(d), with regard to only the new rule at section 1307 requiring payment by electronic funds transfer, because compliance is impracticable, unnecessary, and contrary to the public interest. The Commission emphasizes that the new rule requiring payment by electronic funds transfer was adopted by the Commission after a comprehensive administrative process, including public hearing and notice-and-comment rulemaking.[8] The Commission received no public comments regarding the electronic funds transfer rule. The Commission has provided actual notice of this new rule to all effected milk handlers no later than April 13, 1999 and the first day of required compliance with this new rule will be May 18, 1999.

II. Summary and Analysis of Issues and Comments

Administrative Assessment

The Commission received oral and written testimony and comments from the Commission's Regulations Administrator, Carmen Ross, and eight commenters in the December 1998 subjects and issues rulemaking proceeding, regarding whether the amount of, or method for determining, the administrative assessment should be amended.[9] In the subsequent March 1999 proposed rule proceedings, the Commission received oral testimony from Mr. Ross and written comments from two commenters.[10] The Commission confirms its published analysis of the testimony and written comments received in the December 1998 proceeding.[11] Therefore, the Commission herein supplements that analysis by reviewing the testimony and comments received in the March 1999 proceedings.

Mr. Ross opened his testimony on March 3, 1999 by repeating the main points of his testimony of December 11, 1998. Mr. Ross reiterated that the Compact authorizes the Commission to impose an assessment on milk handlers to cover the costs of the administration and enforcement of the over-order price regulation. He explained the principle of milk market regulation that the milk handlers, not the dairy farmers, are assessed to pay the costs of the administration and enforcement of the milk market regulation and that this assessment is a cost of doing business in the milk market.[12]

Mr. Ross also explained that the Compact requires the Commission to establish a reserve for the ongoing operating expenses.[13] The current administrative assessment is a flat rate of 3.2 cents per hundredweight and results in a variance in income of up to 13% per month.[14] Mr. Ross stated that the Commission regulation is, in all material respects, the same as corresponding provisions of the Federal Order #1 regulations.[15]

Mr. Ross explained that under the Federal Market Order #1 regulation, "the federal market order [Administrator] can, when conditions warrant it, reduce or even waive the administrative assessment."[16] Under Federal Market Administrator Instruction 1207, the United States Department of Agriculture Dairy Division (USDA) recommends that budgeted operating reserves be maintained within a range of 80% to 120% of the designated reserve level.[17]

At the subjects and issues hearing in December 1998, a milk processor testified in support of an amendment to the Commission's administrative assessment regulation that would recognize the Commission's budget process, impose a limitation on the Commission's reserves and provide for an adjustment or waiver of the administrative assessment based on the budget and the reserves.[18] As is explained in more detail below, the Commission adopts this commenter's recommendations in all material respects.

Of the two commenters who participated in the March 1999 public hearing and comment part of this rulemaking proceeding, one commenter supported the proposed rule to allow

[5] 64 FR 533 (Jan. 5, 1999).

[6] 64 FR 4353 (Jan. 28, 1999).

[7] 64 FR 4353, 4355 (Jan. 28, 1999), 64 FR 14943 (March 29, 1999) and Transcript of March 3, 1999 public hearing at 9.

[8] 64 FR 4353 (Jan. 28, 1999).

[9] Carmen L. Ross, Transcript ("Tr.") at 4; Charles Arbing, Tr. at 30; Diane Bothfeld Tr. at 54 and Written Comment ("WC") at 32; Leon J. Berthiaume, WC 13 ; Robert D. Wellington, WC 16; Edward W. Gallagher, WC 18; Sally J. Beach, WC 21; Michael L. Altman, WC 25; and Leon Graves, WC 34;

[10] Ross, Record ("R.") at 9; Michael L. Altman, on behalf of Suiza GTL, LLC, H.P. Hood, Inc. and the Stop & Shop supermarket Companies, Inc., R. at 38–42; Diane Bothfeld, R. 43.

[11] 64 FR 4353 (Jan. 28, 1999).

[12] Ross, R. at 15.

[13] Ross, R. at 10; *See also,* Compact Article IV, Section 10(9) and Article VII, Section 18(a).

[14] Ross, R. at 14–15.

[15] Ross, R. at 11–12.

[16] Ross, R. at 16.

[17] Market Administrator Instruction #207, December 1998 rulemaking record, WC at 3–11, and referenced in March 1999 rulemaking record, R. at 17.

[18] Arbing, Tr. at 53–53 (December 1998 rulemaking record).

the Commission to adjust the administrative assessment rate, upward or downward, as needed.[19]

The other commenter,[20] on behalf of the three major fluid milk handlers in New England, generally supported the Commission's proposal to permit it the discretion to adjust or waive the administrative assessment rate and further reiterated his two main objections (as submitted in the December 1998 subjects and issues proceeding)[21] to the Commission's administrative assessment regulation: (1) That the Commission should not use the funds generated by the administrative assessment for any purpose other than the actual costs of computing, announcing, collecting or distributing the over-order obligation; and (2) that the administrative assessment is an unfair burden on the milk handlers. The Commission has carefully considered these arguments and respectfully disagrees.

In making his first main objection, this commenter relies on a narrow, and inaccurate, reading of the language of the Compact to argue the Commission must only use the assessment to administer the over-order obligation provisions of the Compact Over-order Price Regulation. The commenter asserts that the Compact restricts the administrative assessment provision of Article VII, Section 18(a) to the administration of the over-order *obligation* only.[22] However, the full sentence, of which the commenter quotes only a portion, plainly and clearly references the over-order *price regulation*. The section of the Compact in question provides, in relevant part, as follows: "In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses." The Commission concludes that the language of the Compact itself is clear and for this reason respectfully rejects the commenter's suggested interpretation.

In addition to the plain language of the Compact, accepted principles of statutory interpretation also compel rejection of this commenter's suggested reading of Section 18(a), because to do so would render other provisions of the Compact meaningless. The commenter's restrictive interpretation of the language of the Compact would, for example, render meaningless the provisions of Article IV, Section 10. That section provides eleven separate paragraphs of provisions that the Commission is specifically authorized to include in a compact over-order price.[23] Those provisions are not restricted to the physical activities of computing, announcing, collecting or distributing the over-order obligation, as the commenter's narrow interpretation of Section 18(a) would require. "[L]egislative enactments should not be construed to render their provisions mere surplusage." *Dunn* v. *Commodity Futures Trading Comm'n*, 117 S.Ct. 913, 917 (1997). In light of the plain language of the Compact, reinforced by application of accepted principles of statutory construction, the Commission respectfully rejects this commenter's interpretation of the Compact.

The Commission also declines to accept the narrow interpretation of Section 18(a) of the Compact advanced by the commenter because his interpretation would lead to such illogical results as to leave the Commission without the funds to carry out its obligations and responsibilities under the Compact and the Over-order Price Regulation as a whole.[24] For example, the commenter's suggestion that the administrative assessment be used only for the direct costs associated with the actual computing, announcing, collecting or distributing the over-order obligation,[25] would leave the Commission without funds for amending the over-order price regulation, as authorized by Compact Article V, for providing handler exemption petition proceedings, as required by Compact Article VI, Section 16, or for conducting and administering the activities authorized, or required by, Articles I, II, IV, or VII of the Compact.[26] Furthermore, as explained below, the Compact is designed to have the administration and enforcement activities of the Commission supported by assessments on handlers. Article VII, Section 18(b) specifically prohibits the Commission from pledging the credit of any participating state, or the United States. Although the Commission may, at times, obtain funding from other sources, such funds cannot be obtained with any predictability, and Section 18 does not compel any state to contribute funds to support the activities of the Commission. However, if the receipt of such unanticipated funds are sufficient, the amendments to the administrative assessment rule will allow the Commission to reduce or waive the assessment on handlers.

Therefore, the Commission reaffirms its interpretation of its authority under the Compact that the administrative assessment may be used to fund all administration and enforcement activities to implement the entire over-order price regulation and to effectuate its obligations and responsibilities under the Compact.[27]

The core of this commenter's second main argument is that the administrative assessment places an unfair burden on milk handlers. The commenter suggests that the Commission should fund its statutory and regulatory activities through voluntary contributions of states, cooperatives and handlers. However, that interpretation is contrary to the underlying principles of milk market regulation, which establishes the handler's cost of raw milk, including the amount that must be paid to producers and the cost of administration of the federal regulation, the compact regulation and even the cost of fluid milk promotion.[28] The interpretation is also contrary to the design of the Compact, which specifies that the Commission should fund its administration and enforcement costs through an administrative assessment on milk handlers. Compact Article IV, Section 10(9) and Article VII, Section 18(a). Carmen Ross explained the "regulatory techniques historically associated with milk marketing,"[29] as they specifically relate to the administrative assessment component of the milk regulation principle, as follows:

As I just stated, the Compact administration assessment regulation is consistent with the Federal Market Order #1 regulation in its applicability to fluid milk

[19] Bothfeld, R. at 43.

[20] Altman, R. at 38–42.

[21] Altman, December 1998 rulemaking record, WC at 26–30; See also, Commission analysis of these comments at 64 FR 4354–4355 (Jan. 28, 1999).

[22] Altman, R. at 41.

[23] In authorizing the Compact, Congress specifically prohibited the Commission from including a provision in the over-order price regulation for compensatory payments, as included in Section 10(6). 7 U.S.C. 7256(7).

[24] *See, e.g. Green* v. *Bock Laundry Machine Co.*, 490 U.S. 504, 509–10 (1989); *In re Pacific-Atlantic Trading Co.*, 64 F.3d 1292, 1303 (9th Cir. 1995) ("Legislative enactments should never be construed as establishing statutory schemes that are illogical, unjust or capricious.") (internal citations omitted). In addition, for the reasons discussed more fully below, the Compact producer-settlement funds are not used for administrative purposes and principles of milk market regulation assess the costs of the administration of milk price regulation to handlers, as a cost of doing business in the milk marketplace, not to farmers or to cooperatives, as suggested by the commenter.

[25] Altman, R. at 42.

[26] See also, 64 FR 4354–55 (Jan. 28, 1999).

[27] 64 FR 4354–4355 (Jan. 28, 1999); See also, Ross, R. at 12–14.

[28] Ross, R. at 15–16, 27–29.

[29] Compact Article II, Section 3(b).

handlers. The principle is that the milk handlers, not the dairy farmer, pay for the administration and enforcement of the milk price regulation. This is a cost of doing business in the milk market. The same as all other costs associated with the assembly and receipts of milk at the plant.

The cost of milk includes the announced Federal Order Class I price, Federal Order Administrative Assessment, Federal Order Processor Assessment, Federal Order differential, Federal Order plant zone, hauling, handling, farmer or cooperative premiums, plant loss and the Compact over-order obligation and the Compact administrative assessment.

The total of all the above is the handler's cost of raw milk. To this cost, a handler will add the processing cost, container cost, delivery cost and margins to arrive at the handler's sale price. The Compact assessment is only one of the many components that is included to arrive at the sale price of milk. The Compact administrative assessment, like all other costs, are ultimately paid by the market, the consumer, not the handler.[30]

The Federal Market Administrator announces the raw milk price on the fifth day of the month preceding the month the announced price will be applied. This advance price announcement allows the milk handlers to set their prices accordingly and to recover those costs from the milk marketplace. If, after receiving advance notice of the price, a handler does not choose to include a particular component in his selling price, that is the handler's decision and not within the control of either the Federal Market Order Administrator or the Compact Commission. Therefore, the administrative assessment, as well as all other costs associated with milk market regulation, is a cost of doing business in the milk market.[31] The regulation does not require the assessment to come from the handler's profit line and the advance price announcement allows the handlers the opportunity to pass the costs on in setting their sale price for the milk. Therefore, the consumer, and not the milk handler, is paying the incremental cost of administering the Compact Over-order Price Regulation.[32] Accordingly, the Commission respectfully disagrees with the commenter's assertion that the Compact administrative assessment portion of the regulated milk price places an unfair burden on milk handlers.

Contrary to this commenter's [33] broad complaints, the Commission seeks to, and indeed does, incorporate the interests of all the affected constituencies in its regulatory decisions. The Commission is itself made up of state officials, consumers, producers and processors. The delegation members to the Commission are appointed, as provided in the Compact, as passed by all six participating states and approved by Congress. Compact, Article III, Section 4. Two of the states specifically require processors to be a part of the state delegation. Vermont, 6 V.S.A. 1823 ("A fourth voting member shall be a milk handler") and New Hampshire, RSA 184-A:2 ("One owner or officer of a fluid milk processing or distribution plant.") Two other states have appointed members to the delegation who are associated with fluid milk processors. Therefore, the interests of milk processors are clearly, and actively, represented and protected through membership in the state delegations to the Compact Commission.

In addition, the Commission always provides the opportunity for regulated handlers to participate in each of its rulemaking proceedings through attending and testifying at the public hearings and/or submitting written comments and testimony.[34]

After careful review of both the December 1998 and March 1999 rulemaking records relating to the administrative assessment regulation, the Commission concludes that the model used by the USDA is an appropriate standard for the Commission to use in the establishment of its administrative assessment rate. Therefore, the Commission amends the administrative assessment provision of the over-order price regulation to give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current flat rate of 3.2 cents, or less, per hundredweight of fluid milk. In establishing this rate-setting flexibility, the Commission's goal is to maintain a reserve account in the range of 80% to 120% of four-months operating expenses, as determined to be necessary in the budget approved by the Commission. This range is not binding on the Commission and the Commission at all times retains the discretion whether to waive or adjust the rate of the administrative assessment.

The Commission also sought testimony and comment on whether the administrative assessment regulation should be amended to permit the Commission to adjust the rate upward, from the current rate of 3.2 cents, in exceptional circumstances. The Commission's Regulations Administrator, Carmen Ross, testified that there may be times that the Commission needs to increase the assessment rate to "cover operating expenses because of unknown extraordinary or exceptional circumstances." [35] One commenter supported the proposal to allow the Commission the flexibility to increase the administrative assessment rate "to maintain the solvency of the Compact so it can maintain its operations and fulfill the responsibilities as established under the law." [36]

The Commission carefully considered this option and concluded that it is not necessary at this time to amend the administrative assessment rule to permit an increase over the current rate of 3.2 cents. The Commission income from the administrative assessment is sufficient to cover the anticipated and budgeted expenses. Although, as explained above, the Commission disagrees with some processors' assertions that the administrative assessment constitutes an unfair burden on milk handlers, the Commission is nevertheless sensitive to the concerns of these processors. Accordingly, the Commission chooses not to add a rate increase provision to the regulation in cognizance of some processors' perception of the Commission's administrative assessment.

Method of Payment

The Commission also promulgates a new regulation which requires milk handlers to make payment of the over-order obligation and administrative assessment to the Commission by electronic transfer of funds if the aggregate total due for the month is greater than $25,000. The Commission adds this rule in order to best ensure the efficient and timely transfer of funds into the producer-settlement fund and the corresponding timely distribution of funds from the producer-settlement

[30] Ross, R. at 15–16.

[31] Ross, R. at 15–16 and 28–29.

[32] Ross, R. at 16 and 28–29.

[33] Altman, R. at 39–42.

[34] As always, the Commission encourages and welcomes full participation by all those affected by the Commission's regulations. The Commission notes, however, that although this commenter has submitted written arguments, he has not availed himself of the opportunity to attend either of the public hearings held in December 1998 or March 1999 by the full Commission regarding the administrative assessment regulation. The opportunity for interactive discourse with the full Commission, offered in the public hearing forum, is very beneficial to and instructive for the Commission and such participation significantly advances the rulemaking proceeding. Indeed, as discussed above, the final rule adopted by the Commission includes major elements proposed in the testimony of one commenter, a processor, in the December 1998 hearing. Arbing, Tr. at 53–54 (December 1998 rulemaking record).

[35] Ross, R. at 18–19.

[36] Bothfeld, R. at 43.

fund.[37] Based on the experience of the Commission in administering the producer-settlement fund, most handlers already use electronic transfer of funds. The Commission also uses electronic transfer of funds for distribution to handlers of monies from the producer-settlement fund.[38] The Commission received no comments on this proposed rule.

III. Summary and Explanation of Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-order Price Regulation can become effective. Each required finding is discussed below.

a. Whether the Public Interest Will Be Served by the Amendments to the Over-Order Price Regulation

The first finding considers whether the amendments to the Compact Over-order Price Regulation serves the public interest. The Commission determines that the public interest is served by allowing the Commission discretion to waive entirely or set the administrative assessment at the current rate of 3.2 cents, or less, per hundredweight of fluid milk, in any given month, to support the Commission's administration and enforcement of the Over-order Price Regulation, as authorized by Article VII, Section 18(a) of the Compact.

The Commission also determines that the public interest is served by requiring all regulated milk handlers to make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000. This rule ensures the Commission's timely processing of the monthly pool, when payments are received and distributed within two business days.

b. The Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The amendments to the Compact Over-order Price Regulation adopted in this rulemaking proceeding are related to the administration of the Over-order Price Regulation and do not affect the local supply of milk or price received by producers, other than through ensuring timely receipt of payment by adoption of the electronic funds transfer rule.

[37] Ross, R. at 19–26.

[38] Ross, R. at 24–25.

c. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonable Designed To Achieve the Purposes of the Order

The Commission concludes that, for the same reasons identified in the first finding, the amendments adopted in this rulemaking proceeding are in the public interest. The Commission further concludes that the Over-order Price Regulation, as hereby amended, remains in the public interest in the manner contemplated by this finding.

d. Whether the Terms of the Proposed Amendments Are Approved by Producers

The fourth finding, requiring the determination of whether the amendment has been approved by producer referendum pursuant to Article V, Section 13 of the Compact is invoked in this instance given that the amendment will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR Part 1371.

Pursuant to 7 CFR 1371.3 and the referendum procedure certified by the Commission, a referendum was held during the period of April 16 through April 26, 1999. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during December 1998, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before April 16, 1999 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on April 26, 1999. The ballots were opened and counted in the Commission offices on April 27, 1999 under the direction and supervision of Commission Chair Mae S. Schmidle, designated "Referendum Agent."

Twelve Cooperative Associations were notified of the procedures necessary to block vote by letter dated April 9, 1999. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on April 26, 1999. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by April 20, 1999 with notice mailed to the Commission offices no later than April 22, 1999.

Notice

On April 27, 1999, the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. The ballots cast on the administrative assessment amendment and the electronic funds transfer amendment were separately reviewed and counted. A total of 3987 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers not members of any cooperative association were then counted.

The referendum agent then certified the following for the ballot on the administrative assessment amendment:

A total of 3,987 ballots were mailed to eligible producers.

A total of 3,010 ballots were returned to the Commission.

A total of 34 ballots were disqualified—late, incomplete or duplicate.

A total of 2,976 ballots were verified.

A total of 2,960 verified ballots were cast in favor of the administrative assessment amendment.

A total of 16 verified ballots were cast in opposition to the administrative assessment amendment.

Accordingly, notice is hereby provided that of the 2,976 verified ballots cast, 2,960, 99.5 %, or, a minimum of two-thirds were in the affirmative.

The referendum agent then certified the following for the ballot on the electronic funds transfer amendment:

A total of 3,987 ballots were mailed to eligible producers.

A total of 3,010 ballots were returned to the Commission.

A total of 35 ballots were disqualified—late, incomplete or duplicate.

A total of 2,975 ballots were verified.

A total of 2,967 verified ballots were cast in favor of the electronic funds transfer amendment.

A total of 8 verified ballots were cast in opposition to the electronic funds transfer amendment.

Accordingly, notice is hereby provided that of the 2,975 verified ballots cast, 2,967, 99.7%, or, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the administrative assessment and electronic funds transfer amendments are approved by producers.

IV. Good Cause for Effective Date Within 30 Day Notice Period

The Administrative Procedure Act, 5 U.S.C. 553(d), requires that the Compact Commission publish a substantive rule not less than 30 days before its effective date, except that this time period is not required for a substantive rule as otherwise provided by the agency for good cause found and published with the rule. The Commission concludes that, to the extent that the electronic funds transfer rule is a substantive rule, the Commission nevertheless finds that there is good cause for non-compliance with the 30-day advance publication provision of 553(d) and publishes this final rule on May 3, 1999, with an effective date of May 13, 1999.

In promulgating this new regulation, the Commission specifically finds good cause to set an effective date within thirty days of publication in the **Federal Register**. As described by Carmen Ross, the Commission's Regulations Administrator, the time line for the Commission to receive funds from milk handlers on the 18th of the month and make payments from the producer-settlement fund on the 20th of the month places a tremendous burden on the Commission to clear the pool in two business days.[39] If a handler makes payment by check, the funds, although received by the Commission on the 18th of the month, are not always available to be paid out on the 20th of the month.[40] The Commission disburses funds through electronic transfer and must have the funds available to make the payments out of the producer settlement fund.[41]

If the payments received from handlers by check exceed the Commission's reserve amount in the producer-settlement account, the Commission can uniformly reduce payments back to handlers or establish a line of credit with the bank.[42] As Mr. Ross stated in his testimony: "Reducing payments to the handlers would create havoc since all handlers would have already included the anticipated amount due from the Commission on their payroll and handlers would face a shortage of funds."[43] Alternatively, either the producer-settlement fund or the Commission administrative fund would have to incur the cost of establishing a line of credit.[44] Based on the price announcement on March 5, 1999 for April milk, the Commission will be faced with the possibility of confronting this problem during the pool to be run on May 18 through 20. In order to ensure timely receipt of available funds to the producer-settlement fund, and the timely distribution from that fund, the Commission finds good cause, to the extent necessary, to set an effective date of this new regulation of May 13, 1999.

The Commission determines that, in promulgating the electronic funds transfer rule, compliance with the 30-day waiting period, in this instance, is excused for three separate reasons: it is (1) impracticable, (2) unnecessary, and (3) contrary to the public interest. *See, e.g., Service Employees Intern Union, Local 102* v. *County of San Diego,* 60 F.3rd 1346 (9th Cir. 1994) (good cause exemption to § 553(d) includes situations where compliance is impracticable, unnecessary, or contrary to the public interest); *Buschmann* v. *Schweiker,* 676 F. 2d 352 (9th Cir. 1982) (same).

1. It would be impracticable to provide the thirty-day interval because, based on the April price of milk announced by the Federal Market Administrator on March 5, 1999, the Commission will run its largest pool ever on May 18 through 20, and the anticipated over-order obligation of several handlers will exceed the Commission's reserve fund. The Commission must have access to the handlers' payments by May 20 in order to distribute the funds for payment to producers. Although the Commission began this proceeding by published notice on January 28, 1999, and voted to adopt the rule on April 7, 1999, Article V, Section 21 requires the Commission to conduct a producer referendum before issuing the final rule. Based on the Commission's producer referendum procedure, the earliest publication date is May 3, 1999. Therefore, the thirty-day notice interval is impracticable and compliance with that rule would impair the Commission's ability to clear the pool on May 20, 1999.

2. The full thirty-day post-publication notice period is unnecessary because the Commission provided actual notice, by certified mail, return receipt, to all affected handlers no later than April 13, 1999.

3. In this instance, the full thirty-day notice requirement is contrary to the public interest. Based on the anticipated volume of milk in the pool to be run on May 18 through 20, several handlers will owe sums in excess of the reserve balance in the producer-settlement fund. If just one of those handlers makes payment by check that does not clear by May 20, the Commission will be forced to uniformly reduce payments out of the producer-settlement fund to all handlers, thereby interfering with those handlers already prepared payments to producers. The public interest requires that producers receive their payments in a timely manner. Most of the handlers already make payment by electronic funds transfer, and the Commission disburses funds by electronic transfer. This rule will only affect a few handlers, but failure to implement this rule prior to May 18, 1999 could result in an otherwise unnecessary reduction in the producer payments to all producers supplying the New England milk market. The Commission emphasizes that it received no comments opposing promulgation of this requirement. Therefore, the Commission concludes that the thirty-day notice period is not in the public interest.

Finally, the purpose of the procedural requirement that a rule be published thirty days prior to its effective date is to permit those affected by the amendment a reasonable amount of time to prepare to take whatever action is prompted by the final rule. As noted above, all affected handlers have received actual notice of the action required by the rule in excess of thirty

[39] Ross, R. at 20.
[40] Ross, R. at 21.
[41] Ross, R. at 24–25.
[42] Ross, R. at 25.
[43] Ross, R. at 25.
[44] Ross, R. at 26.

days of the date the action is first required, May 18, 1999.

Accordingly, for all the reasons described above, the Commission concludes that the full thirty-day post-publication notice period is not required.

V. Required Findings of Fact

Pursuant to Compact Article V, Section 12, the Compact Commission hereby finds:

1. That the public interest continues to be served by establishment of minimum milk prices to dairy farmers under Article IV, as amended to: (1) permit the Commission discretion, in any given month, to waive entirely or to set the rate of the administrative assessment at the current rate of 3.2 cents, or less, per hundredweight of fluid milk; and (2) require handlers make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000.

2. That the previously established level price of $16.94 (Zone 1) to dairy farmers under Article IV, is unaffected by these amendments, and will continue to assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

3. That the major provisions of the order, other than those fixing minimum milk prices, are and continue to be in the public interest and are reasonably designed to achieve the purposes of the order.

4. That the terms of the proposed amendments are approved by producers pursuant to a producer referendum required by Article V, Section 13.

List of Subjects in 7 CFR Parts 1307 and 1308

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR parts 1307 and 1308 as follows:

PART 1307—PAYMENTS FOR MILK

1. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

§ 1307.4 [Redesignated]

2. Section 1307.4 is redesignated as § 1307.5.

3. A new § 1307.4 is added to read as follows:

§ 1307.4 Method of payment.

If the combined total of the handler's producer-settlement fund debit for the month as determined under § 1307.2(a) and the handler's obligation for the month as determined under § 1308.1 of this chapter is greater than $25,000, then the handler must make payment to the compact commission by electronic transfer of funds on or before the 18th day after the end of the month.

PART 1308—ADMINISTRATIVE ASSESSMENT

1. The authority citation for part 1308 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1308.1 is amended by revising the introductory text to read as follows:

§ 1308.1 Assessment for pricing regulations administration.

On or before the 18th day after the end of the month, each handler shall pay to the compact commission his pro rata share of the expense of administration of this pricing regulation. The payment shall be at the rate of 3.2 cents per hundredweight. The compact commission may waive, or set the rate at an amount less than 3.2 cents, pursuant to § 1308.2. The payment shall apply to:

* * * * *

3. A new § 1308.2 is added to read as follows:

§ 1308.2 Method to waive or change the administrative assessment.

The compact commission may waive or change the assessment for pricing regulation administration to maintain the operating reserve in the range of 80% to 120% of four months operating expenses, as determined in the budget approved by the compact commission. The compact commission will announce, pursuant to § 1305.2 of this chapter, the waiver or change in rate of assessment.

Dated: April 27, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–10967 Filed 4–30–99; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–3]

Amendment of Class E Airspace; Toccoa, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the spelling of the name of the municipality and the abbreviation of the navigation aid reference point in the airspace description of a final rule that was published in the **Federal Register** on April 5, 1999, (64 FR 16343), Airspace Docket No. 99–ASO–3.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr05ap99–5, Airspace Docket No. 99–ASO–3, published on April 5, 1999, (64 FR 16343), revised the description of the Class E airspace area at Toccoa, GA. Errors were discovered in the spelling of the municipality and the abbreviation of the navigation aid reference point in the airspace description. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the municipality spelling and the abbreviation of the navigation aid reference point in the airspace description for the Class E airspace area at Toccoa, GA, as published in the **Federal Register** on April 5, 1999, (64 FR 16343), (Federal Register Document DOCID: fr05ap99–5), page 16343, third column, lines 3 and 16 from the bottom, are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO GA E Toccoa, GA [Corrected]

By removing "Toccoca" and substituting "Toccoa" and by removing "VOR" and substituting "VORTAC"

* * * * *

Issued in College Park, Georgia, on April 15, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–10442 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by PennField Oil Co. The supplemental NADA provides for a revised withdrawal period of 1-day following feeding of Type B and Type C chlortetracycle feeds to cattle.

EFFECTIVE DATE: May 3, 1999

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: PennField Oil Co., 14040 Industrial Rd., Omaha, NE 68144, is the sponsor of NADA 138–935 that provides for feeding Type B and Type C chlortetracycline medicated feeds to poultry cattle, swine, and sheep. The firm has filed a supplemental NADA that provides for a revised withdrawal period of 1-day in cattle. The supplemental NADA is approved as of March 24, 1999, and the regulations are amended in 21 CFR 558.128 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.128 [Amended]

2. Section 558.128 *Chlortetracycline* is amended in the table in paragraph (d)(1) in entries (xi) and (xvii) by revising the entry under the "Limitations" column, and in entry (xii) by revising the entry under the "Indications for use" column to read as follows:

(d)(1) * * *

Chlortetracycline amount	Combination	Indications for use	Limitations	Sponsor
* *	*	*	* *	*
(xi) * * *	* * *	* * *	Withdraw 48 h prior to slaughter. For sponsor 000004 zero withdrawal time. For sponsor 053389 1 d withdrawal time.	* * *
(xii) * * *	* * *	1. Calves, beef and nonlactating dairy cattle; treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline. For sponsor 053389 1 d withdrawal time. 2. * * *	* * *	* * *
* *	*	*	* *	*
(xvii) * * *	* * *	* * *	Withdraw 48 h prior to slaughter. For sponsor 000004 zero withdrawal time. For sponsor 053389 1 d withdrawal time.	* * *
* *	*	*	* *	*

* * * * *

Dated: April 22, 1999.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–10983 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–045–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed deletions, revisions, and addition of regulations concerning air pollution control plans; reclamation plans: general requirements; air resources protection; stabilization of surface areas; and coal processing plants: performance standards. Texas intends to bring its regulations into alignment with Federal regulations that were revised in 1983.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated January 28, 1999 (Administrative Record No. TX–647), Texas sent us an amendment to its program under SMCRA. The amendment included changes to the Texas Administrative Code (TAC) made at Texas' own initiative.

We announced receipt of the amendment in the February 12, 1999 **Federal Register** (64 FR 7145). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on March 15, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. Regulations Deleted From Texas' Program

1. Sections 12.379 and 12.546, Air Resources Protection (Surface and Underground Mining, Respectively)

Texas proposed to delete the above regulations. The Federal counterparts to these State regulations were previously found at 30 CFR 816.95 and 817.95 for surface and underground mining, respectively. We deleted these Federal counterpart regulations from our own regulations. See the **Federal Register** dated January 10, 1983 (48 FR 1163). Therefore, we are approving the deletion of the above Texas regulations.

2. Sections 12.389 and 12.554, Regrading or Stabilizing Rills and Gullies (Surface and Underground Mining, Respectively)

Texas proposed to delete the above regulations. The Federal counterparts to these State regulations were previously found at 30 CFR 816.106 and 817.106 for surface and underground mining, respectively. We deleted these Federal counterpart regulations from our own regulations. See the **Federal Register** dated January 10, 1983 (48 FR 1163). Therefore, we are approving the deletion of the above Texas regulations.

B. Revisions to Texas' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation (TAC)	Federal counterpart regulation (30 CFR)
Air pollution control plan	Sections 12.143(a)(2), (b)(1) and (b)(2); 12.199(2).	780.15(a)(2), (b)(1) and (b)(2); 784.26(b).
Stabilization of surface areas	Sections 12.389 and 12.554	816.95 and 817.95.
Coal processing plants: performance standards.	Section 12.651(9)	827.12(j).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

C. Revisions to Texas' Regulations That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Sections 12.145 and 12.187, Reclamation Plan: General Requirements (Surface and Underground Mining, Respectively) [30 CFR 780.18(a)(3) and 784.13(b)(3)]

Texas proposed to update and change one of the reference citation titles in paragraph (b)(3) from "Regrading or Stabilizing Rills and Gullies" to "Stabilization of Surface Areas." We are approving this change because it is not inconsistent with our Federal regulations at 30 CFR 780.18(a)(3) and 784.13(b)(3).

2. Section 12.651, Coal Processing Plants: Performance Standards

Texas proposed to update and change one of the reference citation titles in paragraph (13) from "Regrading or Stabilizing Rills and Gullies" to "Stabilization of Surface Areas." We are approving this change because it is not inconsistent with our Federal regulations at 30 CFR 827.12(1).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. In a letter dated March 12, 1999 (Administrative Record No. TX–647.07), Texas Utilities Services, Inc. states that it strongly supports the proposed amendments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–647.03). In a letter dated February 12, 1999 (Administrative Record No. TX–647.05), the U.S. Army Corps of Engineers responded that it found the amendment satisfactory. In a letter dated February 22, 1999 (Administrative Record No. TX–647.06), the U.S. Department of Agricultural Natural Resources Conservation Service responded that it had no comments pertaining to the revised regulations.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX–647.01), The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 2, 1999, we requested comments on Texas' amendment (Administrative Record No. TX–647.02), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Texas on January 28, 1999. We approve the regulations that Texas proposed with the provisions that they be published in identical form to the regulations sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 943, which codify decisions concerning the Texas program. We are making this final rule effective immediately to speed the State program amendment process and to encourage Texas to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * * * *
January 28, 1999	May 3, 1999	Sections 12.143(a)(2), (b)(1) and (b)(2); .145(b)(3); .187(b)(3); .199(2); .379; .389; .546; .554; and .651(9) and (13).

[FR Doc. 99–11034 Filed 4–30–99; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–110–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment changes the Virginia Coal Surface Mining Control and Reclamation Act to add "letter of credit" as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act. The amendment is intended to revise the State program to be consistent with the Federal regulations.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated July 31, 1997, (Administrative Record Number VA–921), the Virginia Department of Mines, Minerals and Energy (DMME) stated that the Virginia legislature has amended, effective July 1, 1997, the Virginia Coal Surface Mining Control and Reclamation Act at Section 45.1–241(C). The amendment adds "letter of credit" as an acceptable form of collateral bond that the DMME may accept to satisfy the performance bonding requirements of the Virginia Act.

We announced receipt of the proposed amendment in the August 25, 1997, **Federal Register** (62 FR 44924), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 24, 1997. No one requested to speak at a public hearing, so no hearing was held.

During our review of the amendment, we identified concerns with the language of the amendment. We notified Virginia of our concerns on October 20, 1997 (Administrative Record Number VA–932). Virginia responded to our questions by letter dated October 23, 1997 (Administrative Record Number VA–933).

We reviewed the State's comments and responded to them by letter dated November 26, 1997 (Administrative Record Number VA–942). In our response, we asked the State to provide an attorney general's opinion that cites the statutory and/or regulatory basis for the interpretation submitted by the DMME in its October 23, 1997, letter. The DMME obtained an opinion from the Virginia Office of the Attorney General by Memorandum dated October 27, 1998 (Administrative Record Number VA–958). By letter dated June 4, 1998 (Administrative Record Number VA–956) Virginia deleted two sentences that were proposed in the July 31, 1997 submission. In a separate request we asked the DMME whether its use of the term "financial institution authorized to do business in the United States," at 45.1–241(C), is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which states that letters of credit may be issued only by a bank organized or authorized to do business in the United States. The DMME responded by letter dated February 23, 1999 (Administrative Record Number VA–972).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program.

As amended, Section 45.1–241(C) of the Virginia Coal Surface Mining Control and Reclamation Act provides for letters of credit as follows.

> The Director may also accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, unconditional, shall be payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace the bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until acceptable bond is posted. The letter of credit shall be provided on the form and format established

by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

After we reviewed the amendment, we made the following comments to the DMME. First, for letters of credit, there is no requirement that there be an indemnity agreement for a sum certain executed by the permittee, as is required by the Federal regulations at 30 CFR 800.5(b). Second, there is no requirement that when a letter of credit is used as security in areas requiring continuous bond coverage it shall be forfeited and shall be collected by the regulatory authority if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date as is required by 30 CFR 800.21(b)(2).

The DMME responded to our comments by letter dated October 23, 1997 (Administrative Record Number VA–933). The DMME explained their interpretation of the proposed amendment, how the amendment would be implemented, and why they believe the amendment is consistent with the Federal standards. The federal definition of "collateral bond" at 30 CFR 800.5(b) states that it is "an indemnity agreement in a sum certain executed by the permittee as principal" which then lists types of collateral, that includes irrevocable letters of credit. Virginia's proposed statutory amendment does not state that a letter of credit is a collateral bond nor that the permittee will execute an indemnity agreement. Virginia's regulatory definition of "collateral bond" at 4 VAC 25–130–700.5 also requires an indemnity agreement in a sum certain executed by the permittee which then lists types of collateral but it does not include irrevocable letters of credit. The DMME stated that the Virginia definition of "collateral bond" (at 4 VAC 25–130–700.5) and the Federal definition at 30 CFR 800.5 differ only to the extent the Virginia definition does not specifically list "letter of credit" as a form of collateral bond, while the Federal definition does. The DMME explained that it omitted references to "letters of credit" from the rule because authority to accept a letter of credit as a performance bond did not previously exist under the enabling legislation (45.1–241). Virginia obtained a revision to 45.1–241(C) in mid-1997. The Virginia Act now provides for the acceptances of "letters of credit" as a performance bond. The DMME stated that it believes that a "letter of credit" is a type of collateral bond even though it is not specifically listed as such in the Virginia rule at VAC 25–130.700.5. The DMME further stated that since a "letter of credit" is considered to be a collateral bond, the DMME interprets the standards for collateral bonds to be applicable. The DMME stated, therefore, that it intends that any "letter of credit" accepted as a performance bond will meet the standards for "collateral bonds" and will be an indemnity agreement in a sum certain executed by the permittee and deposited with the DMME as is required for collateral bonds (Administrative Record No. VA–933). Also, Virginia's proposed amendment to its statute and its existing regulation concerning collateral bonds at 4 VAC 25–130–800.21 lacks a counterpart to the Federal requirements concerning collateral bonds at 30 CFR 800.21(b)(2). Section 800.21(b)(2) requires that thirty days before the letter of credit expires that it be replaced with another bond or be forfeited. The DMME explained that the enabling statutory revision to 45.1–241(C) does provide DMME with the authority to collect the proceeds from a letter of credit should the term of the letter of credit expire before the bond is replaced or released. Section 45.1–241(C) specifies that the letter of credit "shall be payable to the Department upon demand." The DMME stated that it will interpret the phrase "shall be payable to the Department upon demand" as Virginia's "intent to demand payment at least 30 days prior to an expiration date of such a letter of credit." (Admin. record no. VA–933).

We reviewed the DMME's interpretation, and in our response, we asked the State to provide an attorney general's opinion that cites the statutory and/or regulatory basis for the interpretation submitted by the DMME in its October 23, 1997, letter. By memorandum dated October 27, 1998 (Administrative Record Number VA–958) the Virginia Attorney General's Office provided the DMME with its opinion that the provisions of Section 45.1–241.C, Code of Virginia, are consistent with the requirements of the Federal surface mining program. That opinion further states that Section 45.1–241.C may be implemented by the Virginia Division of Mined Land Reclamation (DMLR) in a manner consistent with both the Federal and Virginia program bonding requirements under the authority of Section 45.1–230, Code of Virginia.

Finally, Virginia's statute states that a letter of credit may be accepted on certain designated funds issued by a financial institution authorized to do business in the United States. We asked the DMME whether its use of the term "financial institution authorized to do business in the United States," at 45.1–241(C), is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which states that letters of credit may be issued only by a bank organized or authorized to do business in the United States. In its response, the DMME stated that its intention is to apply all the criteria specified at subsection (b), including (b)(1).

We find that the amendments to Section 45.1–241(C) concerning letters of credit are not inconsistent with SMCRA and can be approved. We are making this finding and approving the amendment to (1) the extent that Virginia will implement this amendment as it stated in its letters dated October 23, 1997, and February 23, 1999, and (2) to the extent that a bank issues letters of credit. In addition, and as we discussed above, the Virginia program regulations lack certain counterparts to the Federal provisions concerning letters of credit at 30 CFR 800.5(b)(4) and 800.21(b)(2). Specifically, Virginia's definition of "collateral bond" at 4 VAC 25–130–700.5 lacks a counterpart to the letter of credit provision in the Federal definition of "collateral bond" at 30 CFR 800.5(b)(4). Also, Virginia's regulation concerning collateral bonds at 4 VAC 25–130–800.21 lacks a counterpart to the Federal requirements concerning collateral bonds at 30 CFR 800.21(b)(2). Lastly, Virginia's use of the term "financial institution" needs to be amended or defined so that letters of credit are only issued by banks organized or authorized to transact business in the United States as required in 30 CFR 800.5(b)(4) and 800.21(b)(2). Therefore, we are requiring that the Virginia program regulations be further amended, or the Virginia program be otherwise amended, to be no less effective than the Federal regulations concerning letters of credit at 30 CFR 800.5(b)(4) and 800.21(b)(2).

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(I), comments were solicited from various interested Federal agencies. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded (Administrative Record Number VA–924) and recommended that the proposed language be denied. MSHA stated that the proposed changes do not appear to offer the financial surety of the present system. MSHA stated that a letter of credit does not reflect the financial solvency sufficient for the authorization of surety and could be obtained under inflated values of

property, equipment, or other collateral. Completion of reclamation operations after mining is completed or reimbursement to the State, if the bond is forfeited, seems more a positive objective under the present system, MSHA stated.

The Director does not concur with the concern. The Director notes that the Federal regulations at 30 CFR 800.5(b) and 800.21(b)(2) authorized the use of letters of credit as a form of collateral bond to meet the performance bond requirements of 30 CFR 800.11. If a letter of credit bond is forfeited, the bank must pay the bond amount to the regulatory authority.

The U.S. Fish and Wildlife Service (USFWS) responded (Administrative Record Number VA–923). USFWS stated that the proposed amendment is not likely to adversely affect Federally listed species or designated critical habitat in Virginia.

Public Comments

The Virginia Department of Historic Resources commented and stated that it finds that the amendments submitted by the DMME will not affect historic properties.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from EPA. The EPA did not provide any comments.

V. Director's Decision

Based on the findings above we are approving Virginia's amendment concerning letters of credit as submitted by letter dated July 31, 1997, amended by letter dated June 4, 1998, and clarified by letters dated October 23, 1997 and February 23, 1999, and Memorandum dated October 27, 1998. We are approving this amendment to the extent that Virginia will implement this amendment as it stated in its letters dated October 23, 1997, and February 23, 1999, and to the extent that a bank issues letters of credit. In addition, we are requiring that the Virginia program regulations be further amended, or the Virginia program be otherwise amended, to be no less effective than the Federal regulations at 30 CFR 800.5(b), and 30 CFR 800.21(b)(2) concerning letters of credit.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
July 31, 1997	May 3, 1999	Code of Virginia at § 45.1–241(C) concerning letter of credit.

3. Section 946.16 is amended by amending paragraph (a) to read as follows:

Section 946.16 Required regulatory program amendments.

* * * * *

(a) By July 2, 1999, Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise the Virginia program regulations, or otherwise amend the Virginia program, to be no less effective than the Federal regulations at 30 CFR 800.5(b), and 30 CFR 800.21(b)(2) concerning letters of credit.

* * * * *

[FR Doc. 99–11035 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–031]

Drawbridge Operation Regulations: Hutchinson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The District Commander, First Coast Guard District has issued a temporary deviation from the Drawbridge Operation Regulations governing the operation of the Pelham Parkway Bridge, mile 0.4, across the Hutchinson River in New York City, New York. This deviation from the regulations authorizes the bridge owner, the New York City Department of Transportation (NYCDOT), to not open the bridge for vessel traffic from March 28, 1999 through May 22, 1999, Monday through Friday, between 7 a.m. and 5 p.m., daily. This action is necessary to facilitate needed repairs to the bridge.

DATES: This deviation is effective from March 28, 1999 through May 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Bridge Management Specialist, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Pelham Parkway Bridge, mile 0.4, across the Hutchinson River has a vertical clearance of 13 feet at mean high water and 20 feet at mean low water in the closed position. Vessels that can pass under the bridge without an opening may do so at all times.

The NYCDOT requested a temporary deviation from the operating regulations for the Pelham Parkway Bridge in order to facilitate necessary repairs to the bridge. This work is essential for public safety and continued operation of the bridge.

This deviation from the normal operating regulations is authorized under 33 CFR § 117.35.

Dated: April 15, 1999.

R. M. Larrabee,

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

[FR Doc. 99–10993 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 500, 501, 503, 504, 506, 507, 508, 540 and 582

[Docket No. 99–09]

Amendments to Regulations Governing Employee Ethical Conduct Standards, the Federal Maritime Commission—General, Public Information, Environmental Policy Analysis, Monetary Penalty Inflation Adjustments, Nondiscrimination on the Basis of Handicap, Passenger Vessel Financial Responsibility, and Certification of Policies and Efforts To Combat Rebating

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations relating to agency organization, public information, procedures for environmental policy analysis, civil monetary penalty inflation adjustments, nondiscrimination on the basis of handicap, passenger vessel operations, and anti-rebating certifications, and is redesignating its regulation relating to employee ethical conduct standards, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

DATES: This rule is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998 ("OSRA"), Public Law 105–258, 112 Stat. 1902, amends the Shipping Act of 1984 ("1984 Act") in several areas. The Commission's rules at 46 CFR Parts 500, 501, 503, 504, 506, and 507 address employee ethical conduct standards, the organization of the Commission, public information, environmental policy analysis, civil monetary inflation adjustment, and nondiscrimination on the basis of handicap. The Commission's rules at 46 CFR Part 540 address passenger vessel financial responsibility, and the rules at 46 CFR Part 582 address anti-rebating certifications. The Commission now amends these rules both to make certain changes required by OSRA and to update, redesignate, and clarify the rules more generally. Because the changes made in this proceeding are routine and ministerial in nature, this rulemaking is published as a final rulemaking as to which no notice and comment period is necessary.

Redesignation of Former 46 CFR Part 500

The Commission's regulations at 46 CFR part 500 address employee ethical conduct standards. The rule redesignates former part 500 as part 508.

Amendments to 46 CFR Part 501

OSRA amended Reorganization Plan No. 7 of 1961, 75 Stat. 840, to change the Commission's quorum requirements. Accordingly, the Commission has determined to amend 46 CFR 501.2(d) to track the new statutory language.

Amendments to 46 CFR Part 503

The Commission's regulations at 46 CFR part 503 address access to public information. OSRA's elimination of tariff filing with the Commission has rendered unnecessary those portions of 46 CFR 514 relating to fees for the provision of copies of tariffs. See 46 CFR 514.21. While tariffs will no longer be filed with the Commission, the

Commission has determined to provide public access to historical tariff records. Accordingly, we have removed from part 503 the references to part 514 involving public access to information, but have included reference to public access to historical ATFI records. We have also added, at 46 CFR 503.24, two entries to the list of information available over the internet, to include a list of the location of common carrier and conference tariffs and marine terminal operator schedules, as well as a list of ocean transportation intermediaries who have provided the Commission with evidence of their financial responsibility.

Also, Subpart F—Information Security Program of Part 503, is revised to implement changes required by Executive Order 12958 of April 17, 1995, "Classified National Security Information" and Executive Order 12968 of August 2, 1995 "Access to Classified Information." Changes are primarily to remove references to Executive Order 12356 of April 6, 1982, which was revoked by Executive Order 12958, and to keep pace with the requirements of the National Archives and Records Administration, 32 CFR Part 2001, made pursuant to Executive Order 12958.

Finally, in section 503.71(c), we have amended the Commission's definition of the term "meeting," to reflect changes in the Commission's quorum rules prescribed by OSRA. Several other changes have been made to Part 503 that are of a purely ministerial nature.

Amendments to 46 CFR Part 504

This part addresses the Commission's procedures for environmental policy analysis. We have removed references to the Shipping Act, 1916, in the Authority citation, in 504.1, and in 504.2, because that Act, to the extent it involved the Commission's jurisdiction, has been repealed. We have redefined "marine terminal operator" in 504.2 pursuant to changes required by OSRA. We have updated the Commission's address in 504.3. We have deleted categorical exclusions (a)(5) and (a)(7) in 504.4 pursuant to OSRA, and amended (a)(6) to reflect the recently proposed redesignation of part 514 as part 520. Throughout the part, we removed references to the Office of Environmental Analysis, which no longer exists, and have indicated that for the purposes of part 504, the term "Commission" includes any office or bureau to which the Commission may delegate its environmental policy analysis responsibilities.

Amendments to 46 CFR Part 506

This part addresses civil monetary penalty inflation adjustments. Pursuant to OSRA, we removed the penalty for failure to pay ATFI fees, and removed the penalty for failure to file an anti-rebate certification. We also added the suspension of service contracts as a penalty under the Merchant Marine Act of 1920 as amended by OSRA.

Amendment to 46 CFR Part 507

This part addresses the Commission's enforcement of nondiscrimination on the basis of handicap. Section 507.170(b) is amended to correct a citation error. Section 507.170(c) is updated to reflect the Commission's current street address.

Amendments to 46 CFR Part 540

This part addresses the financial responsibility of passenger vessel operators. The Commission has decided to clarify the regulation by renaming it "Passenger Vessel Financial Responsibility," to replace its old title, "Security for the Protection of the Public." The Commission has also removed an outdated reference in the authority section of the rule to the Shipping Act, 1916, which, to the extent it involved the Commission's jurisdiction, has been repealed.

Removal of 46 CFR Part 582

This part addresses the requirements that govern the submission of anti-rebating certifications by common carriers and other entities in the foreign commerce of the United States. Such certifications were based upon the statutory authority of section 15(b) of the Shipping Act of 1984. However, OSRA has eliminated section 15(b); accordingly, the Commission has determined to remove 46 CFR part 582 from its regulations.

List of Subjects

46 CFR Parts 500 and 508

Conflicts of interest.

46 CFR Part 501

Authority delegations, Organization and functions.

46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine act.

46 CFR Part 504

Environmental impact statements, Reporting and recordkeeping requirements.

46 CFR Part 506

Fines and penalties.

46 CFR Part 507

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 582

Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission amends 46 CFR parts 500, 501, 503, 504, 506, 507, 508, 540, and 582 as follows:

PART 500—EMPLOYEE ETHICAL CONDUCT STANDARDS AND FINANCIAL DISCLOSURE REGULATIONS

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 553; 5 U.S.C. 7301; 46 U.S.C. app. 1716

2. Redesignate part 500 as part 508.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub.L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

2. Revise § 501.2(d) to read as follows:

§ 501.2 General.

* * * * *

(d) A vacancy or vacancies in the Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members of the Commission is required to dispose of any matter before the Commission. For purposes of holding a formal meeting for the transaction of the business of the Commission, the actual presence of two Commissioners shall be sufficient. Proxy votes of absent members shall be permitted.

PART 503—PUBLIC INFORMATION

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

2. Remove § 503.11(b) and (c), redesignate paragraph (a) introductory text as the section's introductory text, redesignate paragraphs (a)(1) through (a)(5) as paragraphs (a) through (e), and revise the introductory text to read as follows:

§ 503.11 Materials to be published.

The Commission shall publish the following materials in the **Federal Register** for the guidance of the public:

* * * * *

3. Revise § 503.22(b) to read as follows:

§ 503.22 Records available at the Office of the Secretary.

* * * * *

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part.

4. In § 503.23, remove paragraph (a)(3) and redesignate paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4), and revise redesignated paragraph (a)(3) and paragraph (b) to read as follows:

§ 503.23 Records available upon written request.

(a) * * *

(3) Tariff data filed in the Commission's ATFI system prior to May 1, 1999.

* * * * *

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part.

5. In § 503.24, revise paragraph (b)(5)(iii), revise paragraph (b)(10), and add paragraphs (b)(11) and (b)(12) to read as follows:

§ 503.24 Information available via the internet.

* * * * *

(b) * * *

(5) * * *

(iii) Access to statements of policy and interpretations as published in part 545 of this chapter; and

* * * * *

(10) Privacy Act information;

(11) Lists of the location of all common carrier and conference tariffs and publicly available terminal schedules of marine terminal operators; and

(12) A list of licensed ocean transportation intermediaries which have furnished the Commission with evidence of financial responsibility.

* * * * *

6. Revise § 503.51 to read as follows:

§ 503.51 Definitions.

(a) *Access* means the ability or opportunity to gain knowledge of classified information.

(b) *Classification* means the act or process by which information is determined to be classified information.

(c) *Classification guide* means a documentary form of instruction or source that prescribes the classification of specific information issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(d) *Classified national security information (hereafter "classified information")* means information that has been determined pursuant to Executive Order 12958 or any predecessor order in force to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(e) *Commission* means the Federal Maritime Commission.

(f) *Declassification* means the authorized change in the status of information from classified information to unclassified information.

(g) *Derivative classification* means the incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(h) *Downgrading* means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(i) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) information received and treated as "Foreign Government Information" under the terms of Executive Order 12958 or any predecessor order.

(j) *Mandatory declassification review* means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.6 of Executive Order 12958.

(k) *Multiple sources* means two or more source documents, classification guides, or a combination of both.

(l) *National security* means the national defense or foreign relations of the United States.

(m) *Need to know* means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(n) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(o) *Original classification authority* means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(p) *Self-inspection* means the internal review and evaluation of individual Commission activities and the Commission as a whole with respect to the implementation of the program established under Executive Order 12958 and its implementing directives.

(q) *Senior agency official ("security officer")* means the official designated by the Chairman under section 5.6 of Executive Order 12958 to direct and administer the Commission's program under which classified information is safeguarded.

(r) *Source document* means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(s) *Unauthorized disclosure* means a communication or physical transfer of classified information to an unauthorized recipient.

7. Revise § 503.52 to read as follows:

§ 503.52 Senior Agency Official.

The Chairman of the Commission shall designate a senior agency official to be the Security Officer for the Commission, who shall be responsible for directing, administering and

reporting on the Commission's information security program, which includes oversight (self-inspection) and security information programs to ensure effective implementation of Executive Orders 12958 and 12968, and 32 CFR part 2001.

8. Amend § 503.53 to revise paragraphs (a) and (d) to read as follows:

§ 503.53 Oversight Committee.

* * * * *

(a) Establish a Commission security education program to familiarize all personnel who have or may have access to classified information with the provisions of Executive Order 12958 and directives of the Information Security Oversight Office. The program shall include initial, refresher, and termination briefings;

* * * * *

(d) Recommend appropriate administrative action to correct abuse or violations of any provision of Executive Order 12958; and

* * * * *

9. Amend § 503.54 to revise paragraphs (a) and (b) to read as follows:

§ 503.54 Original classification.

(a) No Commission Member or employee has the authority to originally classify information.

(b) If a Commission Member or employee develops information that appears to require classification, or receives any foreign government information as defined in section 1.1(d) of Executive Order 12958, the Member or employee shall immediately notify the Security Officer and appropriately protect the information.

* * * * *

10. Amend § 503.55 to revise paragraphs (a), (b) and (c) and delete paragraph (d) to read as follows:

§ 503.55 Derivative classification.

(a) In accordance with Part 2 of Executive Order 12958 and directives of the Information Security Oversight Office, the incorporation, paraphrasing, restating or generation in new form of information that is already classified, and the marking of newly developed material consistent with the classification markings that apply to the source information, is derivative classification.

(1) Derivative classification includes the classification of information based on classification guidance.

(2) The duplication or reproduction of existing classified information is not derivative classification.

(b) Members or employees applying derivative classification markings shall:

(1) Observe and respect original classification decisions; and

(2) Carry forward to any newly created documents the pertinent classification markings.

(3) For information derivatively classified based on multiple sources, the Member or employee shall carry forward:

(i) The date or event for declassification that corresponds to the longest period of classification among the sources; and

(ii) A listing of these sources on or attached to the official file or record copy.

(c) Documents classified derivatively shall bear all markings prescribed by 32 CFR 2001.20 through 2001.23 and shall otherwise conform to the requirements of 32 CFR 2001.20 through 2001.23.

11. Amend § 503.56 to revise the section heading and the first sentence of paragraph (a) to read as follows:

§ 503.56 General declassification and downgrading policy.

(a) The Commission exercises declassification and downgrading authority in accordance with section 3.1 of Executive Order 12958, only over that information originally classified by the Commission under previous Executive orders. * * *

* * * * *

12. Amend § 503.57 to revise paragraphs (a) introductory text, (a)(1), (c), (e), and (i), and add paragraph (j), to read as follows:

§ 503.57 Mandatory review for declassification.

(a) Information originally classified by the Commission but which has not been automatically declassified shall be subject to a review for declassification by the Commission, if:

(1) A declassification request is made; and

* * * * *

(c) If the request requires the provision of services by the Commission, fair and equitable fees may be charged pursuant to 31 U.S.C. 9701.

* * * * *

(e) If the information was originally classified by the Commission, the Commission Security Officer shall forward the request to the Chairman of the Commission for a determination of declassification. If the information was originated by another agency, the Commission Security Officer shall refer the review and the pertinent records to the originating agency. The final determination will be issued within 180 days of the receipt of the request.

* * * * *

(i) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of Executive Order 12958, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under Executive Order 12958.

(j) When a request has been submitted both under mandatory review and the Freedom of Information Act (FOIA), the requester must elect one process or the other. If the requester fails to so elect, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory review.

* * * * *

13. Amend § 503.58 to revise paragraph (c) to read as follows:

§ 503.58 Appeals of denials of mandatory declassification review requests.

* * * * *

(c) In accordance with section 5.4 of Executive Order 12598 and 32 CFR 2001.54, within 60 days of such issuance, the requester may appeal a final determination of the Commission under paragraph (b) of this section to the Interagency Security Classification Appeals Panel. The appeal should be addressed to, Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Classification Challenge Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, N.W., Room 5W, Washington DC 20408.

14. Revise § 503.59 paragraphs (d), (e) introductory text, (g)(2), (h), and (q)(1),(2) and (3), to read as follows:

§ 503.59 Safeguarding classified information.

* * * * *

(d) Classified information shall be made available to a recipient only when the authorized holder of the classified information has determined that:

(1) The prospective recipient has a valid security clearance at least commensurate with the level of classification of the information; and

(2) The prospective recipient requires access to the information in order to perform or assist in a lawful and authorized governmental function.

(e) The requirement in paragraph (d)(2) of this section, that access to classified information may be granted only to individuals who have a need-to-know the information, may be waived for persons who:

* * * * *

(g)* * *

(2) To protect the classified information in accordance with the provisions of Executive Order 12958; and

* * * * *

(h) Except as authorized by the originating agency, or otherwise provided for by directives issued by the President, the Commission shall not disclose information originally classified by another agency.

* * * * *

(q)* * *

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under Executive Order 12958 or predecessor orders in force;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 12958 or any implementing directive; or

(3) Knowingly and willfully violate any other provision of Executive Order 12958 or implementing directive.

* * * * *

15. Revise § 503.71(c) introductory text to read as follows:

§ 503.71 Definitions.

* * * * *

(c) *Meeting* means the deliberations of a majority of the members serving on the agency which determine or result in the joint conduct of or disposition of official agency business, but does not include:

* * * * *

16. Revise § 503.86(b) to read as follows:

§ 503.86 Public access to records.

* * * * *

(b) Requests for access to the records described in this section shall be made in accordance with procedures described in subparts C and D of this part.

* * * * *

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

1. The authority citation for part 504 is revised to read as follows:

Authority: 5 U.S.C. 552, 553; 46 U.S.C. app. 1712 and 1716; 42 U.S.C. 4332(2)(b), and 42 U.S.C. 6362.

2. Revise § 504.1(c) to read as follows:

§ 504.1 Purpose and scope.

* * * * *

(c) Information obtained under this part is used by the Commission to assess potential environmental impacts of proposed Federal Maritime Commission actions. Compliance is voluntary but may be made mandatory by Commission order to produce the information pursuant to section 15 of the Shipping Act of 1984. The penalty for violation of a Commission order under section 13 of the Shipping Act of 1984 may not exceed $5,000 for each violation, unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation, as adjusted by § 506.4 of this chapter. (Each day of a continuing violation constitutes a separate offense.)

3. Revise § 504.2 paragraphs (a), (b), (h), and (i) to read as follows:

§ 504.2 Definitions.

(a) *Shipping Act of 1984* means the Shipping Act of 1984 (46 U.S.C. app. 1701—1720).

(b) *Common carrier* means any common carrier by water as defined in section 3 of the Shipping Act of 1984, including a conference of such carriers.

* * * * *

(h) *Marine Terminal Operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of Title 49, United States Code.

(i) *Commission* means the Federal Maritime Commission, including any office or bureau to which the Commission may delegate its environmental policy analysis responsibilities.

4. Revise § 504.3 to read as follows:

§ 504.3 General information.

(a) All comments submitted pursuant to this part shall be addressed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

(b) A list of recent Commission actions, if any, for which a finding of no significant impact has been made or for which an environmental impact statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

5. In § 504.4, remove and reserve paragraph (a)(7), revise paragraphs (a)(1), (a)(3), (a)(5), (a)(6), (a)(19), (b), and (c) to read as follows:

§ 504.4 Categorical exclusions.

(a) * * *

(1) Issuance, modification, denial and revocation of ocean transportation intermediary licenses.

(2) * * *

(3) Receipt of surety bonds submitted by ocean transportation intermediaries.

(4) * * *

(5) Receipt of service contracts.

(6) Consideration of special permission applications pursuant to part 520 of this chapter.

(7) [Reserved]

* * * * *

(19) Action taken on special docket applications pursuant to § 502.271 of this chapter.

* * * * *

(b) If interested persons allege that a categorically-excluded action will have a significant environmental effect (e.g., increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy), they shall, by written submission to the Secretary, explain in detail their reasons. The Secretary shall refer these submissions for determination by the appropriate Commission official, not later than ten (10) days after receipt, whether to prepare an environmental assessment. Upon a determination not to prepare an environmental assessment, such persons may petition the Commission for review of the decision within ten (10) days of receipt of notice of such determination.

(c) If the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, an environmental assessment shall be prepared pursuant to § 504.5.

6. Revise § 504.5(b) to read as follows:

§ 504.5 Environmental assessments.

* * * * *

(b) A notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting written comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues may be published in the **Federal Register**. Such comments must be received by the Commission no later than ten (10) days from the date of publication of the notice in the **Federal Register**.

7. Revise § 504.6 to read as follows:

§ 504.6 Finding of no significant impact.

(a) If upon completion of an environmental assessment, it is determined that a potential or proposed action will not have a significant impact on the quality of the human

environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the **Federal Register**. This document shall include the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 504.4, will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within ten (10) days from the date of publication of the notice of its availability in the **Federal Register**. The Commission shall review the petitions and either deny them or order prepared an EIS pursuant to § 504.7. The Commission shall, within ten (10) days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

8. Revise § 504.7 paragraphs (a)(1), (b)(1) and (c)(1) to read as follows:

§ 504.7 Environmental impact statements.

(a) *General.* (1) An environmental impact statement (EIS) shall be prepared when the environmental assessment indicates that a potential or proposed action may have a significant impact upon the environment of the United States or the global commons.

* * * * *

(b) *Draft environmental impact statements.* (1) A draft environmental impact statement (DEIS) will initially be prepared in accordance with 40 CFR part 1502.

* * * * *

(c) *Final environmental impact statements.* (1) After receipt of comments on the DEIS, a final environmental impact statement (FEIS) will be prepared pursuant to 40 CFR part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will be distributed in the same manner as specified in paragraph (b)(2) of this section.

* * * * *

9. Revise § 504.9 paragraphs (a) introductory text, (c), and (d) to read as follows:

§ 504.9 Information required by the Commission.

(a) Upon request, a person filing a complaint, protest, petition or agreement requesting Commission action shall submit, no later than ten (10) days from the date of the request, a statement setting forth, in detail, the impact of the requested Commission action on the quality of the human environment, if such requested action will:

* * * * *

(c) If environmental impacts, either adverse or beneficial, are alleged, they should be sufficiently identified and quantified to permit meaningful review. Individuals may contact the Secretary of the Federal Maritime Commission for informal assistance in preparing this statement. The Commission shall independently evaluate the information submitted and shall be responsible for assuring its accuracy if used by it in the preparation of an environmental assessment or EIS.

(d) In all cases, the Secretary may request every common carrier by water, or marine terminal operator, or any officer, agent or employee thereof, as well as all parties to proceedings before the Commission, to submit, within ten (10) days of such request, all material information necessary to comply with NEPA and this part. Information not produced in response to an informal request may be obtained by the Commission pursuant to section 15 of the Shipping Act of 1984.

PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

1. The authority citation for Part 506 continues to read as follows:

Authority: 28 U.S.C. 2461.

2. Revise § 506.4 (d) to read as follows:

§ 506.4 Cost of living adjustments of civil monetary penalties.

(d) *Inflation adjustment.* Maximum Civil Monetary Penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

United States Code citation	Civil monetary penalty description	Maximum penalty amount as of 10/23/96	New adjusted maximum penalty amount
46 U.S.C. app. sec. 817d	Failure to establish financial responsibility for death or injury	5,000	5,500
		200	220
46 U.S.C. app. sec. 817e	Failure to establish financial responsibility for nonperformance of transportation.	5,000	5,500
		200	220
46 U.S.C. app. sec. 876	Failure to provide required reports, etc.—Merchant Marine Act of 1920.	5,000	5,500
46 U.S.C. app. sec. 876	Adverse shipping conditions—Merchant Marine Act of 1920	1,000,000	1,100,000
46 U.S.C. app. sec. 876	Operating after tariff or service contract suspension/ Merchant Marine Act of 1920.	50,000	55,000
46 U.S.C. app. sec. 1710a	Adverse impact on US carriers by foreign shipping practices	1,000,000	1,100,000
46 U.S.C. app. sec. 1712	Operating in foreign commerce after tariff suspension	50,000	55,000
46 U.S.C. app. sec. 1712	Knowing and willful violation/Shipping Act of 1984 or Commission regulation or order.	25,000	27,500
46 U.S.C. app. sec. 1712	Violation of Shipping Act of 1984, Commission regulation or order, not knowing and willful.	5,000	5,500
31 U.S.C. sec. 3802(a)(1)	Program Fraud Civil Remedies Act/giving false statement	5,000	5,500
31 U.S.C. sec. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	5,000	5,500

PART 507—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL MARITIME COMMISSION

1. The authority citation for part 507 continues to read as follows:

Authority: 29 U.S.C. 794.

2. In § 507.170(b), remove "29 CFR part 1613" and replace with "29 CFR part 1614".

3. Revise § 507.170(c) to read as follows:

§ 507.170 Compliance Procedures.

* * * * *

(c) The Director, Bureau of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, DC 20573.

* * * * *

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

1. In part 540, revise the part heading to read as set forth above:

2. Revise the authority citation of part 540 to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; 46 U.S.C. 1716.

PART 582—[REMOVED]

Under the authority of 5 U.S.C. 553, 6 U.S.C. app. 1701, 1702, 1707, 1709, 1712, and 1714–1716, remove part 582.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–10896 Filed 4–30–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 545, and 571

[Docket No. 98–21]

Miscellaneous Amendments to Rules of Practice and Procedure; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of February 17, 1999, a final rule making corrections and changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. Inadvertently, several amendatory instructions were omitted.

DATES: Effective on May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The FMC published a final rule in the **Federal Register** of February 17, 1999 (64 FR 7804), which made corrections and changes to existing rules of practice and procedure. Inadvertently, several amendatory instructions were omitted.

In Docket No. 98–21, published on February 17, 1999 (64 FR 7804), make the following corrections:

1. On page 7807, in the first column, after the text of instruction 4(c) add the following amendatory instructions:

d. In paragraph (b)(2), revise the phrase "paragraphs (b)(5), (6) and (7)" to read "paragraphs (e), (f) and (g)."

e. In paragraph (b)(4)(iii), revise the phrase "(b)(4)(i) and (b)(4)(ii)" to read "(d)(1) and (d)(2)."

f. In paragraph (b)(5), revise the reference "(b)(4)" to read "(d)."

2. On page 7808, in the first column, revise amendatory instruction 15 to read as follows:

In § 502.61, remove "[Rule 61.]" from the end of paragraph (c) and add "[Rule 61.]" to the end of paragraph (d).

3. On page 7810, in the first column, revise amendatory instruction 39(c) to read as follows:

c. Amend redesignated paragraph (a) by removing "[Rule 144.]" and revising the last sentence to read as set forth below;

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–10899 Filed 4–30–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 551, 555, 560, 565, 585, 586, 587, and 588

[Docket No. 98–25]

Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of February 18, 1999, a final rule revising and redesignating regulations governing restrictive foreign shipping practices and controlled carriers to incorporate amendments made by the Ocean Shipping Reform Act of 1998. A filing fee was inadvertently removed in the revision process.

DATES: Effective on May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The FMC published a final rule in the **Federal Register** of February 18, 1999 (64 FR 8007), revising and redesignating regulations governing restrictive foreign shipping practices, and controlled carriers. A final rule published September 22, 1998 at 63 FR 50537, effective November 2, 1998, amended § 588.4(a) to include a filing fee for filing of petitions under part 588. In the process of revising that section for this final rule, reference to the filing fee was inadvertently omitted from redesignated § 555.4(a).

In Docket No. 98–25, published on February 18, 1999 (64 FR 8007), make the following correction. On page 8010, in the third column, at the end of § 555.4, paragraph (a), add the following sentence: "The petition shall be accompanied by remittance of a $177 filing fee."

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–10898 Filed 4–30–99; 8:45 am]

BILLING CODE 6730–01–M

Proposed Rules

Federal Register
Vol. 64, No. 84
Monday, May 3, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–63–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model 2000, 900EX, and Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dassault Model Falcon 2000 series airplanes; and certain Dassault Model 900EX, and Mystere Falcon 900 series airplanes. This proposal would require repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary; repetitive replacement of the inboard flap jackscrews with new jackscrews; repetitive measurement of the screw/nut play to detect discrepancies; and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent jamming of the flap jackscrews, which could result in the inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

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 shall 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 99–NM–63–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, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Dassault Model Falcon 2000 series airplanes. The DGAC advises that several operators of these airplanes have reported jamming of the inboard flap jackscrew during extension of the flaps while the airplanes were in the approach-to-landing phase of the flight. The same inboard flap jackscrew is installed on certain Dassault Model 900EX, and Mystere Falcon 900 series airplanes, therefore, the identified unsafe condition may also exist on these airplane models. Such jamming of the flap jackscrews, if not corrected, could result in inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair of any discrepancy. The proposal also would require repetitive replacement of the inboard flap jackscrews with new jackscrews; and repetitive measurement of the screw/nut play of the outboard and center flap jackscrews to detect discrepancies, and corrective action, if necessary. The corrective action consists of replacement of any discrepant jackscrew with a new jackscrew.

The actions would be required to be accomplished in accordance with the applicable Dassault Aviation Falcon 2000, 900EX, or Mystere Falcon 900 Airplane Maintenance Manual, and/or a

method approved by the FAA or the DGAC (or its delegated agent).

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

The FAA estimates that 159 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed operational test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational test proposed by this AD on U.S. operators is estimated to be $9,540, or $60 per airplane, per test cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed flap jackscrew replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $21,200 per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $3,447,120 or $21,680 per airplane, per replacement cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed measurement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $76,320, or $480 per airplane, per measurement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation [Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)]: Docket 99–NM–63–AD.

Applicability: All Model Falcon 2000 series airplanes; Falcon 900EX series airplanes, serial numbers 161 and subsequent; and Mystere Falcon 900 series airplanes, serial numbers 04 and subsequent; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the flap jackscrews, which could result in inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Operational Test

(a) Within 5 flight cycles after the effective date of this AD: Perform an operational test of the flap asymmetry detection system to ensure that the system is functioning correctly, in accordance with the procedures specified in Falcon 2000 Airplane Maintenance Manual (AMM) 27–502, dated November 1995; Falcon 900 AMM 27–502, dated January 1995; or Falcon 900EX AMM 27–502, dated September 1996, as applicable. Prior to further flight, repair any discrepancy detected in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent). Repeat the operational test thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Repetitive Replacement

(b) Prior to the accumulation of 1,000 total flight cycles on the inboard flap jackscrews, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Replace the inboard flap jackscrews with new jackscrews in accordance with the procedures specified in Falcon 2000 AMM 27–510, dated November 1995; Falcon 900 AMM 27–521, dated December 1998; or Falcon 900EX AMM 27–510, dated September 1996, as applicable. Repeat the replacement thereafter at intervals not to exceed 1,000 flight cycles.

Repetitive Inspection

(c) Prior to the accumulation of 1,000 total flight cycles on the outboard and center flap jackscrews, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the outboard and center flap jackscrews to detect discrepancies, in accordance with the procedures specified in Falcon 2000 AMM, Temporary Revision (TR) 27–504, dated October 1998; Falcon 900 AMM, TR 27–514, dated February 1999; or Falcon 900EX AMM, TR 27–514, dated February 1999, as applicable.

Note 2: The AFM revisions required by paragraph (c) of this AD may be accomplished by inserting a copy of the TR's into the applicable AFM. When these TR's have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the TR's.

(1) If the measurement is greater than 0.014 inch, prior to further flight, replace the discrepant flap jackscrew with a new jackscrew in accordance with the procedures specified in Falcon 2000 AMM 27–510, dated November 1995; Falcon 900 AMM 27–521, dated December 1998; or Falcon 900EX AMM 27–510, dated September 1996, as applicable. Repeat the inspection thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

(2) If the measurement is less than or equal to 0.014 inch, repeat the measurement

thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Alternative Methods of Compliance

(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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directives 1999–038–008(B), dated January 27, 1999 (for Falcon 2000 series airplanes); and 1999–082–024(B) dated February 24, 1999 (for Falcon 900 and Mystere Falcon 900EX series airplanes).

Issued in Renton, Washington, on April 26, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10962 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–1999–5536; Notice No. 99–05]

RIN 2120–AG51

Security of Checked Baggage on Flights Within the United States; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking, published in the **Federal Register** on April 19, 1999 (64 FR 19220). That NPRM clarified that each certificate holder required under § 108.5 to adopt and implement an FAA-approved security program screen checked baggage or conduct passenger-to-bag matching for scheduled passenger operations within the United States when using an airplane having a passenger seating configuration of more than 60 seats.

FOR FURTHER INFORMATION CONTACT: Lon M. Siro, 202–267–3414.

Correction of Publication

In proposed rule FR Doc. 99–9635, beginning on page 19220 in the **Federal Register** issue of April 19, 1999, make the following corrections:

1. On page 19220, in column 1, in the **ADDRESSES** section, beginning on line 5, correct the "Docket No. FAA–1999–5336" to read "Docket No. FAA–1999–5536".

2. On page 19220, in column 2, in Comments Invited section, beginning on line 7 in the fourth paragraph, correct the "Docket No. FAA–1999–5336" to read "Docket No. FAA–1999–5536".

Issued in Washington, DC on April 22, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–10734 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106004–98]

RIN 1545–AW71

Guidance Under Section 355(d); Recognition of Gain on Certain Distributions of Stock or Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation. These proposed regulations affect corporations and their shareholders. Proposed regulations are necessary because of statutory changes made by the Omnibus Budget Reconciliation Act of 1990. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by August 2, 1999. Outlines of topics to be discussed at the public hearing scheduled for September 21, 1999, at 10 a.m. must be received by August 31, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–106004–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–106004–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robert Hawkes (202) 622–7530 or Phoebe Bennett (202) 622–7750; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

If the requirements of section 355(a) are met, a distributing corporation (Distributing) may distribute the stock or securities of a controlled corporation (Controlled) to its shareholders or security holders (Distributees) with no gain or loss recognized to the Distributees. A Distributee allocates its basis in Distributing stock or securities between the Controlled stock or securities received in the distribution and any Distributing stock or securities retained in proportion to the fair market value of each. See section 358; §§ 1.358–1 and 1.358–2. If neither section 355 (d) nor (e) applies, then Distributing generally recognizes no gain on the distribution of stock or securities. See section 355(c)(2) or 361(c)(2).

With limited exceptions, the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 208) (TRA), repealed the doctrine of *General Utilities & Operating Co.* v. *Helvering,* 296 U.S. 200 (1935), by requiring a corporation to recognize gain on both liquidating and nonliquidating distributions of appreciated property. In retaining section 355 as an exception to *General Utilities* repeal, Congress intended to permit historic shareholders to carry on their historic corporate businesses in separate corporations. See H. R. Rep. 101–881, at 341 (1990). However, Congress became concerned that, after the TRA, a person could purchase a historic shareholder's

interest, receive a distribution of Controlled stock tax-free to both Distributing and the purchaser, and obtain a fair market value basis in the Controlled stock. Accordingly, Congress amended section 355(b)(2)(D) in the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203, section 10223, 101 Stat. 1330–411) (1987 OBRA) to make section 355 inapplicable where a Distributee acquired control (as defined in section 368(c)) of a corporation conducting a business in a taxable transaction during the five-year period ending on the date of the distribution. See H. R. Rep. No. 100–391, at 1082–83 (1987). However, section 355(b)(2)(D) did not apply to noncorporate purchasers or purchasers of less than 80 percent of Distributing stock.

Section 355(d), enacted as part of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, section 11321(a), 104 Stat. 1388–460) (1990 OBRA), followed the purposes of the 1987 OBRA provisions but substantially expanded their scope. See H. R. Rep. 101–881, at 341 (1990). In section 355(d), Congress intended to prevent the use of section 355 either to "dispose of subsidiaries in transactions that resemble sales, or to obtain a fair market value stepped-up basis for any future dispositions, without incurring corporate-level tax." Id.

Section 355(d) requires recognition of gain on a distribution of Controlled stock (as though the Controlled stock were sold to the Distributee at its fair market value) if, immediately after the distribution, any person holds disqualified stock of Distributing or any distributed Controlled that constitutes a 50 percent or greater interest. See section 355(d) (1) and (2). Disqualified stock is stock in Distributing acquired by purchase after October 9, 1990 and during the five-year period (taking into account section 355(d)(6)) ending on the date of distribution (the five-year period), or Controlled stock either (1) acquired by purchase during the five-year period or (2) distributed with respect to either disqualified Distributing stock or on Distributing securities acquired by purchase during the five-year period. See section 355(d)(3). A *50 percent or greater interest* means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. See section 355(d)(4). Section 355(d) also contains a definition of *purchase* (section 355(d)(5)), a provision suspending the five-year period for certain stock or securities (section 355(d)(6)), and aggregation and attribution provisions (section 355(d) (7) and (8)). Section 355(d)(9) authorizes regulations to carry out the purposes of section 355(d), including regulations to prevent the avoidance of its purposes through the use of related persons, intermediaries, pass-through entities, options, or other arrangements, and regulations modifying the definition of *purchase*.

Explanation of Provisions

(a) General Rules and Purposes of Section 355(d)

As stated above, section 355(d) is intended to prevent taxpayers from using section 355 to dispose of subsidiaries in sale-like transactions, or to obtain a fair market value stepped-up basis for future dispositions, without incurring a corporate-level tax. See H. R. Rep. 101–881, at 341 (1990). The legislative history to section 355(d) describes transactions generally not violating the purposes of section 355(d):

> The purposes of [section 355(d)] are not generally violated if there is a distribution of a controlled corporation within 5 years of an acquisition by purchase and the effect of the distribution is neither (1) to increase ownership in the distributing corporation or any controlled corporation by persons who have directly or indirectly acquired stock within the prior five years, nor (2) to provide a basis step-up with respect to the stock of any controlled corporation.

H. R. Rep. No. 101–964 (Conference Report), at 1093 (1990).

The Conference Report, at page 1091, clarifies that the grant of regulatory authority in section 355(d)(9) includes the authority to exclude from section 355(d) transactions not violating its purposes. The proposed regulations provide that a distribution is not a disqualified distribution under section 355(d)(2) and proposed § 1.355–6(b)(1) if the distribution and any related transactions do not violate the purposes of section 355(d). The proposed regulations describe transactions not violating the purposes of section 355(d) in a manner similar to the legislative history and provide some examples of those transactions. If a distribution does not violate the purposes of section 355(d) under proposed § 1.355–6(b)(3), such distribution is a distribution to which section 355(d) does not apply. Accordingly, such a distribution still could be a distribution to which section 355(e) applies. See section 355(e)(2)(D).

The exception in the proposed regulations for transactions that do not violate the purposes of section 355(d) applies to transactions in which a disqualified person neither increases an interest nor obtains a purchased basis in Controlled stock. A disqualified person is any person that, immediately after a distribution, holds disqualified stock in Distributing or Controlled that constitutes a 50-percent or greater interest (under section 355(d)(4) and proposed § 1.355–6(c)). Based on examples in the Conference Report, the proposed regulations define *purchased basis* as basis in Controlled stock that is disqualified stock, unless the Controlled stock and the Distributing stock on which the Controlled stock is distributed are treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and proposed § 1.355–6(e)(1). Examples in the proposed regulations demonstrate the application of the two-pronged purpose test.

The proposed regulations also provide that a person that acquires an interest in any entity by purchase is not treated as having acquired by purchase stock owned by the entity under section 355(d)(8)(B) and paragraph (e)(1) of this section when the person no longer holds the directly purchased interest. Examples demonstrate the operation of this rule when purchased stock is eliminated in a liquidation or upstream merger.

The proposed regulations provide an anti-avoidance rule that permits the Commissioner to treat any distribution as a disqualified distribution under section 355(d)(2) and proposed § 1.355–6(b)(1) if the distribution or another transaction or transactions are engaged in or structured with a principal purpose to avoid the purposes of section 355(d) or the regulations thereunder with respect to the distribution. For example, the Commissioner may determine that the existence of a related person, intermediary, pass-through entity, or similar person (an intermediary) should be disregarded, in whole or in part, if the intermediary is formed or availed of with a principal purpose to avoid the purposes of section 355(d) or the regulations thereunder.

(b) Whether a Person Holds a 50 Percent or Greater Interest

Under section 355(d)(4), *50 percent or greater interest* means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. The proposed regulations provide rules relating to that definition.

Valuation

The proposed regulations provide that, for purposes of section 355(d)(4) and proposed § 1.355–6, all shares of stock within a single class are

considered to have the same value. But see proposed § 1.355–6(c)(3)(vii), which applies a special valuation rule to determine whether options are reasonably certain to be exercised.

Effect of Options, Warrants, Convertible Obligations, and Other Similar Interests

Section 355(d)(9) provides regulatory authority to prevent the avoidance of the purposes of section 355(d) through the use of options. The Conference Report states, at page 1092, that Congress intends that regulations be issued to treat an option to acquire stock as exercised if two criteria are satisfied. The first is that a deemed exercise would cause a person to have a 50 percent or greater interest acquired by purchase. The second is that, under all the facts and circumstances (including projected earnings or appreciation and including the risk shifting or other effects of any other arrangements with the option holder or related parties), the effect of the option would be to avoid the application of section 355(d).

In general, the proposed regulations disregard options in determining whether any person holds disqualified stock constituting a 50 percent or greater interest. However, under the proposed regulations, an option to acquire stock that has not been exercised when a distribution occurs is treated as exercised on the date it was issued or most recently transferred if two criteria are satisfied. The first, based on the Conference Report, is that a deemed exercise would cause a person to become a disqualified person. An option is not treated as exercised under this criterion, however, if the effect of the treatment is to prevent a person who would otherwise be a disqualified person from being treated as a disqualified person. The second criterion is that, immediately after the distribution of Controlled, and based on all the facts and circumstances, it is reasonably certain that the option will be exercised. The IRS and Treasury believe that the proposed regulations, which employ a "reasonably certain" standard to treat options as exercised in potentially abusive situations, is consistent with the guidance given in the Conference Report with respect to options. The proposed regulations generally except certain instruments not ordinarily having an abuse potential from treatment as options, such as escrow, pledge, or other security agreements, compensatory options, and options exercisable only upon death, disability, mental incompetency, or retirement.

When an option is treated as exercised, it is treated as exercised both for purposes of determining the percentage of the voting power of stock owned and for purposes of determining the percentage of the value of stock owned. The effect of control premiums and minority and blockage discounts on stock value is taken into account only for purposes of applying the "reasonably certain" test. If the "reasonably certain" test is met, so that an option is treated as exercised, all shares of a single class are considered to have the same value for purposes of determining the amount of stock deemed acquired under the option.

The option rules of proposed § 1.355–6(c)(3) determine when an option is treated as exercised only for purposes of section 355(d) (but not for purposes of section 355(d)(6)) and do not apply for purposes of any other sections of the Internal Revenue Code. The option rules are proposed to apply generally to options outstanding in distributions occurring after the regulations are published as final regulations in the **Federal Register**. See proposed § 1.355–6(g). However, the Service may apply substance over form principles in determining whether options outstanding in distributions before the effective date are treated as stock or as exercised in appropriate circumstances.

Plan or Arrangement

Under section 355(d)(7)(B), if two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in Distributing or Controlled, those persons are treated as one person for purposes of section 355(d). The proposed regulations provide a rule to determine when shareholders act pursuant to a plan or arrangement. Under the rule (which does not apply for purposes of any other section of the Internal Revenue Code), two or more shareholders act pursuant to a plan or arrangement only if they have a formal or informal understanding among themselves to make a coordinated acquisition of stock. A principal element in determining if such an understanding exists is whether the investment decision of each person is based on the investment decision of one or more other existing or prospective shareholders. Thus, in general, a public offering is not treated as a plan or arrangement if each investor makes an independent investment decision. This rule applies regardless of the amount of stock the shareholders own or acquire. The rule is based on the entity rule contained in § 1.382–3(a)(1), and the IRS and Treasury intend that the two provisions be administered in a similar manner.

The proposed regulations provide that creditors' participation in an insolvency workout or reorganization in a title 11 or similar case, and the receipt of stock in satisfaction of indebtedness in a workout or reorganization, are not treated as a plan or arrangement among the creditors. The IRS and Treasury request comments as to whether additional provisions are appropriate for workout or bankruptcy situations, such as rules regarding the timing of purchases of stock received by creditors, or rules regarding whether rights created in favor of creditors in a bankruptcy case should be treated as options.

(c) Purchase

Under section 355(d)(5)(A), except as otherwise provided in section 355(d)(5)(B) and (C), a purchase means any acquisition, but only if (1) the basis of the property acquired in the hands of the acquirer is not determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or under section 1014(a), and (2) the property is not acquired in an *exchange* to which section 351, 354, 355, or 356 applies. The proposed regulations clarify that the term *exchange* in the statute includes a reference to all section 355 distributions (for example, spin-offs, even though no property is conveyed in exchange for the distributed stock).

Exceptions to Definition of Purchase Under Section 355(d)(5)(A)

The proposed regulations provide that an acquisition of stock permitted to be received by a transferor of property without the recognition of gain under section 351(a), or permitted to be received without the recognition of gain under section 354 or 355, is not a purchase to the extent section 358(a)(1) applies to determine the recipient's basis, whether or not the recipient also recognizes gain under section 351(b) or 356. The Conference Report suggests, at page 1092, that regulations generally should treat stock received by a target corporation shareholder in a reorganization as acquired by purchase if the shareholder also receives boot. The Conference Report states that purchase treatment is warranted because the basis in the shareholder's acquiring corporation stock is increased by the gain the shareholder recognizes. However, under section 358(a)(1)(A), the basis in the stock also is reduced by the amount of the boot received. Thus, the shareholder will not receive a net basis increase in the acquiring corporation stock. The proposed regulations also provide that, to the extent stock that is "other property" under section 351(b) or 356(a)(1) is

received in addition to stock excepted from purchase treatment under the basic rule, the boot stock is treated as purchased on the date of the exchange or distribution for purposes of section 355(d).

The proposed regulations provide that an acquisition of stock by a corporation is generally not a purchase to the extent section 334(b) or 362 (a) or (b) applies to determine the corporation's basis in the stock received. However, because of the basis results, stock is treated as purchased on the date of the stock acquisition for purposes of section 355(d) if the liquidating corporation recognizes gain or loss with respect to the transferred stock as described in section 334(b)(1), or to the extent the basis of the transferred stock is increased through the recognition of gain by the transferor under section 362 (a) or (b).

The proposed regulations provide that, subject to certain restrictions, section 305(a) and section 1036(a) transactions are not purchases.

Certain Section 351 Exchanges Treated as Purchases

Under section 355(d)(5)(B), a purchase includes any acquisition of property in an exchange to which section 351 applies to the extent the property is acquired in exchange for any cash or cash item, any marketable stock or security, or any debt of the transferor. The property treated as acquired by purchase is the property received by the transferor in the exchange. If the transferor receives more than one class of stock or securities, or receives both stock and securities, the proposed regulations provide that the amount of stock or securities purchased is determined in a manner that corresponds to the basis allocation under section 358. The proposed regulations define the terms *cash item* and *marketable stock* to include personal property within the meaning of section 1092(d)(1) and § 1.1092(d)–1, without giving effect to section 1092(d)(3).

The proposed regulations provide certain exceptions to purchase treatment under section 355(d)(5)(B). Under the first exception, an acquisition of stock in a corporation in a section 351(a) transaction by one or more persons in exchange for an amount of stock in another corporation (the transferred corporation) that meets the requirements of section 1504(a)(2) is not a purchase by the transferor or transferors, regardless of whether the stock of the transferred corporation is marketable stock. Under the second exception, an acquisition of stock in exchange for any cash or cash item, any marketable stock, or any debt of the transferor in a section 351 transaction generally is not a purchase if the transferor transfers the items as part of an active trade or business and the transferred items do not exceed the reasonable needs of the trade or business. This exception is based on the Conference Report, at page 1093. The proposed regulations provide guidance based on § 1.355–3(b) (2) and (3) for determining active conduct of a trade or business and guidance on the reasonable needs of the trade or business. All facts and circumstances are considered in applying the exception.

The third exception, also based on the Conference Report, at pages 1092–93, provides that an acquisition of stock in exchange for any cash or cash item, marketable stock or security, or debt of the transferor in a section 351 transaction is generally not a purchase if the transferor corporation or corporations, the transferee corporation, and any distributed controlled corporation of the transferee corporation are members of the same affiliated group as defined in section 1504(a) before the section 351 transaction (if the transferee corporation is in existence before the transaction) and do not cease to be members of such affiliated group in any transaction related to the section 351 transaction (including any distribution of a controlled corporation by the transferee corporation). An example illustrates that, under the anti-avoidance rule of proposed § 1.355–6(b)(4), this exception does not apply if the section 351 transaction is engaged in or structured with a principal purpose to avoid the purposes of section 355(d).

The proposed regulations provide purchase rules for certain triangular asset reorganizations. For purposes of section 355(d), the proposed regulations generally treat the controlling corporation as having acquired the assets and liabilities of the target corporation in a transaction in which basis in the acquired assets is determined under section 362(b) and then transferred the assets and liabilities to its subsidiary corporation in a section 351 transaction. This treatment is consistent with the determination of basis in the stock of the acquiring subsidiary or target corporation under § 1.358–6. The application of section 351 to the deemed asset contribution causes section 355(d)(5)(B) (and proposed § 1.355–6(d)(3) (i) through (iv)) to apply.

The proposed regulations provide special rules for transactions qualifying as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E) and also as either a reorganization under section 368(a)(1)(B) or a section 351 transfer. Special rules are necessary for these transactions because, under § 1.358–6(c)(2)(ii) or 1.1502–30(b), a controlling corporation may determine its basis in surviving corporation stock by choosing from two alternative methods, but the taxpayer need not choose a method until a basis determination is relevant. The proposed regulations describe corresponding methods for determining the amount of surviving corporation stock treated as purchased for purposes of section 355(d). The proposed regulations provide that, regardless of which method the controlling corporation may actually employ to determine its basis in the surviving corporation stock under § 1.358–6(c)(2)(ii) or 1.1502–30(b), the total amount of surviving corporation stock treated as purchased immediately after the distribution equals the higher of the amount of surviving corporation stock that would be treated as purchased under the two alternative methods described in proposed § 1.355–6(d)(5)(i). The proposed regulations allow a controlling corporation to select one of the two alternative methods if the controlling corporation obtains a letter ruling and enters into a closing agreement under section 7121 in which it agrees to determine its basis in surviving corporation stock using the corresponding method under § 1.358–6(c)(2)(ii) (A) or (B). This option allows the taxpayer to conform the section 355(d) results with the section 358 basis results it chooses.

Finally, the proposed regulations explain the treatment of group structure changes to which § 1.1502–31 applies, and provide rules adjusting purchase treatment to conform to basis treatment in triangular reorganizations and group structure changes.

(d) Deemed Purchase and Timing Rules

Attribution and Aggregation

Under section 355(d)(8)(B), if any person purchases an interest in an entity, and any stock held by the entity is attributed to the person under section 355(d)(8)(A), the person is treated as purchasing the stock on the later of the date the person purchased the interest in the entity or the date the entity purchased the stock.

The proposed regulations adopt three additional timing rules based on the Conference Report, at page 1090. First, if a person and an entity are treated as a single person under section 355(d)(7), and the person later purchases an

additional interest in the entity, the person is treated as purchasing, at the time the additional interest is purchased, the amount of stock attributed from the entity to the person as a result of the additional interest. This timing rule applies even though the person was (prior to purchasing the additional interest in the entity) already treated as owning all of the stock owned by the entity under the aggregation rules of section 355(d)(7). Second, if two persons are treated as one person under section 355(d)(7) and one later purchases stock from the other, the date of the later purchase is used. Third, if a person who is already treated as holding stock under section 355(d)(8)(A) later directly purchases such stock, the date of the later direct purchase is used. The proposed regulations contain a series of examples, similar to those on pages 1090 and 1091 of the Conference Report, demonstrating the operation of these rules.

Transferred Basis Rule

Under section 355(d)(5)(C), if any person acquires property from another person who acquired the property by purchase, and the adjusted basis of the property in the hands of the acquirer is determined in whole or in part by reference to the adjusted basis of the property in the hands of the other person, the acquirer is treated as having acquired the property by purchase on the date it was acquired by the other person. This rule applies, for example, where stock of a corporation with a purchased basis is acquired in a section 351 transfer or a reorganization qualifying under section 368(a)(1)(B), but does not apply if the stock of a former common parent is acquired in a group structure change.

Under proposed § 1.355–6(d)(2)(i)(B)(*2*), transferred stock is treated as purchased on the date of a transfer if the stock is transferred in a liquidation, and the liquidating corporation recognizes gain or loss with respect to the transferred stock as described in section 334(b)(1), or to the extent the basis of the transferred stock is increased through the recognition of gain by the transferor under section 362(a) or (b).

Exchanged Basis Rule

Based on the Conference Report, at page 1092, the proposed regulations adopt a rule that, if any person acquires an interest in an entity (the first interest) by purchase, and the first interest is exchanged for an interest in another entity (the second interest) where the adjusted basis of the second interest is determined by reference to the adjusted basis of the first interest, then the second interest is treated as having been purchased on the date the first interest was purchased. This rule applies, for example, where stock of a corporation acquired by purchase is subsequently exchanged for other stock in a section 351, 354, or 1036(a) exchange. Under proposed § 1.355–6(d)(2)(i)(A)(*2*), stock that is other property under section 351(b) or 356(a)(1) is treated as purchased on the date of the exchange or distribution.

Substantial Diminution of Risk

As in section 355(d)(6), the proposed regulations provide that the running of the five-year period under section 355(d)(3) is suspended for any period during which the holder's risk of loss is substantially diminished by an option, a short sale, any special class of stock (including tracking stock), or any other device or transaction.

(e) Duty to Determine Stockholders and Presumptions

The proposed regulations provide that, in determining whether section 355(d) applies to a distribution, Distributing must determine whether a disqualified person holds its stock or the stock of any distributed Controlled. For this purpose, a corporation is deemed to have knowledge of the existence and contents of all schedules, forms, and other documents filed with or under the rules of the Securities and Exchange Commission, including, without limitation, any Schedule 13D or 13G (or any similar schedules) and amendments, with respect to any relevant corporation.

The proposed regulations provide that, absent actual knowledge to the contrary, with respect to reporting stock, Distributing may presume that all schedules, forms, or other documents are timely filed, accurate, and complete. *Reporting stock* is defined as stock that is described in Rule 13d-1(i) of Regulation 13D promulgated under the Securities and Exchange Act of 1934. In addition, the proposed regulations provide a presumption with respect to *less-than-five-percent shareholders*, which are defined as persons that, at no time during the five-year period, hold directly (or under the option rules contained in the proposed regulations) stock possessing five percent or more of the total combined voting power of all classes of stock entitled to vote and the total value of shares of all classes of stock of a corporation. Absent actual knowledge (or deemed knowledge regarding reporting stock) immediately after a distribution to the contrary regarding a particular shareholder, Distributing may generally presume that no less-than-five-percent shareholder of a corporation acquired stock by purchase during the five-year period. This presumption does not apply to any less-than-five-percent shareholder that, at any time during the five-year period, is related to, acted pursuant to a plan or arrangement with, or holds stock that is attributed to a shareholder that is not a less-than-five-percent shareholder at any time during the five-year period. If an acquiring corporation acquires Distributing in a transferred basis transaction, Distributing may apply both the reporting stock presumption and the less-than-five-percent shareholder presumption to determine whether section 355(d) applies to a distribution of Controlled stock to the acquiring corporation due to preacquisition stock purchases by Distributing's former shareholders.

Proposed Effective Date

The proposed regulations would apply to distributions occurring after the regulations are published as final regulations in the **Federal Register**, except that they would not apply to any distributions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (preferably a signed original and eight (8) copies, if written) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All

comments will be available for public inspection and copying.

A public hearing has been scheduled for September 21, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, N.W. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies, if written) by August 31, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these proposed regulations is Phoebe Bennett, Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.355–6 also issued under 26 U.S.C. 355(d)(9). * * *

Par. 2. Section 1.355–0 is amended by;

1. Revising the section heading.
2. Revising the entries for § 1.355–6.

The revisions read as follows:

§ 1.355–0 To facilitate the use of §§ 1.355–1 through 1.355–6, this section lists the major paragraphs in those sections.

* * * * *

§ 1.355–6 Recognition of gain on certain distributions of stock or securities in controlled corporation.

(a) Conventions.
(1) Distributing securities.
(2) Marketable securities.
(3) Examples.
(4) Five-year period.
(b) General rules and purposes of section 355(d).
(1) Disqualified distributions in general.
(2) Disqualified stock.
(i) In general.
(ii) Purchase.
(3) Certain distributions not disqualified distributions because purposes of section 355(d) not violated.
(i) In general.
(ii) Disqualified person.
(iii) Purchased basis.
(iv) Purchased interest no longer held.
(v) Examples.
(4) Anti-avoidance rule.
(i) In general.
(ii) Example.
(c) Whether a person holds a 50 percent or greater interest.
(1) In general.
(2) Valuation.
(3) Effect of options, warrants, convertible obligations, and other similar interests.
(i) Application.
(ii) General rule.
(iii) Options deemed newly issued.
(A) Exchange, adjustment, or alteration of existing option.
(B) Certain compensatory options.
(iv) Effect of treating an option as exercised.
(A) In general.
(B) Cash settlement options, phantom stock, stock appreciation rights, certain notional principal contracts, or similar interests.
(C) Stock purchase agreement or similar arrangement.
(v) Instruments treated as options.
(vi) Instruments generally not treated as options.
(A) Escrow, pledge, or other security agreements.
(B) Compensatory options.
(*1*) General rule.
(*2*) Exception.
(C) Certain stock conversion features.
(D) Options exercisable only upon death, disability, mental incompetency, or retirement.
(E) Rights of first refusal.
(F) Other enumerated instruments.
(vii) Reasonably certain that the option will be exercised.
(A) In general.
(B) Stock purchase agreement or similar arrangement.
(viii) Examples.
(4) Plan or arrangement.
(i) In general.
(ii) Understanding.
(iii) Examples.
(d) Purchase.
(1) In general.
(i) Definition of purchase under section 355(d)(5)(A).
(ii) Section 355 distributions.
(iii) Examples.
(2) Exceptions to definition of purchase under section 355(d)(5)(A).
(i) Acquisition of stock in a transaction which includes other property or money.
(A) Transferors and shareholders of transferor or distributing corporations.
(*1*) In general.
(*2*) Exception.
(B) Transferee corporations.
(*1*) In general.
(*2*) Exception.
(C) Examples.
(ii) Acquisition of stock in a distribution to which section 305(a) applies.
(iii) Section 1036(a) exchange.
(3) Certain section 351 exchanges treated as purchases.
(i) In general.
(A) Treatment of stock received by transferor.
(B) Multiple classes of stock.
(ii) Cash item, marketable stock.
(iii) Exception for certain acquisitions.
(A) In general.
(B) Example.
(iv) Exception for assets transferred as part of an active trade or business.
(A) In general.
(B) Active conduct of a trade or business.
(C) Reasonable needs of the trade or business.
(D) Consideration of all facts and circumstances.
(v) Exception for transfer between members of the same affiliated group.
(A) In general.
(B) Examples.
(4) Triangular asset reorganizations.
(i) Definition.
(ii) Treatment.
(iii) Example.
(5) Reverse triangular reorganizations other than triangular asset reorganizations.
(i) In general.
(ii) Letter ruling and closing agreement.
(iii) Examples.
(6) Treatment of group structure changes.
(i) In general.
(ii) Adjustments to basis of higher-tier members.
(iii) Example.
(7) Special rules for triangular asset reorganizations, other reverse triangular reorganizations, and group structure changes.
(e) Deemed purchase and timing rules.
(1) Attribution and aggregation.
(i) In general.
(ii) Purchase of additional interest.
(iii) Purchase between persons treated as one person.
(iv) Purchase by a person already treated as holding stock under section 355(d)(8)(A).
(v) Examples.
(2) Transferred basis rule.
(3) Exchanged basis rule.
(i) In general.
(ii) Example.
(4) Substantial diminution of risk.
(i) In general.
(ii) Property to which suspension applies.
(iii) Risk of loss substantially diminished.

(iv) Special class of stock.
(f) Duty to determine stockholders.
(1) In general.
(2) Deemed knowledge of contents of securities filings.
(3) Presumptions as to securities filings.
(4) Presumption as to less-than-five-percent shareholders.
(5) Examples.
(g) Effective date.

Par. 3. Section 1.355–6 is revised to read as follows:

§ 1.355–6 Recognition of gain on certain distributions of stock or securities in controlled corporation.

(a) *Conventions*—(1) *Distributing securities.* Unless otherwise stated, any reference in this section to stock of a corporation that is (or becomes) a distributing corporation includes a reference to securities of the corporation. See section 355(d)(3)(B)(ii)(II) (disqualified controlled corporation stock includes controlled corporation stock distributed with respect to purchased distributing corporation securities).

(2) *Marketable securities.* Unless otherwise stated, any reference in this section to marketable stock includes a reference to marketable securities.

(3) *Examples.* For purposes of the examples in this section, unless otherwise stated, assume that P, S, T, X, Y, N, HC, D, D1, D2, D3, and C are corporations, A and B are individuals, shareholders are not treated as one person under section 355(d)(7), stock has been owned for more than five years and section 355(d)(6) and paragraph (e)(4) of this section do not apply, no election under section 338 (if available) is made, and all transactions described are respected under general tax principles, including the step transaction doctrine. No inference should be drawn from any example as to whether any requirements of section 355 other than those of section 355(d), as specified, are satisfied.

(4) *Five-year period.* For purposes of this section, the term *five-year period* means the five-year period (determined after applying section 355(d)(6) and paragraph (e)(4) of this section) ending on the date of the distribution, but in no event beginning earlier than October 10, 1990.

(b) *General rules and purposes of section 355(d)*—(1) *Disqualified distributions in general.* In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of section 355(c)(2) or 361(c)(2). In general, a *disqualified distribution* is any distribution to which section 355(or so much of section 356 as relates thereto) applies if, immediately after the distribution—

(i) Any person holds disqualified stock in the distributing corporation that constitutes a 50 percent or greater interest in such corporation; or

(ii) Any person holds disqualified stock in the controlled corporation (or, if stock of more than one controlled corporation is distributed, in any controlled corporation) that constitutes a 50 percent or greater interest in such corporation.

(2) *Disqualified stock*—(i) *In general. Disqualified stock* is—

(A) Any stock in the distributing corporation acquired by purchase during the five-year period; and

(B) Any stock in any controlled corporation—

(*1*) Acquired by purchase during the five-year period; or

(*2*) Received in the distribution to the extent attributable to distributions on any stock in the distributing corporation acquired by purchase during the five-year period.

(ii) *Purchase.* For the definition of a *purchase* for purposes of section 355(d) and this section, see section 355(d)(5) and paragraph (d) of this section.

(3) *Certain distributions not disqualified distributions because purposes of section 355(d) not violated*—(i) *In general.* Notwithstanding the provisions of section 355(d)(2) and this paragraph (b), a distribution is not a disqualified distribution if the distribution and any related transactions do not violate the purposes of section 355(d) as provided in this paragraph (b)(3). A distribution does not violate the purposes of section 355(d) if the effect of the distribution and any related transactions is neither—

(A) To increase direct or indirect ownership in the distributing corporation or any controlled corporation by a disqualified person; nor

(B) To provide a disqualified person with a purchased basis in the stock of any controlled corporation.

(ii) *Disqualified person.* A *disqualified person* is any person (taking into account section 355(d)(7) and paragraph (c)(4) of this section) that, immediately after a distribution, holds (directly or indirectly under section 355(d)(8) and paragraph (e)(1) of this section) disqualified stock in the distributing corporation or controlled corporation that constitutes a 50 percent or greater interest in such corporation (under section 355(d)(4) and paragraph (c) of this section).

(iii) *Purchased basis.* A *purchased basis* is basis in controlled corporation stock that is disqualified stock, unless the controlled corporation stock and any distributing corporation stock with respect to which the controlled corporation stock is distributed are treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section.

(iv) *Purchased interest no longer held.* A person that acquires an interest in any entity by purchase ceases to be treated as having acquired by purchase stock owned by the entity under section 355(d)(8)(B) and paragraph (e)(1) of this section at the time when the person no longer holds the directly purchased interest.

(v) *Examples.* The following examples illustrate this paragraph (b)(3):

Example 1. *Stock distributed in spin-off; no purchased basis.* D owns all of the stock of D1, and D1 owns all the stock of C. A purchases 60 percent of the D stock for cash. Within five years of A's purchase, D1 distributes the C stock to D. A is treated as having purchased 60 percent of the stock of both D1 and C on the date A purchases 60 percent of the D stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. The C stock received by D is attributable to a distribution on purchased D1 stock under section 355(d)(3)(B)(ii). Accordingly, the D1 and C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. However, the purposes of section 355(d) under paragraph (b)(3)(i) of this section are not violated. A did not increase direct or indirect ownership in D1 or C. In addition, D's basis in the C stock is not a purchased basis under paragraph (b)(3)(iii) of this section because both the D1 and the C stock are treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. Accordingly, D1's distribution of the C stock to D is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 2. *Stock distributed in spin-off; purchased basis.* The facts are the same as *Example 1*, except that D immediately further distributes the C stock to its shareholders (including A) pro rata. The D and C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. The purposes of section 355(d) under paragraph (b)(3)(i) of this section are violated. A did not increase direct or indirect ownership in D or C. However, A's basis in the C stock is a purchased basis under paragraph (b)(3)(iii) of this section because the D stock is not treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. Accordingly, the further distribution is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 3. *Stock distributed in split-off with ownership increase; purchased basis.* The facts are the same as *Example 1*, except

that D immediately further distributes the C stock to A in exchange for A's purchased stock in D. The C stock received by A is attributable to a distribution on purchased D stock under section 355(d)(3)(B)(ii), and A's basis in the C stock is determined by reference to the adjusted basis of A's purchased D stock under paragraph (e)(3) of this section. Accordingly, the D stock and the C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. The purposes of section 355(d) under paragraph (b)(3)(i) of this section are violated because A increased its ownership in C from a 60 percent indirect interest to a 100 percent direct interest, and because A's basis in the C stock is a purchased basis under paragraph (b)(3)(iii) of this section. Accordingly, the further distribution is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 4. *Stock distributed in spin-off; purchased basis.* D1 owns all the stock of C. D purchases all of the stock of D1 for cash. Within five years of D's purchase of D1, P acquires all of the stock of D1 from D in a section 368(a)(1)(B) reorganization that is not a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E), and D1 distributes all of its C stock to P. P is treated as having acquired the D1 stock by purchase on the date D acquired it under the transferred basis rule of section 355(d)(5)(C) and paragraph (e)(2) of this section. P is treated as having purchased all of the C stock on the date D purchased the D1 stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section, and the C stock received by P is attributable to a distribution on purchased D1 stock under section 355(d)(3)(B)(ii). Accordingly, the D1 and C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and P is a disqualified person under paragraph (b)(3)(ii) of this section. The purposes of section 355(d) under paragraph (b)(3)(i) of this section are violated. P did not increase direct or indirect ownership in D1 or C. However, P's basis in the C stock is a purchased basis under paragraph (b)(3)(iii) of this section because the D1 stock is not treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. Accordingly, D1's distribution of the C stock to P is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 5. *Stock distributed in split-off with ownership increase; no purchased basis.* P owns 50 percent of the stock of D, the remaining D stock is owned by unrelated persons, D owns all the stock of C, and A purchases all of the P stock from the P shareholders. Within five years of A's purchase, D distributes all of the C stock to P in exchange for P's D stock. A is treated as having purchased 50 percent of the stock of both D and C on the date A purchases the P stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. The C stock received by P is attributable to a distribution on purchased D stock under section 355(d)(3)(B)(ii). Accordingly, the D stock and the C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. The purposes of section 355(d) under paragraph (b)(3)(i) of this section are violated because, even though P's basis in the C stock is not a purchased basis under paragraph (b)(3)(iii) of this section, A increased its direct or indirect ownership in C from a 50 percent indirect interest to a 100 percent indirect interest. Accordingly, D's distribution of the C stock to P is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 6. *Stock distributed in split-off with no ownership increase; no purchased basis.* A purchases all of the stock of T. T later merges into D in a section 368(a)(1)(A) reorganization and A exchanges its purchased T stock for 60 percent of the stock of D. D owns all of the stock of D1 and D2, D1 and D2 each owns 50 percent of the stock of D3, and D3 owns all of the stock of C. Within five years of A's purchase of the T stock, D3 distributes the C stock to D1 in exchange for all of D1's D3 stock. A is treated as having acquired 60 percent of the D stock by purchase on the date A purchases the T stock under paragraph (e)(3) of this section. A is treated as having purchased 60 percent of the stock of D1, D2, D3, and C on the date A purchases the T stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. The C stock received by D1 is attributable to a distribution on purchased D3 stock under section 355(d)(3)(B)(ii). Accordingly, the D3 stock and the C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. However, the purposes of section 355(d) under paragraph (b)(3)(i) of this section are not violated. A did not increase direct or indirect ownership in D3 or C, and D1's basis in the C stock is not a purchased basis under paragraph (b)(3)(iii) of this section because the D3 stock is treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. Accordingly, D3's distribution of the C stock to D1 is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 7. *Purchased basis eliminated by liquidation; stock distributed in spin-off.* P owns 30 percent of the stock of D, D owns all of the stock of D1, and D1 owns all of the stock of C. P purchases the remaining 70 percent of the D stock for cash. Within five years of P's purchase, P liquidates D in a transaction qualifying under sections 332 and 337(a), and D1 then distributes the stock of C to P. Prior to the liquidation, P is treated as having purchased 70 percent of the stock of D1 and C on the date P purchases the D stock under the attribution rules of section 355(d)(8)(B) and paragraph (e)(1) of this section. After the liquidation, however, under paragraph (b)(3)(iv) of this section, P is not treated as having acquired by purchase the D1 or the C stock under section 355(d)(8)(B) and paragraph (e)(1) of this section because P no longer holds the directly purchased interest in D. Under section 334(b)(1), P's basis in the D1 stock is determined by reference to D's basis in the D1 stock and not by reference to P's basis in D. Paragraph (d)(2)(i)(B) of this section does not treat the D1 stock as newly purchased in P's hands because no gain or loss was recognized by D in the liquidation. Accordingly, neither the D1 stock nor the C stock is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section in P's hands, and the distribution is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 8. *Purchased basis eliminated by upstream merger; stock distributed in spin-off.* D owns all of the stock of D1, and D1 owns all of the stock of C. P purchases 60 percent of the D stock for cash. Within five years of P's purchase, D merges into P in a section 368(a)(1)(A) reorganization, with the D shareholders other than P receiving solely P stock in exchange for their D stock, and D1 then distributes the stock of C to P. Prior to the merger, P is treated as having purchased 60 percent of the stock of D1 and C on the date P purchases the D stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. After the merger, however, under paragraph (b)(3)(iv) of this section, P is not treated as having acquired by purchase the D1 or the C stock under section 355(d)(8)(B) and paragraph (e)(1) of this section because P no longer holds the directly purchased interest in D. Under section 362(b), P's basis in the D1 stock is determined by reference to D's basis in the D1 stock and not by reference to P's basis in D. Paragraph (d)(2)(i)(B) of this section does not treat the D1 stock as newly purchased in P's hands because no gain or loss was recognized by D in the merger. Accordingly, neither the D1 stock nor the C stock is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section in P's hands, and the distribution is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

(4) *Anti-avoidance rule*—(i) *In general.* Notwithstanding any provision of section 355(d) or this section, the Commissioner may treat any distribution as a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section if the distribution or another transaction or transactions are engaged in or structured with a principal purpose to avoid the purposes of section 355(d) or this section with respect to the distribution. Without limiting the preceding sentence, the Commissioner may determine that the existence of a related person, intermediary, pass-through entity, or similar person (an intermediary) should be disregarded, in whole or in part, if the intermediary is formed or availed of with a principal purpose to avoid the purposes of section 355(d) or this section.

(ii) *Example.* The following example illustrates this paragraph (b)(4):

Example. *Post-distribution redemption.* B wholly owns D, which wholly owns C. With a principal purpose to avoid the purposes of

section 355(d), A, B, D, and C engage in the following transactions. A purchases 45 of 100 shares of the only class of D stock. Within five years after A's purchase, D distributes all of its 100 shares in C to A and B pro rata. D then redeems 20 shares of B's D stock, and C redeems 20 shares of B's C stock. After the redemption, A owns 45 shares and B owns 35 shares in each of D and C. Under paragraph (b)(4)(i) of this section, the Commissioner may treat A as owning disqualified stock in D and C that constitutes a 50 percent or greater interest in D and C immediately after the distribution. Under that treatment, the distribution is a disqualified distribution under section 355(d)(2).

(c) *Whether a person holds a 50 percent or greater interest*—(1) *In general.* Under section 355(d)(4), *50 percent or greater interest* means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

(2) *Valuation.* For purposes of section 355(d)(4) and this section, all shares of stock within a single class are considered to have the same value. But see paragraph (c)(3)(vii)(A) of this section (determination of whether it is reasonably certain that an option will be exercised).

(3) *Effect of options, warrants, convertible obligations, and other similar interests*—(i) *Application.* This paragraph (c)(3) provides rules to determine when an option is treated as exercised for purposes of section 355(d) (other than section 355(d)(6)). Except as provided in this paragraph (c)(3), an option is not treated as exercised for purposes of section 355(d). This paragraph (c)(3) does not affect the determination of whether an instrument is an option or stock under general principles of tax law (such as substance over form).

(ii) *General rule.* In determining whether a person has acquired by purchase a 50 percent or greater interest under section 355(d)(4), an option to acquire stock (as described in paragraphs (c)(3) (v) and (vi) of this section) that has not been exercised when a distribution occurs is treated as exercised on the date it was issued or most recently transferred if—

(A) Its exercise (whether by itself or in conjunction with the deemed exercise of one or more other options) would cause a person to become a disqualified person; and

(B) Immediately after the distribution, it is reasonably certain (as described in paragraph (c)(3)(vii) of this section) that the option will be exercised.

(iii) *Options deemed newly issued*—(A) *Exchange, adjustment, or alteration of existing option.* For purposes of this paragraph (c)(3), each of the following is treated as a new issuance or transfer of an existing option only if it materially increases the likelihood that an option will be exercised—

(*1*) An exchange of an option for another option or options;

(*2*) An adjustment to the terms of an option (including an adjustment pursuant to the terms of the option);

(*3*) An adjustment to the terms of the underlying stock (including an adjustment pursuant to the terms of the stock);

(*4*) A change to the capital structure of the issuing corporation; and

(*5*) An alteration to the fair market value of issuing corporation stock through an asset transfer (other than regular, ordinary dividends) or through any other means.

(B) *Certain compensatory options.* An option described in paragraph (c)(3)(vi)(B)(*2*) of this section is treated as issued on the date it becomes transferable.

(iv) *Effect of treating an option as exercised*—(A) *In general.* For purposes of section 355(d), an option that is treated as exercised under this paragraph (c)(3) is treated as exercised both for purposes of determining the percentage of the voting power of stock owned by the holder and for purposes of determining the percentage of the value of stock owned by the holder.

(B) *Cash settlement options, phantom stock, stock appreciation rights, certain notional principal contracts, or similar interests.* If a cash settlement option, phantom stock, stock appreciation right, notional principal contract described in paragraph (c)(3)(v)(B) of this section, or similar interest is treated as exercised, the option is treated as having been converted into stock of the issuing corporation. If the amount to be received upon the exercise of such an option is determined by reference to a multiple of the increase in the value of a share of the issuing corporation's stock on the exercise date over the value of a share of the stock on the date the option is issued, the option is treated as converted into a corresponding number of shares of such stock. Appropriate adjustments must be made in any situation in which the amount to be received upon exercise of the option is determined in another manner.

(C) *Stock purchase agreement or similar arrangement.* If a stock purchase agreement or similar arrangement is deemed exercised, the purchaser is treated as having purchased of the stock under the terms of the agreement or arrangement as though all covenants had been satisfied and all contingencies met. The agreement or arrangement is deemed to have been exercised as of the date it is entered into or most recently assigned.

(v) *Instruments treated as options.* For purposes of this paragraph (c)(3), except to the extent provided in paragraph (c)(3)(vi) of this section, the following are treated as options:

(A) A call option, warrant, convertible obligation, the conversion feature of convertible stock, put option, redemption agreement (including a right to cause the redemption of stock), notional principal contract (as defined in § 1.446–3(c)) that provides for the payment of amounts in stock, stock purchase agreement or similar arrangement, or any other instrument that provides for the right to purchase, issue, redeem, or transfer stock (including an option on an option).

(B) A cash settlement option, phantom stock, stock appreciation right, notional principal contract (as defined in § 1.446–3(c)) that provides for payment based on the price of stock, or any other similar interest (except for stock).

(vi) *Instruments generally not treated as options.* For purposes of this paragraph (c)(3), the following are not treated as options, unless issued, transferred, or listed with a principal purpose to avoid the application of section 355(d) or this section:

(A) *Escrow, pledge, or other security agreements.* An option that is part of a security arrangement in a typical lending transaction (including a purchase money loan), if the arrangement is subject to customary commercial conditions. For this purpose, a security arrangement includes, for example, an agreement for holding stock in escrow or under a pledge or other security agreement, or an option to acquire stock contingent upon a default under a loan.

(B) *Compensatory options*—(*1*) *General rule.* An option to acquire stock in a corporation with customary terms and conditions provided to an employee, director, or independent contractor in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) and that—

(*i*) Is nontransferable within the meaning of § 1.83–3(d); and

(*ii*) Does not have a readily ascertainable fair market value as defined in § 1.83–7(b).

(*2*) *Exception.* Paragraph (c)(3)(vi)(B)(*1*) of this section ceases to apply to an option that becomes transferable.

(C) *Certain stock conversion features.* The conversion feature of convertible stock, provided that—

(*1*) The stock is not convertible for at least five years after issuance or transfer; and

(*2*) The terms of the conversion feature do not require the tender of any consideration other than the stock being converted.

(D) *Options exercisable only upon death, disability, mental incompetency, or retirement.* Any option entered into between stockholders of a corporation (or a stockholder and the corporation) with respect to the stock of either stockholder that is exercisable only upon the death, disability, mental incompetency of the stockholder, or, in the case of stock acquired in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed), the stockholder's retirement.

(E) *Rights of first refusal.* A bona fide right of first refusal regarding the corporation's stock with customary terms, entered into between stockholders of a corporation (or between the corporation and a stockholder).

(F) *Other enumerated instruments.* Any other instruments specified in regulations, a revenue ruling, or a revenue procedure. See § 601.601(d)(2) of this chapter.

(vii) *Reasonably certain that the option will be exercised*—(A) *In general.* The determination of whether, immediately after the distribution, an option is reasonably certain to be exercised is based on all the facts and circumstances. In applying the previous sentence, the fair market value of stock underlying an option is determined by taking into account control premiums and minority and blockage discounts.

(B) *Stock purchase agreement or similar arrangement.* A stock purchase agreement or similar arrangement is treated as reasonably certain to be exercised if the parties' obligations to complete the transaction are subject only to reasonable closing conditions.

(viii) *Examples.* The following examples illustrate this paragraph (c)(3):

Example 1. D owns all of the stock of C. A purchases 40 percent of D's only class of stock and an option to purchase an additional 20 percent of the D stock. Assume that no control premium or minority or blockage discount applies to the D stock underlying the option. The option permits A to acquire the stock at $30 per share, and D's stock has a fair market value of $27 per share on the date the option is issued. The option is subject to no contingencies or restrictive covenants, may be exercised within five years after its issuance, and is not described in paragraph (c)(3)(vi) of this section (regarding instruments generally not treated as options). Within five years of A's purchase of the D stock and option, D distributes the stock of its subsidiary C pro rata and A receives 40 percent of the C stock in the distribution. Immediately after the distribution, D's stock has a fair market value of $30 per share and C's stock has a fair market value of $15 per share. At the time of the distribution, A exchanges A's option for an option to purchase 20 percent of the D stock at $20 per share and an option to purchase 20 percent of the C stock at $10 per share. Based on all the facts and circumstances, it is reasonably certain, immediately after the distribution, that A will exercise its options. Under paragraph (c)(3)(iii)(A)(*1*) of this section, the substituted options are treated as issued on the date the original option was issued. Accordingly, the options are treated as exercised by A on the date that A purchased the original option. A is treated as owning 60 percent of the D stock and 60 percent of the C stock that is disqualified stock, and the distribution is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 2. D owns all of the stock of C. A purchases 37 percent of D's only class of stock. B owns 38 percent of the D stock, and the remaining 25 percent is owned by 20 individuals, each of whom owns less than five percent of D's stock. A purchases an option to purchase an additional 14 percent of the D stock from shareholders other than B for $50 per share. The option is subject to no contingencies or restrictive covenants, may be exercised within five years after its issuance, and is not described in paragraph (c)(3)(vi) of this section. Within five years of A's purchase of the option and 37 percent interest in D, D distributes the stock of its subsidiary C pro rata and A receives 37 percent of the C stock in the distribution. At the time of the distribution, A exchanges its option for an option to purchase 14 percent of the D stock at $25 per share and an option to purchase 14 percent of the C stock at $25 per share. Assume that, although a shareholder that owned no D or C stock would pay only $20 per share for D or C stock immediately after the distribution, a shareholder in A's position would pay $30 per share for 14 percent of the stock of D or C because of the control premium which attaches to the shares. The control premium is taken into account under paragraph (c)(3)(vii)(A) of this section to determine whether A is reasonably certain to exercise the options. Based on all the facts and circumstances, it is reasonably certain, immediately after the distribution, that A will exercise its options. Under paragraph (c)(3)(iii)(A) of this section, the substituted options are treated as issued on the date the original option was issued. Accordingly, the options are treated as exercised by A on the date that A purchased the original option. Under paragraph (c)(2) of this section, all shares of D and C are considered to have the same value to determine the amount of stock A is treated as purchasing under the options. A is treated as owning 51 percent of the D stock and 51 percent of the C stock that is disqualified stock, and the distribution is a disqualified distribution under section 355(d)(2).

(4) *Plan or arrangement*—(i) *In general.* Under section 355(d)(7)(B), if two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock in the distributing corporation or controlled corporation, those persons are treated as one person for purposes of section 355(d).

(ii) *Understanding.* For purposes of section 355(d)(7)(B), two or more persons who are (or will after an acquisition become) shareholders (or are treated as shareholders under paragraph (c)(3)(ii) of this section) act pursuant to a plan or arrangement with respect to an acquisition of stock only if they have a formal or informal understanding among themselves to make a coordinated acquisition of stock. A principal element in determining if such an understanding exists is whether the investment decision of each person is based on the investment decision of one or more other existing or prospective shareholders. However, the participation by creditors in formulating a plan for an insolvency workout or a reorganization in a title 11 or similar case (whether as members of a creditors' committee or otherwise) and the receipt of stock by creditors in satisfaction of indebtedness pursuant to the workout or reorganization do not cause the creditors to be considered as acting pursuant to a plan or arrangement.

(iii) *Examples.* The following examples illustrate paragraph (c)(4)(ii) of this section:

Example 1. D has 1,000 shares of common stock outstanding. A group of 20 unrelated individuals who previously owned no D stock (the Group) agree among themselves to acquire 50 percent or more of D's stock. The Group is not a person under section 7701(a)(1). Subsequently, pursuant to their understanding, the members of the Group purchase 600 shares of D common stock from the existing D shareholders (a total of 60 percent of the D stock), with each member purchasing 30 shares. Under paragraph (c)(4)(ii) of this section, the members of the Group have a formal or informal understanding among themselves to make a coordinated acquisition of stock. Their interests are therefore aggregated under section 355(d)(7)(B), and they are treated as one person who purchased 600 shares of D's stock for purposes of section 355(d).

Example 2. D has 1,000 shares of outstanding stock owned by unrelated individuals. D's management is concerned that D may become subject to a takeover bid. In separate meetings, D's management meets with potential investors who own no stock and are friendly to management to convince them to acquire D's stock based on an understanding that D will assemble a group

that in the aggregate will acquire more than 50 percent of D's stock. Subsequently, 15 of these investors each purchases four percent of D's stock. Under paragraph (c)(4)(ii) of this section, the 15 investors have a formal or informal understanding among themselves to make a coordinated acquisition of stock. Their interests are therefore aggregated under section 355(d)(7)(B), and they are treated as one person who purchased 600 shares of D stock for purposes of section 355(d).

Example 3. (i) D has 1,000 shares of outstanding stock owned by unrelated individuals. An investment advisor advises its clients that it believes D's stock is undervalued and recommends that they acquire D stock. Acting on the investment advisor's recommendation, 20 unrelated individuals each purchases 30 shares of D stock. Each client's decision was not based on the investment decisions made by one or more other clients. Because there is no formal or informal understanding among the clients to make a coordinated acquisition of D stock, their interests are not aggregated under section 355(d)(7)(B) and they are treated as making separate purchases.

(ii) The facts are the same as in paragraph (i) of this *Example 3*, except that the investment advisor is also the underwriter (without regard to whether it is a firm commitment or best efforts underwriting) for a primary or secondary offering of D stock. The result is the same.

(iii) The facts are the same as in paragraph (i) of this *Example 3*, except that, instead of an investment advisor recommending that clients purchase D stock, the trustee of several trusts qualified under section 401(a) sponsored by unrelated corporations causes each trust to purchase the D stock. The result is the same, provided that the trustee's investment decision made on behalf of each trust was not based on the investment decision made on behalf of one or more of the other trusts.

(d) *Purchase*—(1) *In general*—(i) *Definition of purchase under section 355(d)(5)(A).* Under section 355(d)(5)(A), except as otherwise provided in section 355(d)(5)(B) and (C), a *purchase* means any acquisition, but only if—

(A) The basis of the property acquired in the hands of the acquirer is not determined—

(*1*) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired; or

(*2*) Under section 1014(a); and

(B) The property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

(ii) *Section 355 distributions.* Paragraph (d)(1)(i)(B) of this section includes all section 355 distributions, whether in exchange (in whole or in part) for stock or pro rata.

(iii) *Examples.* The following examples illustrate this paragraph (d)(1):

Example 1. *Section 304(a)(1) acquisition.* A, who owns all of the stock of P and T, sells the T stock to P for cash. The T stock is not marketable stock under section 355(d)(5)(B)(ii) and paragraph (d)(3)(ii) of this section. A is treated under section 304(a)(1) as receiving a distribution in redemption of the P stock. Under section 302(d), the deemed redemption is treated as a section 301 distribution. Assume that under sections 304(b)(2) and 301(c)(1), all of the distribution is a dividend. A and P are treated in the same manner as if A had transferred the T stock to P in exchange for stock of P in a transaction to which section 351(a) applies, and P had then redeemed the stock P was treated as issuing in the transaction. Under section 362(a), P's basis in the T stock is determined by reference to A's adjusted basis in the T stock, and there is no basis increase in the T stock because A recognizes no gain on the deemed transfer. Accordingly, P's acquisition of the T stock from A is not a purchase by P under section 355(d)(5)(A)(i)(I) and paragraphs (d)(1)(i)(A)(*1*) and (d)(2)(i)(B) of this section.

Example 2. *Section 338 election.* P owns all of the stock of S and no other assets. X acquires all of the P stock from the P shareholders and makes an election under section 338. Under section 355(d)(5)(A), X has acquired the P stock by purchase. Under section 338(a) and (b), P is treated as having sold all of its assets at fair market value and purchased the assets as a new corporation as of the beginning of the day after the acquisition date for an amount equal to the purchase price of the P stock. Accordingly, P is treated as having purchased all of the S stock under section 355(d)(5)(A).

(2) *Exceptions to definition of purchase under section 355(d)(5)(A).* The following acquisitions are not treated as purchases under section 355(d)(5)(A):

(i) *Acquisition of stock in a transaction which includes other property or money*—(A) *Transferors and shareholders of transferor or distributing corporations*—(*1*) *In general.* An acquisition of stock permitted to be received by a transferor of property without the recognition of gain under section 351(a), or permitted to be received without the recognition of gain under section 354 or 355, is not a purchase to the extent section 358(a)(1) applies to determine the recipient's basis in the stock received, whether or not the recipient also recognizes gain under section 351(b) or 356. But see paragraph (e)(3) of this section (interest received in exchange for purchased interest in exchanged basis transaction treated as purchased).

(*2*) Exception. To the extent there is received in the exchange or distribution, in addition to stock described in paragraph (d)(2)(i)(A)(*1*) of this section, stock that is other property under section 351(b) or 356(a)(1), the stock is treated as purchased on the date of the exchange or distribution for purposes of section 355(d).

(B) *Transferee corporations*—(*1*) *In general.* An acquisition of stock by a corporation is not a purchase to the extent section 334(b) or 362(a) or (b) applies to determine the corporation's basis in the stock received. But see section 355(d)(5)(C) and paragraph (e)(2) of this section (purchased property transferred in transferred basis transaction is treated as purchased by transferee).

(*2*) *Exception.* If a corporation acquires stock, the stock is treated as purchased on the date of the stock acquisition for purposes of section 355(d)—

(*i*) If the liquidating corporation recognizes gain or loss with respect to the transferred stock as described in section 334(b)(1); or

(*ii*) To the extent the basis of the transferred stock is increased through the recognition of gain by the transferor under section 362(a) or (b).

(C) *Examples.* The following examples illustrate this paragraph (d)(2)(i):

Example 1. (i) A owns all the stock of T. T merges into D in a transaction qualifying under section 368(a)(1)(A), with A exchanging all of the T stock for D stock and $100 cash. Under section 356(a)(1), A recognizes $100 of the realized gain on the transaction. Under section 358(a)(1), A's basis in the D stock equals A's basis in the T stock, decreased by the $100 received and increased by the gain recognized, also $100. Under paragraph (d)(2)(i)(A) of this section, A is not treated as having purchased the D stock for purposes of section 355(d)(5).

(ii) The facts are the same as in paragraph (i) of this *Example*, except that rather than D stock and $100 cash, A receives D stock and stock in C, a corporation not a party to the reorganization, with a fair market value of $100. Under section 358(a)(2), A's basis in the C stock is its fair market value, or $100. Under paragraph (d)(2)(i)(A)(*2*) of this section, A is treated as having purchased the C stock, but not the D stock, for purposes of section 355(d)(5).

Example 2. A purchases all of the stock of D, which is not marketable stock, on Date 1 for $90. Within five years of A's purchase, on Date 2, A contributes the D stock to P in exchange for P stock worth $90 and $10 cash in a transaction qualifying under section 351. Under section 362(a), P's basis in D is $100. P is treated as having purchased 90 percent ($90 worth) of the D stock on Date 1 under section 355(d)(5)(C) and paragraph (e)(2)(i) of this section and as having purchased 10 percent ($10 worth) of the D stock on Date 2 under paragraph (d)(2)(i)(B)(*2*) of this section.

(ii) *Acquisition of stock in a distribution to which section 305(a) applies.* An acquisition of stock in a distribution qualifying under section 305(a) is not a purchase to the extent section 307(a) applies to determine the recipient's basis. However, to the extent

the distribution is of rights to acquire stock, see paragraph (c)(3) of this section for rules regarding options, warrants, convertible obligations, and other similar interests.

(iii) *Section 1036(a) exchange.* An exchange of stock qualifying under section 1036(a) is not a purchase by either party to the exchange to the extent the basis of the property acquired equals that of the property exchanged under section 1031(d).

(3) *Certain section 351 exchanges treated as purchases*—(i) *In general*—(A) *Treatment of stock received by transferor.* Under section 355(d)(5)(B), a purchase includes any acquisition of property in an exchange to which section 351 applies to the extent the property is acquired in exchange for any cash or cash item, any marketable stock, or any debt of the transferor. The property treated as acquired by purchase is the property received by the transferor in the exchange.

(B) *Multiple classes of stock.* If the transferor in a transaction described in section 355(d)(5)(B) receives stock or securities of more than one class, or receives both stock and securities, then the amount of stock or securities purchased is determined in a manner that corresponds to the allocation of basis to the stock or securities under section 358. See § 1.358–2(b).

(ii) *Cash item, marketable stock.* For purposes of section 355(d)(5)(B) and this paragraph (d)(3), either or both of the terms *cash item* and *marketable stock* include personal property within the meaning of section 1092(d)(1) and § 1.1092(d)–1, without giving effect to section 1092(d)(3).

(iii) *Exception for certain acquisitions*—(A) *In general.* Except to the extent provided in paragraph (e)(3) of this section (interest received in exchange for purchased interest in exchanged basis transaction treated as purchased), an acquisition of stock in a corporation in a section 351 transaction by one or more persons in exchange for an amount of stock in another corporation (the transferred corporation) that meets the requirements of section 1504(a)(2) is not a purchase by the transferor or transferors, regardless of whether the stock of the transferred corporation is marketable stock under section 355(d)(5)(B)(ii) and paragraph (d)(3)(ii) of this section.

(B) *Example.* The following example illustrates this paragraph (d)(3)(iii):

Example. D's two classes of stock, voting common and nonvoting preferred, are both widely held and publicly traded. The nonvoting preferred stock is stock described in section 1504(a)(4). Assume that all of the D stock is marketable stock under section 355(d)(5)(B)(ii) and paragraph (d)(3)(ii) of this section. D's board of directors proposes that, for valid business purposes, D's common stock should be held by a holding company, HC, but its preferred stock should not be transferred to HC. As proposed, the D common shareholders exchange their D stock solely for HC common stock in a section 351(a) transaction. The D preferred shareholders retain their stock. HC acquires an amount of D stock that meets the requirements of section 1504(a)(2). Although the D common stock was marketable stock in the hands of the D shareholders immediately before the transfer, and the D nonvoting preferred stock is marketable stock after the transfer, the D shareholders are not treated as having acquired the HC stock by purchase (except to the extent the exchanged basis rule of paragraph (e)(3) of this section may apply to treat HC stock as purchased on the date the exchanged D stock was purchased).

(iv) *Exception for assets transferred as part of an active trade or business*—(A) *In general.* Except to the extent provided in paragraph (e)(3) of this section, an acquisition not described in paragraph (d)(3)(iii) of this section of stock in exchange for any cash or cash item, any marketable stock, or any debt of the transferor in a section 351 transaction is not a purchase if—

(*1*) The transferor is engaged in the active conduct of a trade or business under paragraph (d)(3)(iv)(B) of this section and the transferred items (including debt incurred in the ordinary course of the trade or business) are used in the trade or business;

(*2*) The transferred items do not exceed the reasonable needs of the trade or business under paragraph (d)(3)(iv)(C) of this section;

(*3*) The transferor transfers the items as part of the trade or business; and

(*4*) The transferee continues the active conduct of the trade or business.

(B) *Active conduct of a trade or business.* For purposes of this paragraph (d)(3)(iv), whether, with respect to the trade or business at issue, the transferor and transferee are engaged in the active conduct of a trade or business is determined under § 1.355–3(b)(2) and (3), except that—

(*1*) Conduct is tested before the transfer (with respect to the transferor) and after the transfer (with respect to the transferee) rather than immediately after a distribution; and

(*2*) The trade or business need not have been conducted for five years before its transfer, but it must have been conducted for a sufficient period of time to establish that it is a viable and ongoing trade or business.

(C) *Reasonable needs of the trade or business.* For purposes of this paragraph (d)(3)(iv), the reasonable needs of the trade or business include only the amount of cash or cash items, marketable stock, or debt of the transferor that a prudent business person apprised of all relevant facts would consider necessary for the present and reasonably anticipated future needs of the business. Transferred items may be considered necessary for reasonably anticipated future needs only if the transferor and transferee have specific, definite, and feasible plans for their use. Those plans must require that items intended for anticipated future needs rather than present needs be used as expeditiously as possible consistent with the business purpose for retention of the items.

Future needs are not reasonably anticipated if they are uncertain or vague or where the execution of the plan for their use is substantially postponed. The reasonable needs of a trade or business are generally its needs at the time of the transfer of the business including the items. However, for purposes of applying section 355(d) to a distribution, events and conditions after the transfer and through the date immediately after the distribution (including whether plans for the use of transferred items have been consummated or substantially postponed) may be considered to determine whether at the time of the transfer the items were necessary for the present and reasonably anticipated future needs of the business.

(D) *Consideration of all facts and circumstances.* All facts and circumstances are considered in determining whether this paragraph (d)(3)(iv) applies.

(v) *Exception for transfer between members of the same affiliated group*—(A) *In general.* Except to the extent provided in paragraph (e)(3) of this section, an acquisition of stock (whether actual or constructive) not described in paragraphs (d)(3)(iii) and (iv) of this section in exchange for any cash or cash item, marketable stock, or debt of the transferor in a section 351 transaction is not a purchase if the transferor corporation or corporations, the transferee corporation, and any distributed controlled corporation of the transferee corporation are members of the same affiliated group as defined in section 1504(a) before the section 351 transaction (if the transferee corporation is in existence before the transaction) and do not cease to be members of such affiliated group in any transaction that is related to the section 351 transaction (including any distribution of a controlled corporation by the transferee corporation). But see paragraph (b)(4) of this section where the transfer is made

for a principal purpose to avoid the purposes of section 355(d).

(B) *Examples.* The following examples illustrate this paragraph (d)(3)(v):

Example 1. Publicly traded P has wholly owned S since 1990. S is engaged in the business of computer software development and is developing a new software platform for use in the managed health care industry. Over a period of four years beginning on January 31, 2000, P contributes a substantial amount of cash to S solely for the purpose of funding the software platform development. On completion of the software platform in January of 2004, 60 percent of the value of the S stock is attributable to the cash contributions made within the last four years. The P group's primary lender requires that S separately incorporate the software platform and related assets and distribute the new subsidiary to P as a condition of providing required funding to market the platform. Accordingly, on February 1, 2004, S forms N, contributes the platform and related assets to N, and distributes all of the N stock to P in a transaction intended to qualify under section 355(a). P, S, and N will not leave the affiliated group in any transaction related to the cash contributions. Under paragraph (d)(3)(v)(A) of this section, P's cash contributions to S are not treated as purchases of additional S stock, and the distribution of N from S to P is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 2. On Date 1, P contributes cash to its subsidiary S with a principal purpose to increase its stock basis in S. Sixty percent of the value of P's S stock is attributable to the cash contribution. Under paragraph (b)(4) of this section (anti-avoidance rule), 60 percent of the S stock is treated as purchased under section 355(d)(5)(B), notwithstanding paragraph (d)(3)(v)(A) of this section. Accordingly, any distribution of a subsidiary of S to P within the five-year period after Date 1 will be a disqualified distribution, regardless of whether P, S, and any distributed S subsidiary remain affiliated after the distribution and any transactions related to the cash contribution.

(4) *Triangular asset reorganizations*—(i) *Definition.* A *triangular asset reorganization* is a reorganization that qualifies under—

(A) Section 368(a)(1) (A) or (G) by reason of section 368(a)(2)(D);

(B) Section 368(a)(1)(A) by reason of section 368(a)(2)(E) (regardless of whether section 368(a)(3)(E) applies), unless the transaction also qualifies as either a section 351 transfer or a reorganization under section 368(a)(1)(B); or

(C) Section 368(a)(1)(C), and stock of the controlling corporation rather than the acquiring corporation is exchanged for the acquired corporation's properties.

(ii) *Treatment.* Notwithstanding section 355(d)(5)(A), for purposes of section 355(d), the controlling corporation in a triangular asset reorganization is treated as having—

(A) Acquired the assets of the acquired corporation (and as having assumed any liabilities assumed by the controlling corporation's subsidiary corporation or to which the acquired corporation's assets were subject (the acquired liabilities)) in a transaction in which the controlling corporation's basis in the acquired corporation's assets was determined under section 362(b); and

(B) Transferred the acquired assets and acquired liabilities to its subsidiary corporation in a section 351 transfer.

(iii) *Example.* The following example illustrates this paragraph (d)(4):

Example. *Forward triangular reorganization.* P forms S with $10 cash and T merges into S in a reorganization qualifying under section 368(a)(1)(A) by reason of section 368(a)(2)(D) in which the T shareholders receive solely P stock in exchange for their T stock. T is not a common parent of a consolidated group of corporations. The $10 cash with which P formed S will not be used in the acquired business. T's assets consist only of assets part of and used in its business with a value of $80, and $10 cash that is not part of or used in T's business. T has no liabilities. S will use T's business assets in T's business (which will become S's business), but will invest the $20 cash in an unrelated passive investment. Under paragraph (d)(4)(ii) of this section, P is treated as acquiring the T assets in a transaction in which P's basis in the T assets was determined under section 362(b) and contributing them to S in a section 351 transfer. The exception in paragraph (d)(3)(v) of this section does not apply because P and S became affiliated in the same transaction in which the section 351 transfer is deemed to occur. Accordingly, P is treated under section 355(d)(5)(B) and paragraph (d)(3)(iv) of this section as having purchased $20 of the S stock, but is not deemed to have purchased the remaining $80 of the S stock.

(5) *Reverse triangular reorganizations other than triangular asset reorganizations*—(i) *In general.* Except as provided in paragraph (d)(5)(ii) of this section, if a transaction qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E) and also as either a reorganization under section 368(a)(1)(B) or a section 351 transfer, then either section 355(d)(5)(B) (and paragraph (d)(3) (i) through (iv) of this section) or 355(d)(5)(C) (and paragraph (e)(2) of this section) applies. Regardless of which method the controlling corporation employs to determine its basis in the surviving corporation stock under § 1.358–6(c)(2)(ii) or 1.1502–30(b), the total amount of surviving corporation stock treated as purchased by the controlling corporation will equal the higher of—

(A) The amount of surviving corporation stock that would be treated as purchased (on the date of the deemed section 351 transfer) by the controlling corporation if the controlling corporation acquired the surviving corporation's assets and assumed its liabilities in a transaction in which the controlling corporation's basis in the surviving corporation assets was determined under section 362(b), and then transferred the acquired assets and liabilities to the surviving corporation in a section 351 transfer (see §§ 1.358–6(c)(1) and (2)(ii)(A) and 1.1502–30(b)); or

(B) The amount of surviving corporation stock that would be treated as purchased (on the date the surviving corporation shareholders purchased their surviving corporation stock) if the controlling corporation acquired the stock of the surviving corporation in a transaction in which the basis in the surviving corporation's stock was determined under section 362(b) (see §§ 1.358–6(c)(2)(ii)(B) and 1.1502–30(b)).

(ii) *Letter ruling and closing agreement.* If a controlling corporation obtains a letter ruling and enters into a closing agreement under section 7121 in which it agrees to determine its basis in surviving corporation stock under § 1.358–6(c)(2)(ii)(A), or under § 1.1502–30(b) by applying § 1.358–6(c)(2)(ii)(A) (deemed asset acquisition and transfer by controlling corporation), then section 355(d)(5)(B) and paragraph (d)(3) (i) through (iv) of this section apply, and section 355 (d)(5)(C) and paragraph (e)(2) of this section do not apply. If a controlling corporation obtains a letter ruling and enters into a closing agreement under section 7121 under which it agrees to determine its basis in surviving corporation stock under § 1.358–6(c)(2)(ii)(B), or under § 1.1502–30(b) by applying 1.358–6(c)(2)(ii)(B) (deemed stock acquisition), then section 355 (d)(5)(C) and paragraph (e)(2) of this section apply, and section 355 (d)(5)(B) and paragraphs (d)(3) (i) through (iv) of this section do not apply.

(iii) *Example.* The following example illustrates this paragraph (d)(5):

Example. *Reverse triangular reorganization; purchase.* (i) A purchases 60 percent of the stock of D on Date 1. D owns no cash items, marketable stock, or transferor debt, but holds cash that is not part of or used in D's trade or business under paragraph (d)(3)(iv) of this section and that represents 20 percent of D's value. On Date 2, P forms S, and S merges into D in a reorganization qualifying under section 368(a)(1)(B) and under section 368(a)(1)(A) by reason of section 368(a)(2)(E). In the reorganization, P acquires all of the D stock in exchange solely for P stock. After Date 2, and within five years after Date 1, D

distributes its wholly owned subsidiary C to P. P does not obtain a letter ruling and enter into a closing agreement under paragraph (d)(5)(ii) of this section. P would acquire 20 percent of the D stock by purchase on Date 2 under paragraph (d)(5)(i)(A) of this section by operation of section 355(d)(5)(B) and paragraph (d)(3)(iv) of this section. The exception in paragraph (d)(3)(v) of this section does not apply because P and S became affiliated in the same transaction in which the section 351 transfer is deemed to occur. P would acquire 60 percent of the D stock by purchase on Date 1 under paragraph (d)(5)(i)(B) of this section because, under the transferred basis rule of section 355(d)(5)(C) and paragraph (e)(2) of this section, P is treated as though P purchased the D stock on the date A purchased it. Accordingly, under paragraph (d)(5)(i) of this section, P is treated as acquiring the higher amount (60 percent) by purchase on Date 1. D's distribution of C to P is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section. In addition, A is treated as acquiring the P stock by purchase on Date 1 under paragraph (e)(3) of this section because A's basis in the P stock is determined by reference to A's basis in the D stock.

(ii) The facts are the same as in paragraph (i) of this *Example*, except that P obtains a letter ruling and enters into a closing agreement under which it agrees to determine its basis in the D stock under § 1.358–6(c)(2)(ii)(A). Under paragraph (d)(5)(ii) of this section, section 355(d)(5)(B) (and paragraphs (d)(3) (i) through (iv) of this section) applies, and section 355(d)(5)(C) (and paragraph (e)(2) of this section) does not apply. Accordingly, P is treated as acquiring only 20 percent of the D stock by purchase on Date 2. D's distribution of C to P is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

(6) *Treatment of group structure changes*—(i) *In general.* Notwithstanding section 355(d)(5)(A), for purposes of section 355(d), if a corporation succeeds another corporation as the common parent of a consolidated group in a group structure change to which § 1.1502–31 applies, the new common parent is treated as having acquired the assets and assumed the liabilities of the former common parent in a transaction in which the new common parent's basis in the former common parent's assets was determined under section 362(b), and then transferred the acquired assets and liabilities to the former common parent (or, if the former common parent does not survive, to the new common parent's subsidiary) in a section 351 transfer, with the new common parent and former common parent being treated as not in the same affiliated group at the time of the transfer (notwithstanding § 1.1502–31(c)(2)).

(ii) *Adjustments to basis of higher-tier members.* A higher-tier member that indirectly owns all or part of the former common parent's stock after a group structure change is treated as having purchased the stock of an immediate subsidiary to the extent that the higher-tier member's basis in the subsidiary is increased under § 1.1502–31(d)(4).

(iii) *Example.* The following example illustrates this paragraph (d)(6):

Example. P is the common parent of a consolidated group, and T is the common parent of another group. P has owned S for more than five years, and the fair market value of the S stock is $50. T's assets consist only of non-marketable stock of direct and indirect wholly owned subsidiaries with a value of $50, assets used in its business with a value of $50, and $50 of marketable stock that is not part of or used in T's business. T has no liabilities. T merges into S with the T shareholders receiving solely P stock with a value of $150 in exchange for their T stock in a section 368(a)(2)(D) reorganization. S will use T's business assets in T's business (which will become S's business), but will hold the $50 of marketable stock for investment purposes. Assume that the transaction is a reverse acquisition under § 1.1502–75(d)(3) because the T shareholders, as a result of owning T stock, own more than 50 percent of the value of P's stock immediately after the transaction. Thus, the transaction is a group structure change under § 1.1502–33(f)(1). Under paragraph (d)(6) of this section, P is treated as having acquired the assets of T in a transaction in which P's basis in the T assets was determined under section 362(b), and then transferred the acquired assets to S in a section 351 transfer, with P and T being treated as not in the same affiliated group at the time of the transfer. The exception in paragraph (d)(3)(v) of this section (transfers within an affiliated group) does not apply. Accordingly, P is treated under section 355(d)(5)(B) and paragraph (d)(3)(iv) of this section as having purchased $50 of the S stock (attributable to the marketable stock), but is not deemed to have purchased the remaining $150 of the S stock.

(7) *Special rules for triangular asset reorganizations, other reverse triangular reorganizations, and group structure changes.* The amount of acquiring subsidiary, surviving corporation, or former common parent stock that is treated as purchased under paragraph (c)(4), (5)(i)(A), or (6) of this section (by operation of section 355(d)(5)(B) and paragraphs (d)(3) (i) through (iv) of this section) is adjusted to reflect any basis adjustment under—

(i) Section 1.358–6(c)(2)(i) (B) and (C) (reduction of basis adjustment in reverse triangular reorganization where controlling corporation acquires less than all of the surviving corporation stock), § 1.1502–30(b) (applying § 1.358–6(c)(2)(i) (B) and (C) to a consolidated group), and § 1.1502–31(d)(2)(ii) (reduction of basis adjustment in group structure change where new common parent acquires less than all of the former common parent stock); or

(ii) Section 1.358–6(d) (reduction of basis adjustment in any triangular reorganization to the extent controlling corporation does not provide consideration), § 1.1502–30(b) (applying § 1.358–6(d) (except § 1.358–6(d)(2)) to a consolidated group), and § 1.1502–31(d)(1) (reduction of basis adjustment in group structure change to the extent new common parent does not provide consideration).

(e) *Deemed purchase and timing rules*—(1) *Attribution and aggregation*—(i) *In general.* Under section 355(d)(8)(B), if any person acquires by purchase an interest in any entity, and the person is treated under section 355(d)(8)(A) as holding any stock by reason of holding the interest, the stock shall be treated as acquired by purchase on the later of the date of the purchase of the interest in the entity or the date the stock is acquired by purchase by such entity.

(ii) *Purchase of additional interest.* If a person and an entity are treated as a single person under section 355(d)(7), and the person later purchases an additional interest in the entity, the person is treated as purchasing on the date of the later purchase the amount of stock attributed from the entity to the person under section 355(d)(8)(A) as a result of the additional interest.

(iii) *Purchase between persons treated as one person.* If two persons are treated as one person under section 355(d)(7), and one later purchases stock or securities from the other, the date of the later purchase is used for purposes of determining when the five-year period commences.

(iv) *Purchase by a person already treated as holding stock under section 355(d)(8)(A).* If a person who is already treated as holding stock under section 355(d)(8)(A) later directly purchases such stock, the date of the later direct purchase is used for purposes of determining when the five-year period commences.

(v) *Examples.* The following examples illustrate this paragraph (e)(1):

Example 1. On Date 1, A purchases 10 percent of the stock of P, which has held 100 percent of the stock of T for more than five years at the time of A's purchase. A is deemed to have purchased 10 percent of P's T stock on Date 1. If A later purchases an additional 41 percent of the stock of P on Date 2, A is deemed to have purchased an additional 41 percent of P's T stock on Date 2. Because A and P are now related persons under section 267(b), they are treated as one person under section 355(d)(7)(A), and A is treated as owning all of P's T stock. A is treated as acquiring 51 percent of the T stock by purchase at the times of A's respective purchases of P stock on Date 1 and Date 2. The remaining 49 percent of T stock is

treated as acquired when P acquired the T stock, more than five years before Date 1. If P distributes T within five years after Date 1, the distribution will be a disqualified distribution under section 355 (d)(2) and paragraph (b)(1) of this section.

Example 2. A has owned 60 percent of the stock of P for more than five years, and P has owned 40 percent of the stock of T for more than five years. A and P are treated as one person, and A is treated as owning 40 percent of the stock of T for more than five years. If P later purchases an additional 20 percent of the stock of T on Date 1, A is treated as acquiring by purchase the additional 20 percent of T stock on Date 1. If A then purchases an additional 10 percent of the stock of P on Date 2, under the attribution rule and the deemed purchase rule, A is deemed to have purchased on Date 2 an additional four percent of the T stock (10 percent of the 40 percent that P originally owned). In addition, even though A and P were already treated as one person under section 355(d)(7)(A), A is also deemed to have purchased two percent of the T stock on Date 2 (10 percent of the 20 percent of the T stock that it was treated as purchasing on Date 1). A is still treated as owning all 60 percent of the T stock owned by P. However, of the 60 percent, A is treated as having purchased 18 percent of the T stock on Date 1 and 6 percent of the T stock on Date 2, for a total of 24 percent purchased stock.

Example 3. A purchases a 20 percent interest in partnership M on Date 1. M has owned 30 percent of the stock and 25 percent of the securities of P for more than five years. P has owned 40 percent of the stock and 100 percent of the securities of T for more than five years. Under section 318(a)(2)(C) as modified by section 355(d)(8)(A), M is deemed to own 12 percent of the stock (30 percent of the 40 percent P owns) and 30 percent of the securities (30 percent of the 100 percent P owns) of T. Under sections 318(a)(2)(A) and 355(d)(8)(B), A is deemed to have purchased 2.4 percent of the stock (20 percent of the 12 percent M is deemed to own) and 6 percent of the securities (20 percent of the 30 percent M is deemed to own) of T on Date 1. Similarly, A is deemed to have purchased 6 percent of the stock (20 percent of the 30 percent M owns) and five percent of the securities (20 percent of the 25 percent M owns) of P on Date 1. If M later purchases an additional 10 percent of P stock on Date 2, M is deemed to have purchased four percent of the stock (10 percent of the 40 percent P owns) and 10 percent of the securities (10 percent of the 100 percent P owns) of T on Date 2. A is deemed to have purchased two percent of the stock of P on Date 2 (20 percent of the 10 percent M purchased). A is also deemed to have purchased 0.8 percent of the stock (20 percent of the four percent M is deemed to have purchased) and two percent of the securities (20 percent of the 10 percent M is deemed to have purchased) of T on Date 2.

Example 4. A and B are brother and sister. For more than five years, A has owned 75 percent of the stock of P, and B has owned 25 percent of the stock of P. A and B are treated as one person under section 267(b), and the stock of each is treated as purchased on the date it was purchased by A and B, respectively. If B later purchases 50 percent of the P stock from A on Date 1, A and B are still treated as one person. However, the 50 percent of P stock that B purchased from A is treated as purchased on Date 1.

(2) *Transferred basis rule.* If any person acquires property from another person who acquired the property by purchase (determined with regard to section 355(d)(5) and paragraphs (d) and (e)(2) and (3) of this section, but without regard to section 355(d)(8) and paragraph (e)(1) of this section), and the adjusted basis of the property in the hands of the acquirer is determined in whole or in part by reference to the adjusted basis of the property in the hands of the other person, the acquirer is treated as having acquired the property by purchase on the date it was so acquired by the other person. The rule in this paragraph (e)(2) applies, for example, where stock of a corporation acquired by purchase is subsequently acquired in a section 351 transfer or a reorganization qualifying under section 368(a)(1)(B), but does not apply if the stock of a former common parent is acquired in a group structure change to which § 1.1502–31 applies. But see paragraph (d)(2)(i)(B)(*2*) of this section for situations where the stock is treated as purchased on the date of a transfer.

(3) *Exchanged basis rule*—(i) *In general.* If any person acquires an interest in an entity (the first interest) by purchase (determined with regard to section 355(d)(5) and paragraphs (d) and (e)(2) and (3) of this section, but without regard to section 355(d)(8) and paragraph (e)(1) of this section), and the first interest is exchanged for an interest in another entity (the second interest) where the adjusted basis of the second interest is determined in whole or in part by reference to the adjusted basis of the first interest, then the second interest is treated as having been purchased on the date the first interest was purchased. The rule in this paragraph (e)(3) applies, for example, where stock of a corporation acquired by purchase is subsequently exchanged for other stock in a section 351, 354, or 1036(a) exchange. But see paragraph (d)(2)(i)(A)(*2*) of this section for situations where the stock is treated as purchased on the date of an exchange or distribution.

(ii) *Example.* The following example illustrates this paragraph (e)(3):

Example. A purchases 50 percent of the stock of T on Date 1. On Date 2, T merges into D in a section 368(a)(1)(A) reorganization, with A exchanging all of the T stock solely for stock of D. Under section 358(a), A's basis in the D stock is determined by reference to the basis of the T stock it purchased. Accordingly, A is treated as having purchased the D stock on Date 1, and has a purchased basis in the D stock under paragraph (b)(3)(iii) of this section.

(4) *Substantial diminution of risk*—(i) *In general.* If section 355(d)(6) applies to any stock for any period, the running of any five-year period set forth in section 355(d)(3) is suspended during such period.

(ii) *Property to which suspension applies.* Section 355(d)(6) applies to any stock for any period during which the holder's risk of loss with respect to such stock, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by an option, a short sale, any special class of stock, or any other device or transaction.

(iii) *Risk of loss substantially diminished.* Whether a holder's risk of loss is substantially diminished under section 355(d)(6) and paragraph (e)(4)(ii) of this section will be determined based on all facts and circumstances relating to the stock, the corporate activities, and arrangements for holding the stock.

(iv) *Special class of stock.* For purposes of section 355(d)(6) and paragraph (e)(4)(ii) of this section, the term *special class of stock* includes a class of stock that grants particular rights to, or bears particular risks for, the holder or the issuer with respect to the earnings, assets, or attributes of less than all the assets or activities of a corporation or any of its subsidiaries. The term includes, for example, tracking stock and stock (or any related instruments or arrangements) the terms of which provide for the distribution (whether or not at the option of any party or in the event of any contingency) of any controlled corporation or other specified assets to the holder or to one or more persons other than the holder.

(f) *Duty to determine stockholders*—(1) *In general.* In determining whether section 355(d) applies to a distribution of controlled corporation stock, a distributing corporation must determine whether a disqualified person holds its stock or the stock of any distributed controlled corporation. This paragraph (f) provides rules regarding this determination and the extent to which a distributing corporation must investigate whether a disqualified person holds stock.

(2) *Deemed knowledge of contents of securities filings.* A distributing corporation is deemed to have knowledge of the existence and contents of all schedules, forms, and other documents filed with or under the rules of the Securities and Exchange Commission, including without limitation any Schedule 13D or 13G (or

any similar schedules) and amendments, with respect to any relevant corporation.

(3) *Presumption as to securities filings.* Absent actual knowledge to the contrary, in determining whether section 355(d) applies to a distribution, a distributing corporation may presume, with respect to stock that is reporting stock (while such stock is reporting stock), that every shareholder or other person required to file a schedule, form, or other document with or under the rules of the Securities and Exchange Commission as of a given date has filed the schedule, form, or other document as of that date and that the contents of filed schedules, forms, or other documents are accurate and complete. *Reporting stock* is stock that is described in Rule 13d–1(i) of Regulation 13D (17 CFR 240.13d–1(i)) (or any rule or regulation to generally the same effect) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(4) *Presumption as to less-than-five-percent shareholders.* Absent actual knowledge (or deemed knowledge under paragraph (f)(2) of this section) immediately after the distribution to the contrary with regard to a particular shareholder, a distributing corporation may presume that no less-than-five-percent shareholder of a corporation acquired stock by purchase under section 355(d) (5) or (8) and paragraphs (d) and (e) of this section during the five-year period. For purposes of this paragraph (f), *a less-than-five-percent shareholder* is a person that, at no time during the five-year period, holds directly (or by application of paragraph (c)(3)(ii) of this section, but not by application of section 355(d) (7) or (8)) stock possessing five percent or more of the total combined voting power of all classes of stock entitled to vote and the total value of shares of all classes of stock of a corporation. However, this presumption does not apply to any less-than-five-percent shareholder that, at any time during the five-year period—

(i) Is related under section 355(d)(7)(A) to a shareholder in the corporation that is, at any time during the five-year period, not a less-than-five-percent shareholder;

(ii) Acted pursuant to a plan or arrangement, with respect to acquisitions of the corporation's stock under section 355 (d)(7)(B) and paragraph (c)(4) of this section, with a shareholder in the corporation that is, at any time during the five-year period, not a less-than-five-percent shareholder; or

(iii) Holds stock that is attributed under section 355(d)(8)(A) to a shareholder in the corporation that is, at any time during the five-year period, not a less-than-five-percent shareholder.

(5) *Examples.* The following examples illustrate this paragraph (f):

Example 1. *Publicly traded corporation; no schedules filed.* D is a widely held and publicly traded corporation with a single class of reporting stock and no other class of stock. Assume that applicable federal law requires any person that directly holds five percent or more of the D stock to file a schedule with the Securities and Exchange Commission within 10 days after an acquisition. D distributes its wholly owned subsidiary C pro rata. D determines that no schedule, form, or other document has been filed with respect to its stock or the stock of any other relevant corporation during the five-year period or within 10 days after the distribution. Immediately after the distribution, D has no knowledge that any of its shareholders are (or were at any time during the five-year period) not less-than-five-percent shareholders, or that any particular shareholder acquired D stock by purchase under section 355(d) (5) or (8) and paragraphs (d) and (e) of this section during the five-year period. Under paragraph (f)(3) of this section, D may presume it has no shareholder that is or was not a less-than-five-percent shareholder during the five-year period due to the absence of any filed schedules, forms, or other documents. Under paragraph (f)(4) of this section, D may presume that none of its less-than-five-percent shareholders acquired D's stock by purchase during the five-year period. Accordingly, D may presume that section 355(d) does not apply to the distribution of C.

Example 2. *Publicly traded corporation; schedule filed.* The facts are the same as those in *Example 1*, except that D determines that, as of 10 days after the distribution, only one schedule has been filed with respect to its stock. That schedule discloses that X acquired 15 percent of the D stock one year before the distribution. Absent contrary knowledge, D may rely on the presumptions in paragraph (f)(3) of this section and so may presume that X is its only shareholder that is or was not a less-than-five-percent shareholder during the five-year period. D may not rely on the presumption in paragraph (f)(4) of this section with respect to X. In addition, D may not rely on the presumption in paragraph (f)(4) of this section with respect to any less-than-five-percent shareholder that, at any time during the five-year period, is related to X under section 355(d)(7)(A), acted pursuant to a plan or arrangement with X under section 355 (d)(7)(B) and paragraph (c)(4) of this section with respect to acquisitions of D stock, or holds stock that is attributed to X under section 355(d)(8)(A). Accordingly, under paragraph (f)(1) of this section, to determine whether section 355(d) applies, D must determine: whether X acquired its directly held D stock by purchase under section 355(d)(5) and paragraphs (d) and (e)(2) and (3) of this section during the five-year period; whether X is treated as having purchased any additional D stock under section 355 (d)(8) and paragraph (e)(1) of this section during the five-year period; and whether X is related to, or acquired its D stock pursuant to a plan or arrangement with, one or more of D's other shareholders during the five-year period under section 355(d)(7) (A) or (B) and paragraph (c)(4) of this section, and if so, whether those shareholders acquired their D stock by purchase under section 355(d) (5) or (8) and paragraphs (d) and (e) of this section during the five-year period.

Example 3. *Acquisition of publicly traded corporation.* The facts are the same as those in *Example 1*, except that P acquires all of the D stock in a section 368(a)(1)(B) reorganization that is not also a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E), and D distributes C to P one year later. Under the deemed purchase rule of section 355 (d)(5)(C) and paragraph (e)(2) of this section, P is treated as having acquired the D stock by purchase on the date the D shareholders acquired the D stock by purchase. Even though D has no less-than-five-percent shareholder immediately after the distribution, D may rely on the presumptions in paragraphs (f)(3) and (4) of this section to determine whether and to what extent the D stock is treated as purchased during the five-year period in P's hands under the deemed purchase rule of section 355 (d)(5)(C) and paragraph (e)(2) of this section. Accordingly, D may presume that section 355(d) does not apply to the distribution of C to P.

Example 4. *Non-publicly traded corporation.* D is owned by 20 shareholders and has a single class of stock that is not reporting stock. D knows that A owns 40 percent of the D stock, and D does not know that any other shareholder has owned as much as five percent of the D stock at any time during the five-year period. D may not rely on the presumption in paragraph (f)(3) of this section because its stock is not reporting stock. D may not rely on the presumption in paragraph (f)(4) of this section with respect to A. In addition, D may not rely on the presumption in paragraph (f)(4) of this section for any less-than-five-percent shareholder that, at any time during the five-year period, is related to A under section 355(d)(7)(A), acted pursuant to a plan or arrangement with A under section 355 (d)(7)(B) and paragraph (c)(4) of this section with respect to acquisitions of D stock, or holds stock that is attributed to A under section 355(d)(8)(A). D may rely on the presumption in paragraph (f)(4) of this section for less-than-five-percent shareholders that during the five-year period are not related to A, did not act pursuant to a plan or arrangement with A, and do not hold stock attributed to A. Accordingly, under paragraph (f)(1) of this section, to determine whether section 355(d) applies, D must determine: that A is its only shareholder that is (or was at any time during the five-year period) not a less-than-five-percent shareholder; whether A acquired its directly held D stock by purchase under section 355 (d)(5) and paragraphs (d) and (e)(2) and (3) of this section during the five-year period; whether A is treated as having purchased any additional D stock under section 355 (d)(8) and paragraph (e)(1) of this

section during the five-year period; and whether A is related to, or acquired its D stock pursuant to a plan or arrangement with, one or more of D's other shareholders during the five-year period under section 355(d)(7)(A) or (B) and paragraph (c)(4) of this section, and if so, whether those shareholders acquired their D stock by purchase under section 355(d)(5) or (8) and paragraphs (d) and (e) of this section during the five-year period.

(g) *Effective date.* The regulations in this section apply to distributions occurring after the regulations in this section are published as final regulations in the **Federal Register**, except that they do not apply to any distributions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations in this section are published as final regulations in the **Federal Register**, and at all times thereafter.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–10818 Filed 4–29–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 09–99–007]

Safety Zone, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering the establishment of a temporary safety zone on the American side of the Detroit River for the Windsor Can-Am Offshore Power Boat Race. The zone would be between the Ambassador Bridge mile 19.5 and William Livingstone Memorial Lt located on Belle Isle mile 25.5, Fleming Channel. The zone would temporarily suspend vessel operations on the Detroit River and close the Belle Isle Anchorage on 22 August from 10:00 a.m. to 1:00 p.m. The Captain of the Port would require all vessels to notify the Coast Guard before transiting the waters affected by the safety zone, and may allow transits case by case.

DATES: Comments must be received on or before 31 May 1999.

ADDRESSES: Comments may be mailed to Commanding Officer, USCG MSO Detroit, 110 Mt. Elliott Avenue, Detroit, MI 48207, or delivered to the same address between 7 a.m. and 4 p.m. Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: LTJG French, Coast Guard Marine Safety Office Detroit, 110 Mt Elliott Ave., Detroit, MI 48207, at 313–568–9580.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 09–99–007) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The Windsor Can-Am Offshore Race would involve off-shore race boats competing in a circular 2½-mile track operating at speeds in excess of 100 miles per hour. The race would run exclusively in Canadian waters. The approving authority for the Canadian Government is the Windsor Harbor Commission. The Captain of the Port has determined that a safety zone would be necessary to ensure the safety of the American boating public and of commercial vessel traffic. The proposed event would enjoy support from the Canadian Government and volunteer patrol under the direction of the Windsor Harbour Master and the event sponsor. The U.S. Coast Guard would be on scene to enforce the river closure along the American side and would help to monitor and advise the Canadian Government on overall safety considerations related to the event.

Drafting Information

The drafter of this regulation is the U.S. Coast Guard Marine Safety Office Detroit, 110 Mt Elliott Ave., Detroit MI 48207, project officer: LTJG French, 313–568–9580. The originator of the race application is the Canadian Boating Federation, Canadian Offshore Race Association, 2740 Jefferson Blvd., Windsor, Ontario N8T 3C7, project officer: Ed Lauzon 519–251–9733. The approving Canadian authority is the Windsor Harbour Commission, 502 Westcourt Place, 251 Goyeau St., Windsor, Ontario N9A 6V4, Harbour Master: Bill Marshall, (519) 258–5741.

Regulatory Evaluation

The proposed rule would instate a 3-hour river closure that would be publicized well in advance of the event to allow vessel traffic to adjust accordingly. The event sponsor has also agreed to compensate commercial vessels that are delayed. The Captain of the Port Detroit considers this regulation to be nonsignificant under Executive Order 12866 on Regulatory Planning and Review and nonsignificant under Department of Transportation regulatory policies and procedures [(44 FR 11034 February 26, 1979)]. If comments received indicate otherwise, the Captain of the Port may reconsider this determination.

Federalism

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the Coast Guard has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

Collection of Information

This proposed rule contains no collection-of-information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Subpart

C of Part 165 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, and 160.5; and 49 CFR 1.46.

2. Add a new temporary rule to read as follows:

165.T09007 Safety Zone: Detroit River.

(a) *Location.* The following area is a safety zone: Detroit River—enclosed area between the Ambassador Bridge mile 19.5 and William Livingston Memorial Lt mile 25.5 located on Belle Isle, Fleming Channel, including the Belle Island Anchorage.

(b) *Effective times and dates.* This regulation is effective from 10:00 a.m. to 1:00 p.m. on Sunday 22 August 1999, unless terminated earlier by the Coast Guard Captain of the Port.

(c) *Restrictions.* In accordance with § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port.

Dated: April 16, 1999.

Stephen P. Garrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 99–10951 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 26, 27, 73, 74, 80, 87, 90, 95, 97, and 101

[WT Docket No. 99–87, RM–9332; FCC 99–52]

Revised Competitive Bidding Authority

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: By this *Notice of Proposed Rule Making* (*"NPRM"*), the Commission commences a proceeding to implement changes to its statutory auction authority made by the Balanced Budget Act of 1997 ("Balanced Budget Act"). The *NPRM* seeks comment on the scope of the Balanced Budget Act's exemption from competitive bidding for public safety radio services. The *NPRM* also seeks comment on how the Balanced Budget Act's revision of the Commission's auction authority affects its determinations of which wireless telecommunications services licenses are potentially auctionable and its determinations of the appropriate licensing scheme for new and existing services. The Commission also seeks comment on how to implement competitive bidding for services that it may determine are auctionable as a result of its revised authority. The Commission also solicits comment on some additional issues relating to the implementation of the Balanced Budget Act's amendments to its auction authority.

DATES: Comments must be filed on or before July 2, 1999. Reply comments must be filed on or before August 2, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554. Alternatively, comments may be filed by using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Gary D. Michaels, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660, or Scot Stone Public Safety & Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, WT Docket No. 99–87, RM–9332, FCC 99–52, adopted March 19, 1999, and released March 25, 1999. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. The complete *NPRM* is also available on the Internet at the Commission's web site: http://www.fcc.gov/wtb/.

Synopsis of Notice of Proposed Rule Making

I. Introduction

1. This *Notice of Proposed Rule Making* (*"NPRM"*) commences a proceeding to implement Sections 309(j) and 337 of the Communications Act of 1934 ("Communications Act"), as amended by the Balanced Budget Act of 1997, Public Law No. 105–33, Title III, 111 Stat. 251 (1997) ("Balanced Budget Act"). The Balanced Budget Act revised the Commission's auction authority for wireless telecommunications services. The purpose of this *NPRM* is to seek comment on changes to the Commission's rules and policies to implement the revised auction authority. This *NPRM* first reviews the Commission's auction authority as provided by the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, § 6002(a), 107 Stat. 312 (1993) ("1993 Budget Act"), and how the Commission implemented that authority. The *NPRM* next discusses the statutory changes to the Commission's auction authority made by the Balanced Budget Act. The *NPRM* then seeks comment on the following matters:

- The scope of the Balanced Budget Act's exemption from competitive bidding for public safety radio services and the regulatory provisions that could be established to ensure that frequencies assigned without auctions meet the statutory requirements for exemption.
- How the Balanced Budget Act's amendments to Section 309(j)(1) affect the categories of services that previously were determined to be nonauctionable by the Commission.
- The extent to which Section 337(c) of the Communications Act, gives eligible providers of public safety services a means to obtain unassigned spectrum not otherwise allocated for public safety purposes.
- A Petition for Rule Making filed by parties proposing that the Commission establish a third radio service pool in the private land mobile bands below 800 MHz for use by electric, gas, and water utilities, petroleum and natural gas pipeline companies, and railroads, and whether the Commission should adopt separate public safety radio services eligibility standards for (1) public safety and (2) public service entities.
- Whether changes in the rules governing multiple-licensed systems would be appropriate to avoid artificial distinctions between such systems and commercial providers, which must obtain spectrum through competitive bidding.
- Whether the Balanced Budget Act requires the Commission to revise its licensing schemes and license assignment methods to provide for competitive bidding in services previously determined not to be auctionable, and how such schemes and methods for new services might be revised.
- How the Commission might implement competitive bidding to award licenses and permits for those services and frequency bands, if any, that will be auctionable for the first time, including what auction procedures would best promote the four public interest objectives listed in 47 U.S.C. 309(j)(3)(A)–(D).

II. Background

A. Commission Implementation of the 1993 Auction Standard

2. The 1993 Budget Act added Section 309(j) to the Communications Act, authorizing the Commission to award licenses for use of the electromagnetic spectrum through competitive bidding where mutually exclusive applications are filed. The 1993 Budget Act expressly authorized, but did not require, the Commission to use competitive bidding to choose among mutually exclusive applications for initial licenses or construction permits. Following enactment of the 1993 Budget Act, the Commission instituted a rule making proceeding to implement Section 309(j). *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Notice of Proposed Rule Making*, 58 FR 53489, October 15, 1993 (*"Competitive Bidding Notice"*). Based on the record in that proceeding and the requirements of the statute, the Commission established rules governing the types of services and licenses that may be subject to auctions in the *Competitive Bidding Second Report and Order*, 59 FR 22980, May 4, 1994. See also Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Second Memorandum Opinion and Order*, 59 FR 44272, August 26, 1994 (*"Competitive Bidding Second M O & O"*). The Commission also conducted several subsequent proceedings in which it established, for specific services, rules and procedures for the competitive bidding process that it believed would best achieve Congress's objectives. *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 59 FR 37566, July 22, 1994 (Broadband PCS); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *First Report and Order and Eighth Report and Order*, 61 FR 6138, February 16, 1996; Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, *Third Report and Order*, 62 FR 15978, April 3, 1997 (*"220–222 MHz Third Report and Order"*).

3. Pursuant to the 1993 Budget Act, Section 309(j)(1), "General Authority," only permitted the Commission to use competitive bidding if mutual exclusivity existed among applications that the Commission has accepted for filing. Indeed, Section 309(j)(6)(E) made clear that the Commission was not relieved of its obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means to avoid mutual exclusivity. The legislative history of the 1993 Budget Act, which added Section 309(j)(6)(E), indicates that Congress intended the Commission to use tools that avoid mutual exclusivity "when feasible and appropriate." See H.R. Rep. No. 103–111, 103d Cong., 1st. Sess., at 258–259 (1993). The Commission has determined that applications are "mutually exclusive" if the grant of one application would effectively preclude the grant of one or more of the other applications. Where the Commission receives only one application that is acceptable for filing for a particular license that is otherwise auctionable, there is no mutual exclusivity, and thus no auction. Therefore, mutual exclusivity is established when competing applications for a license are filed. For example, a request to provide service on the same frequency in the same or overlapping service area would trigger mutual exclusivity where both applicants could not offer service without causing electromagnetic interference to one another.

4. Section 309(j)(1) also restricted the use of competitive bidding to applications for "initial" licenses or permits. Renewal licenses and permits were excluded from the auction process. As a result, the *Competitive Bidding Second Report and Order*, made clear that applications to modify existing licenses were generally not subject to competitive bidding. The Commission recognized, however, that if a modification is "major," i.e., one that substantially alters a licensee's currently authorized facilities, and if the modification application is mutually exclusive with other applications, the Commission would consider treating the "major" modification as an initial application that would be subject to competitive bidding.

5. In addition, Section 309(j)(2), "Uses to Which Bidding May Apply," set forth conditions beyond mutual exclusivity that had to be satisfied in order for spectrum to be auctionable. Specifically, it required the Commission to determine that:

> (A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee—
>
> (i) Enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or
>
> (ii) Enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate.

In the *Competitive Bidding Second Report and Order*, the Commission explained that, in making this assessment, it would evaluate classes of licenses and permits, rather than make a principal use determination on a license-by-license basis. The Commission concluded that it would consider the principal use requirement to be met if, comparing the amount of non-subscription use made by the licensees with the amount of use rendered to subscribers for compensation, at least a majority of the use of a service or class of service was operated for the benefit of subscribers.

6. Section 309(j)(2) further directed the Commission—in evaluating the "uses to which bidding may apply"—to determine whether "a system of competitive bidding will promote the [public interest] objectives described in [Section 309(j)(3)]." Section 309(j)(3), entitled "Design of Systems of Competitive Bidding," directs that these factors be addressed in both identifying classes of licenses to be issued by competitive bidding, and designing particular methodologies of competitive bidding. The objectives are listed as follows:

> (A) The development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;
>
> (B) Promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;
>
> (C) Recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and
>
> (D) Efficient and intensive use of the electromagnetic spectrum.

1. Services Determined to Be Auctionable

7. Employing the criteria outlined above, the Commission identified a number of services and classes of services that were auctionable under the 1993 Budget Act if mutually exclusive applications are accepted for filing. Among the services the Commission found auctionable under the 1993

Budget Act (all of which involve commercial use of the spectrum) were narrowband and broadband Personal Communications Services (PCS), Public Mobile Services, 218–219 MHz Service, Specialized Mobile Radio Services (SMR), Private Carrier Paging (PCP) Services, Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), General Wireless Communications Service (GWCS), Local Multipoint Distribution Service (LMDS), Wireless Communications Service (WCS), Digital Audio Radio Service (DARS), Direct Broadcast Satellite (DBS) Service, 220–222 MHz radio service, Location and Monitoring Service (LMS), and VHF Public Coast Stations. The Commission also adopted competitive bidding for assignment of licenses in the 39 GHz band after enactment of the Balanced Budget Act.

2. Services Determined To Be Nonauctionable

8. Based on the statutory criteria contained in the 1993 Budget Act, the Commission also determined that a number of services were not auctionable, including "private services" that were for "internal use," and thus not subscriber-based. The legislative history of the 1993 Budget Act refers to "private services" as services that do not involve the receipt of compensation from subscribers, "*i.e.*, that were for internal use." *See* H.R. Rep No. 103–111 at 253. Generally, private radio services are used by government or business entities to meet internal communications needs, or by individuals for personal communications. Private radio services that the Commission decided were not auctionable under the 1993 Budget Act include the Public Safety Radio Services (subsequently combined with the Special Emergency Radio Services to form the Public Safety Radio Pool), 220 MHz channels reserved for private service, the Instructional Television Fixed Service (ITFS), the Citizens Band Service, the Radio Control Service, the General Mobile Radio Service, the Amateur Radio Service, Non-SMR licensees above 800 MHz, Multiple Licensed Systems below 800 MHz, and the Private Land Mobile Radio Service (PLMRS) below 470 MHz. *See Competitive Bidding Second Report and Order; Competitive Bidding Notice.*

9. The plain language of the 1993 Budget Act also excluded traditional broadcast services from competitive bidding, because broadcast licensees do not receive compensation from subscribers. Consistent with the clear legislative intent, the Commission excluded from the competitive bidding process broadcast television (VHF, UHF, and LPTV), broadcast radio (AM and FM), and the Instructional Television Fixed Service (ITFS).

10. *Licensing in the Private Radio Services.* The services deemed nonauctionable under the 1993 statute were largely private and noncommercial offerings operating on a variety of frequency bands. In contrast to its extensive use of geographic area licensing for services determined to be auctionable under the 1993 Budget Act, to date, the Commission has employed a variety of alternative licensing approaches for these private radio services.

11. PLMRS frequencies below 470 MHz represent the majority of the frequencies allocated to the private radio services. Formerly, these frequencies were divided into twenty separate and diverse radio services, such as the Local Government, Telephone Maintenance, and Motor Carrier Radio Services. In 1997, however, the Commission consolidated these twenty services into two pools—the Public Safety Radio Pool and the Industrial/Business Radio Pool—in order to increase licensee flexibility to manage spectrum more efficiently by giving users access to a larger set of frequencies. Eligibility in the Industrial/Business pool is open to persons primarily engaged in the operation of a commercial activity; the operation of educational, philanthropic, or ecclesiastical institutions; clergy activities; or the operation of hospitals, clinics, or medical associations. *See* 47 CFR 90.35(a). The majority of communications systems utilizing these frequencies are used to support day-to-day business operations (such as dispatching and diverting personnel or work vehicles, coordinating the activities of workers and machines on location, or remotely monitoring and controlling equipment), but many also are used for responding to emergencies.

12. The private radio services also include PLMRS frequencies above 470 MHz, specifically, in the 806–821/851–866 MHz band (the 800 MHz band) and the 896–901/935–940 MHz band (the 900 MHz band). The Commission divided PLMRS frequencies above 800 MHz into three categories—Public Safety, Business, and Industrial/Land Transportation, each consisting of one or more of the radio services consolidated into the two pools below 470 MHz, and a General category open to entities eligible in the other three categories and the Specialized Mobile Radio category. *See* 47 CFR 90.615, 90.617. The Commission designated private radio spectrum in the 800 and 900 MHz bands as shared, see 47 CFR 90.173(a), but concluded that a licensee may obtain exclusive use of a frequency by showing that it will meet certain loading requirements, *i.e.*, that it will have a minimum number of mobile units operating on the frequency. *See* 47 CFR 90.625(a), 90.631, 90.633.

13. In the *Competitive Bidding Second Report and Order*, the Commission excluded from competitive bidding those services in which mutual exclusivity between applications cannot exist because channels are shared by multiple licensees. In the *Competitive Bidding Second Report and Order*, the Commission also found that for services in which licenses are assigned on a "first-come, first-served" basis, mutual exclusivity among applications will not exist. Specifically, the Commission concluded that use of "first-come-first-served" procedures generally avoids mutual exclusivity because the Commission does not consider competing applications. Rather, the applications are processed in sequence based on filing date and the first acceptable application is granted.

14. The traditional approach to the licensing of users of private spectrum generally does not result in the filing of mutually exclusive applications because the frequencies are intensively shared, assigned on a first-come, first-served basis, and/or subject to frequency coordination. For example, PLMRS spectrum is licensed on a site-by-site basis. Thus, a prospective licensee applies for authority to construct and operate transmission facilities at a specifically designated location or locations using a particular antenna height and signal strength. Historically, site-based licensing has met the needs of PLMRS users like railroads or petroleum pipelines, which need to cover long but narrow areas rather than the wider areas that ordinarily constitute geographic licensing regions. Many other PLMRS users, such as manufacturers seeking to link their raw material, processing, and finishing operations, also have unique configuration requirements.

15. Within the PLMRS services, Industrial/Business frequencies are licensed on a shared, non-exclusive basis, which allows multiple users with different coverage and capacity requirements to use the same frequencies effectively. Shared use increases the amount of frequency reuse that is possible compared to exclusive use with set distance separations, but requires that private system users must be able to tolerate interference and manage potential blocked access to channels. Such problems are

minimized, however, by the frequency coordination process, which involves the use of certified coordinators who analyze applications before they are submitted to the Commission to select a frequency that will meet the applicant's needs while minimizing interference to licensees already using the frequency band. Specifically, the frequency coordinator makes a recommendation to the Commission regarding the best available frequency for the applicant's proposed operations in the relevant area, based on the nature, size, and purpose of the radio systems already authorized on that frequency.

16. The Commission had certified one coordinator for each radio service in the bands below 800 MHz, but now that those frequencies have been consolidated, applicants for those PLMR frequencies generally may use the services of any frequency coordinator certified in the pool. This introduction of competition among coordinators was intended to foster lower coordination costs and better service to the public. However, applicants for those frequencies still sometimes contend that receiving a coordinator's recommendation takes too long and costs too much. Indeed, the Commission has acknowledged that the changes made to date may not be sufficient to maximize the efficiency of its PLMR licensing procedures.

17. Some private radio frequencies are available for shared use without any frequency coordination. One example is private coast station spectrum. Private coast stations serve the business and operational needs of vessels and may not charge fees for the provision of communications services. For example, a private coast station may be used by a vessel towing company to communicate with potential customers, or by a fishing company to maintain radio contact with its fleet. Frequencies are available in the 2–27.5 MHz band for communicating with vessels hundreds or thousands of miles away, and in the 156–162 MHz band for communications in a port area. Users are required to limit their communications to the minimum practicable transmission time. General use of tools to maximize spectrum efficiency, other than sharing of spectrum, have not been deemed necessary for private coast spectrum because, except in certain areas, the available spectrum generally has been sufficient to meet demand.

18. Another example of private radio frequencies available for shared use without any frequency coordination are those services that are "licensed by rule," meaning that no licenses are issued, such as the CB Radio Service. *See* 47 CFR 95.404. The CB Radio Service is a private, two-way, short-distance voice communications service for personal or business activities of the general public. Users may transmit communications about their personal or business activities, emergencies, and traveler assistance, but users must limit their communications to the minimum practicable time. Licensing by rule must be authorized by Congress, and is appropriate only for low-power, short-distance services with multiple, shared channels, where users can avoid congestion fairly easily.

B. The Balanced Budget Act of 1997

19. In the summer of 1997, Congress revised the Commission's auction authority. Specifically, the Balanced Budget Act of 1997 amended Section 309(j)(1) to require the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, except as provided in Section 309(j)(2). Sections 309(j)(1) and 309(j)(2) now state:

> (1) General Authority.—If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.
>
> (2) Exemptions.—The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—
>
> (A) For public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—
>
> (i) Are used to protect the safety of life, health, or property; and
>
> (ii) Are not made commercially available to the public;
>
> (B) For initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or
>
> (C) For stations described in section 397(6) of this title.

Section 397(6), defines the terms "noncommercial educational broadcast station" and "public broadcast station." *See* 47 U.S.C. 397(6).

20. Prior to the Balanced Budget Act of 1997, Sections 309(j)(1) and 309(j)(2) granted the Commission the authority to use competitive bidding to resolve mutually exclusive applications for initial licenses or permits if the principal use of the spectrum was for subscription-based services and competitive bidding would promote the objectives described in Section 309(j)(3). As amended by the Balanced Budget Act of 1997, Section 309(j)(1) states that the Commission *shall* use competitive bidding to resolve mutually exclusive initial license or permit applications, unless one of the three exemptions provided in the statute applies.

21. As noted, the Balanced Budget Act of 1997 left unchanged the restriction that competitive bidding may only be used to resolve mutually exclusive applications. Moreover, the general auction authority provision of Section 309(j)(1) now references the obligation under Section 309(j)(6)(E) to use engineering solutions, negotiation, threshold qualifications, service regulations, or other means to avoid mutual exclusivity where to do so is in the public interest. In addition, the portion of the Conference Report that accompanies this section of the legislation emphasizes that notwithstanding the Commission's expanded auction authority, its determinations regarding mutual exclusivity must still be consistent with and not minimize its obligations under Section 309(j)(6)(E). The conferees expressed concern that the Commission not interpret its expanded auction authority in a manner that overlooks engineering solutions or other tools that avoid mutual exclusivity. The conferees emphasized that, notwithstanding its expanded auction authority, the Commission must still ensure that its determinations regarding mutual exclusivity are consistent with the Commission's obligations under section 309(j)(6)(E). *See* H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., at 572 (1997) ("Conference Report")

22. Section 309(j)(2), as amended by the Balanced Budget Act of 1997, exempts from auctions licenses and construction permits for public safety radio services, digital television service licenses and permits given to existing terrestial broadcast licensees to replace their analog television service licenses, and licenses and construction permits for noncommercial educational broadcast stations and public broadcast stations. The Commission recently observed that the list of exemptions from its general auction authority set forth in Section 309(j)(2) is exhaustive, rather than merely illustrative, of the types of licenses or permits that may not be awarded through a system of competitive bidding. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97–234, *First Report and Order,* 63 FR 48615,

September 11, 1998 ("*Commercial Broadcast Competitive Bidding First Report & Order*"). Although the reference to Section 309(j)(3) is now deleted from Section 309(j)(2), it is worth noting that Section 309(j)(3), "Design of Systems of Competitive Bidding," was not amended by the Balanced Budget Act of 1997 and still directs the Commission to consider the public interest objectives in identifying classes of licenses and permits to be issued by competitive bidding.

23. The Conference Report for Section 3002(a) of the Balanced Budget Act of 1997 states that the exemption for public safety radio services includes "private internal radio services" used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, such as the American Automobile Association (AAA). The Conference Report also notes that the exemption is "much broader than the explicit definition for 'public safety services'" included in Section 337(f)(1) of the Communications Act, 47 U.S.C. 337(f)(1), for the purpose of determining eligibility for licensing in the 24 MHz of spectrum reallocated for public safety services.

24. The 1997 amendments also eliminate the Commission's authority to issue licenses or permits by random selection after July 1, 1997, with the exception of licenses or permits for noncommercial educational radio and television stations. *See* 47 U.S.C. 309(i)(5).

III. Discussion

A. General Approach to Implementing Legislation

25. In this *NPRM*, the Commission seeks comment on which radio services or classes of services Congress intended to exempt from competitive bidding. The Commission also seeks comment on how the Balanced Budget Act's modification of its statutory auction authority affects its analysis of whether spectrum licenses for non-exempt wireless services are auctionable. Specifically, the Commission inquires about the scope and content of its obligation to continue to avoid mutual exclusivity under Sections 309(j)(1) and 309(j)(6)(E). The Commission also inquires whether alternative licensing schemes and techniques would more readily give effect to the goals expressed in the relevant Balanced Budget Act changes. In addition, in view of the above-mentioned statutory changes, the Commission explores the criteria to be used in establishing licensing schemes both for existing wireless services and for wireless services as to which no licensing rules have yet been adopted.

26. The Commission has concluded in other proceedings that the revised statute does not require it to re-examine its determinations that specific services or frequency bands were auctionable under the 1993 Budget Act's more restrictive definition of our auction authority. *See* Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order*, 63 FR 40059, July 27, 1998 ("*Maritime Third Report and Order*"); Amendment of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93–61, *Second Report and Order*, 63 FR 40659, July 30, 1998. Consistent with its conclusions in those previous proceedings, this proceeding will not re-examine the Commission's previous determinations that specific services or frequency bands were auctionable under the 1993 Budget Act.

B. Principles for Determining Whether a License is Subject to Auction

27. By requiring the Commission to use auctions to resolve mutually exclusive applications for all categories of spectrum licenses except those that are expressly exempt, Congress established a new approach to determining the auctionability of spectrum. Under the revised Section 309(j)(1), whether a particular service or class of frequencies is used principally for subscriber-based services is no longer dispositive. With the elimination of this criterion for determining auctionability of mutually exclusive applications, unless a service is expressly exempt from competitive bidding, the only remaining requirement for auctionability is that, subject to the Commission's "obligation in the public interest * * * to avoid mutual exclusivity in application and licensing proceedings," 47 U.S.C. 309(j)(6)(E), there be mutually exclusive applications accepted for licenses in that service. Thus, in enacting the Balanced Budget Act, Congress simplified the statute, apparently expanding its potential scope, by requiring spectrum auctions with certain limited exceptions. Accordingly, the Commission seeks comment on how the Balanced Budget Act's amendments to Section 309(j)(1) affect its determinations of which services are potentially auctionable and which are not.

C. Public Safety Radio Services Exemption

28. Of particular importance to determining the auctionability of wireless services is the express exemption from the Commission's auction authority for "public safety radio services," added by the Balanced Budget Act's amendment to Section 309(j)(2). The exemption is provided for certain *public safety radio services* meeting the conditions contained in the statutory language, rather than for a certain class of public safety licensees (*i.e.*, police, fire, etc.). Thus the Commission seeks comment on how to apply this exemption.

29. This *NPRM* does not seek comment on the exemptions from competitive bidding for digital television or noncommercial educational broadcast stations and public broadcast stations. The Commission has addressed the competitive bidding exemption for noncommercial educational broadcasters and sought further comment in another rule making proceeding. *See* Reexamination of the Comparative Standards for New Noncommercial Educational Applicants, *Further Notice of Proposed Rule Making*, MM Docket No. 95–31, FCC 98–269, 63 FR 58358, October 30, 1998. To the extent the Commission determines that it is necessary to clarify the exemption for digital television or adopt implementing regulations for that exemption, it intends to do so in a proceeding specifically addressing broadcast services.

30. The Balanced Budget Act defines "public safety radio services" to include private internal radio services used by State and local governments and non-government entities, and including emergency road services provided by not-for-profit organizations, that (i) are used to protect the safety of life, health, or property, and (ii) are not made commercially available to the public. The relevant legislative history states that "public safety radio services" is much broader than the explicit definition of "public safety services" contained in Section 337 of the Communications Act, which determines eligibility for licensing in the 24 MHz of spectrum reallocated for public safety services. In view of the express statutory language and legislative history, the Commission tentatively concludes that "public safety radio services" should include, at a minimum, all of the Private Land Mobile Radio Services that are currently assigned to the Public Safety Radio Pool, which is comprised of those services formerly housed in the Public

Safety Radio Services and the Special Emergency Radio Service. *See* 47 CFR 90.16. The Public Safety Radio Services included the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Emergency Medical Radio Services. The Special Emergency Radio Service covered the licensing of radio communications of hospitals and clinics, ambulance and rescue services, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, persons or organizations in isolated areas, and emergency standby and repair facilities for telephone and telegraph systems. Thus, the Commission proposes to include the spectrum allocated to the Public Safety Radio Pool in our definition of "public safety radio services," because such spectrum is used for communications directly related to the safety of life, health, or property and is not made commercially available to the public.

31. The Commission also tentatively concludes that its definition of "public safety radio services" should include the 24 MHz of newly allocated public safety spectrum at 764–776 MHz and 794–806 MHz ("the 700 MHz band"). *See* 47 U.S.C. 337(a). Licensing in the 700 MHz band is restricted to a more narrow class than licensing in the public safety radio services, which does not appear to be limited to particular entities. Moreover, the 700 MHz band, like public safety radio services spectrum, must be used to protect the safety of life, health, or property, and may not be made commercially available to the public. *See* 47 U.S.C. 337(f)(1)(A),(C). The Commission therefore seeks comment on its tentative conclusion that spectrum in the 700 MHz band should be included within the public safety radio services spectrum that is exempt from competitive bidding.

32. Further, in the *220–222 MHz Third Report and Order*, the Commission concluded that it would be in the public interest to allocate ten 220 MHz non-nationwide channel pairs for the exclusive use of public safety eligibles. Therefore, consistent with this decision, the Commission tentatively concludes that its definition of public safety radio services should include the ten 220 MHz channel pairs. Similarly, in the *Maritime Third Report and Order*, the Commission concluded that it would be in the public interest to set aside two contiguous channel pairs in each of the thirty-three inland VHF Public Coast areas (VPC) for public safety users. Although the Commission stated that the ultimate use for these reserved frequencies would be decided as part of its pending public safety proceeding, the Commission concluded that these inland VPC channel pairs were a part of the public safety radio services that the Balanced Budget Act expressly exempted from competitive bidding. The Commission tentatively concludes that it should continue to include the VPC spectrum that it has set aside for public safety uses in its definition of public safety radio services. The Commission seeks comment on these tentative conclusions.

33. In light of the exemption's focus on *public safety radio services* rather than certain classes of public safety licensees, the Commission also seeks comment on whether it should interpret the exemption to apply only to spectrum that the Commission specifically allocates to public safety radio services. Should the Commission designate certain radio services or classes of frequencies within certain services as "public safety radio services" for which licenses will be assigned without competitive bidding? And, if such designations are warranted, upon what basis should the Commission make such designations? Should, for example, such designations be based on the "principal use of the spectrum" as determined by the Commission, or would other bases be more appropriate? Additionally, the Commission seeks comment on whether there are any other private radio services or frequency bands that satisfy the criteria of the public safety radio services exemption, i.e., that are used to protect the safety of life, health or property and that are not made commercially available to the public. For example, it appears that frequencies used by medical telemetry equipment may fall within this exemption.

1. Private Internal Radio Services

34. Private internal systems are traditionally operated by licensees that require highly customized mobile radio facilities for the conduct of the licensee's underlying business. In the *Competitive Bidding Second Report and Order*, the Commission concluded that the term "private services" refers to services "that were for internal use." However, private internal services are a subclassification of private services, because some private services, such as the Amateur Radio Service and the Aviation Services, are not used for internal communications. The Commission's Part 90 rules governing private land mobile radio services currently define an "internal system" as a system in which "all messages are transmitted between the fixed operating positions located on the premises controlled by the licensee and the associated mobile stations or paging receivers of the licensee." 47 CFR 90.7.

35. Because the Balanced Budget Act's exemption for public safety radio services includes "private internal radio services used by State and local governments and non-government entities," the Commission seeks comment on the definition of "private internal radio services." The Commission recognizes, for example, that for the purpose of implementing the public safety radio services exemption, its definition of "private internal radio services" will need to cover private fixed as well as private mobile radio services. The Commision therefore proposes to define private internal radio services by incorporating its definition of "private services" with its definition of internal systems in its Part 90 rules, and expanding the definition to include both fixed and mobile services. Accordingly, the Commission seeks comment on whether it should define a private internal radio service as a service in which the licensee does not receive compensation, and all messages are transmitted between fixed operating positions located on premises controlled by the licensee and the associated fixed or mobile stations or other transmitting or receiving devices of the licensee.

36. Additionally, the Commission seeks comment on whether its definition of private internal radio services should include services in which private internal systems operate on a cooperative or multiple-license basis. The term "private mobile service" as defined in Section 332(d)(3) of the Communications Act, includes mobile service that may be licensed on an "individual, cooperative, or multiple basis." *See* 47 U.S.C. 153(27). In Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Second Report and Order*, 59 FR 18493 (1994) ("*CMRS Second Report and Order*"), the Commission observed that shared-use arrangements are beneficial because they allow radio users to combine resources to meet compatible needs for specialized internal communications facilities, and it decided that such arrangements would be deemed to be not-for-profit and presumptively classified as PMRS. Private internal radio systems operating on a cooperative basis or as multiple-licensed systems would fall outside a definition of private internal radio services that was strictly based on the absence of compensation to the licensee, because such arrangements may involve

cost reimbursements that could be considered compensation. Nevertheless, systems operated on a cooperative basis and multiple-licensed systems possess one of the most common characteristics of private internal radio systems: the systems are not operated as a direct source of revenue, but rather as a means of internal communications to support the day-to-day needs of the licensees' business operations or to protect the safety of their employees, customers, or the general public. Accordingly, the Commission seeks comment on whether licensees operating systems on a not-for-profit basis and under a cost-sharing agreement, on a cooperative basis, or as a multiple licensed system for internal communications to support their own operations should be classified as private internal radio services, and considered exempt, even though the licensee receives compensation.

a. Emergency Road Services

37. Section 309(j)(2)(A) stipulates that licenses issued for private internal radio services used by providers of emergency road services will be awarded without competitive bidding only if the service provider is a not-for-profit organization. The Conference Report that accompanied the legislation states that Congress did not intend this exemption to include internal radio services used by automobile manufacturers and oil companies to support emergency road services provided by those parties as part of the competitive marketing of their products. *See* Conference Report at 572. This distinction between for-profit and not-for-profit entities is not required for any other user of public safety radio services.

38. The Commission invites comment on how it should carry out Congress's intent regarding treatment of providers of emergency road services. Should the Commission limit licensee eligibility in the public safety radio services by excluding emergency road service providers that are not organized as not-for-profit entities under the laws of the state in which they reside and/or provide such services? Alternatively, should the Commission use the categories that are found in its regulations governing eligibility to hold authorizations in the Automobile Emergency Radio Service? Although both categories are eligible licensees under those regulations, the Commission distinguishes between operation of a private emergency road service for disabled vehicles by associations of owners of private automobiles and the business of providing to the general public an emergency road service for disabled vehicles. *See* 47 CFR 90.95(a)(1), (2). The Commission seeks comment on whether it should use similar definitions to distinguish between emergency road service providers that are eligible and noneligible to obtain auction-exempt licenses or permits for public safety radio spectrum.

b. State and Local Governments

39. In establishing eligibility for licensing in the newly-allocated public safety spectrum in the 700 MHz band, the Commission concluded that all state and local government entities would be presumed eligible without further showing as to eligibility. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirement through the Year 2010, WT Docket No. 96–86, *First Report and Order*, FCC 98–191, 63 FR 58645, November 2, 1998 ("*Public Safety First Report and Order*"). The Conference Report accompanying the Balanced Budget Act makes clear that Congress intended the public safety radio services exemption to be broader than the definition of "public safety services" eligible for licensing in the 700 MHz band. The Commission therefore tentatively concludes that it would be consistent with legislative intent for the Commission to presume that all state and local government entities are eligible for licensing in the auction-exempt public safety radio services without further showing as to eligibility, subject to the statutory requirement that this spectrum be used to protect the safety of life, health or property and not made commercially available to the public. The Commission seeks comment on this tentative conclusion.

c. Non-government Entities

40. In establishing the eligibility of non-governmental organizations (NGOs) for licensing in the 700 MHz band, the Commission concluded in the *Public Safety First Report and Order* that NGOs must obtain written governmental approval to be eligible for licensing. However, as observed above, Congress intended the public safety radio services exemption to be much broader than the definition of "public safety services" eligible for licensing in the 700 MHz band and eligible to invoke Section 337. Unlike the definition of "public safety services," which requires NGOs to be authorized by a governmental entity whose primary mission is the provision of such services to be eligible for public safety spectrum in the 700 MHz band, the public safety radio services exemption in Section 309(j)(2) is not restricted to NGOs that are "authorized by a governmental entity." In light of this distinction, the Commission seeks comment on whether it should establish any eligibility criteria for non government entities to ensure that public safety radio services spectrum licensed to non-government entities is used to protect the safety of life, health, or property and not made commercially available to the public. Does the absence of this restriction on "non-government entities" in Section 309(j)(2)(A) suggest that non-government entities should not be required to obtain written governmental approval of their public safety radio service licenses, as they are required to do for licenses in the 700 MHz band?

41. The Commision notes that Section 309(j)(2)(A) exempts public safety radio services from auctions, but does not appear to restrict the entities that may apply for public safety radio services spectrum. The Commission recognizes that in some cases public safety entities may wish to obtain communications services on a contract basis from a commercial service provider. Comments are invited on whether it may be appropriate to permit commercial providers or other non-government entities that intend to provide public safety radio services on a contract basis to apply directly for auction-exempt spectrum, subject to the statutory requirement that this spectrum be used to protect the safety of life, health or property and not made commercially available to the public. If this were permitted, how might the Commission ensure that this spectrum is used only to protect the safety of life, health, or property and not to provide non-qualifying services to the public?

2. Frequency Pools

42. The Commission provides a pool of frequencies for public safety radio services (*i.e.*, the Public Safety Pool). The Commission recognizes that the exemption for public safety radio services provided in Section 309(j)(2)(A) is broader than the criteria the Commission has applied in determining eligibility for frequencies in the Public Safety Pool. The Commission invites comment on the ramifications of the revised Section 309(j)(2)(A) on its assignment of frequencies for public safety radio services. The Commission believes that it would be imprudent and potentially disruptive to current public safety communications to overhaul the existing frequency assignment approach for public safety pool spectrum. Therefore, the Commission seeks alternatives, such as establishing categories or frequency pools for various

types of users of public safety radio services spectrum and allocating specific frequencies within the public safety radio services to each category or frequency pool.

43. The Commission also seeks comment on how such spectrum categories or pools should be defined if it were to decide to establish such categories or pools. Should a separate pool be established for state and local government licensees or for nonprofit organizations providing emergency road services? Based on past experience, frequency pools can sometimes lead to inefficiencies where spectrum is exhausted in one pool but not another. If the Commission were to establish such a separate frequency pool, how should frequencies be apportioned with eligibles in the existing Public Safety Pool so that the Commission can minimize inefficiencies?

44. UTC, The Telecommunications Association, the American Petroleum Institute, and the Association of American Railroads have submitted a rulemaking petition that includes a proposal to create a third radio pool, in addition to the Public Safety and Industrial/Business Radio Pools already used for private radio frequencies below 470 MHz, to be known as the Public Service Radio Pool and open to entities that do not qualify for Public Safety Radio Pool spectrum, but are eligible to use the public safety radio services that the Balanced Budget Act exempted from the Commission's auction authority. *See* UTC, The Telecommunications Association, American Petroleum Institute, and Association of American Railroads Petition for Rulemaking (filed Aug. 14, 1998). The Commission notes that this approach may be feasible for other frequency bands, including PLMR frequencies above 470 MHz. The Commission seeks comment on this proposal.

45. Alternative proposals on ways to categorize public safety radio service spectrum and other PLMR spectrum also are welcome. Commenters discussing the creation of a third pool or any other means of separating auctionable from non-auctionable spectrum should consider the use of frequency coordination, the resolution of mutually exclusive applications, eligibility requirements, and the appropriate treatment of public safety radio service eligibles operating on frequencies not reallocated to the new pool, and of non-eligibles operating on frequencies that are reallocated. In addition, commenters are encouraged to submit specific quantitative information regarding the spectrum needs of public safety and non-public safety PLMR users. Necessary amendments to the Commission's Rules should also be noted.

3. Restrictions On Use

46. The Commission also seeks comment on what regulatory provisions should be established to ensure that the licensee's assigned frequencies continue to be utilized only for purposes that meet the requirements of the Balanced Budget Act's exemption from competitive bidding. For example, private wireless licensees using their systems noncommercially to protect the safety of their employees in the course of conducting routine business operations also would have the capability to use those systems for communications of a routine business nature. Section 309(j)(2)(A) requires that spectrum exempt from auctions under the public safety radio services exemption be used to protect the safety of life, health, or property and not be made commercially available to the public. In contrast, Section 337(f)(1)(A) requires spectrum in the 700 MHz band to be used for services "*the sole or principal purpose*" of which is to protect the safety of life, health, or property. 47 U.S.C. 337(f)(1)(A) (emphasis added).

47. The Commission seeks comment on the scope of permissible uses for auction-exempt services. Does the absence of the words "or principal purpose" in Section 309(j)(2) signify that licensees in these services may use their frequencies only for safety-related purposes? Alternatively, should the Commission permit licensees of auction-exempt spectrum to use their frequencies for ineligible as well as eligible purposes? If the Commission were to allow public safety radio services to be used incidentally for purposes other than safety protection, what standard should it adopt to ensure that licensees that obtain these frequencies do not circumvent the statutory mandate that spectrum be licensed without competitive bidding only for the limited purposes expressed in Section 309(j)(2)?

4. Noncommercial Proviso

48. In addition to being used to protect the safety of life, health, or property, the public safety radio services exemption to our general auction authority requires that the radio services not be "made commercially available to the public." 47 U.S.C. 309(j)(2)(A)(ii). Thus, private internal radio services that are made "commercially available to the public" would be required to be licensed through auctions. The Commission sought comment above on whether commercial providers should be eligible for licenses in the public safety radio services, provided that they do not make the radio services commercially available to the public. The Commission now addresses how the term "not made commercially available to the public" should be defined.

49. In determining what Congress meant by radio services "not made *commercially* available," the Commission is presented with some of the same considerations raised in its discussion of how to interpret "private internal radio services." One of the criteria Congress has used to distinguish commercial mobile radio services from private mobile radio services is whether service is provided for a profit. *See* 47 U.S.C. 332(d). However, the Commission has found that the distinction between CMRS and PMRS is not relevant for purposes of determining the meaning of "private services" in the context of Section 309(j). Similarly, the Commission believes that the distinction between CMRS and PMRS need not be determinative of how it defines "not made commercially available" for purposes of the auction exemption in Section 309(j)(2). Accordingly, the Commission seeks comment on how it should interpret the prohibition against public safety radio services being made commercially available. Should "not made commercially available" be defiined to have the same meaning as "private internal," *i.e.*, that the radio services are not made available for compensation? If the Commission adopts such a definition, should it also adopt an exception that would consider services to be not commercially available even though the licensee receives compensation, if the compensation is received under a nonprofit cost-sharing or cooperative agreement, or as a multiple licensed system?

50. In addition to seeking comment regarding shared use and multiple licensing with respect to the meaning of "not made commercially available," the Commission also seeks more general comment regarding multiple licensing. A "multiple-licensed" system, also known as a "community repeater," is a system for which the same transmitting equipment and spectrum is licensed to and used by more than one entity, each of whom is eligible in the same service. If the station is interconnected with the public switched network, the telephone service must be provided on a cost-shared, non-profit basis, and detailed records must be maintained. No consideration is paid, either directly or indirectly, by any participant to any

other participant for or in connection with the use of the multiple-licensed facilities.

51. In 1992, the Commission proposed eliminating multiple licensing, on the grounds that, from a user's standpoint, such facilities were indistinguishable from SMR facilities, and that users' needs could adequately be met by SMR and private carrier licensees. When the Commission implemented the 1993 Budget Act, however, it concluded that Congress recognized the benefits of allowing private radio users to enter into legitimate cost-sharing arrangements, and did not intend such arrangements to be classified as a "for-profit" CMRS service. *See CMRS Second Report and Order.* This conclusion was based upon the definition of "mobile service" adopted in the 1993 Budget Act, which defines "private" communications systems as systems that may be licensed on an "individual, cooperative, or multiple basis." The Commission discerned that the legislative intent was to provide for shared-use and multiple-licensed "private" communications systems, exempt from the competitive bidding process.

52. Thus, despite concern that these systems are often indistinguishable from commercial systems, the Commission deemed it appropriate to retain multiple licensing. To ensure that only legitimate cost-sharing arrangements were treated as not-for-profit, the Commission continued to impose on licensees disclosure requirements to prevent PMRS licensees from providing *de facto* for-profit service in competition with CMRS providers. Nevertheless, the current licensing rules have sometimes resulted in *de facto* commercial mobile service operations by the managers of multiple licensed stations, who were permitted, after the implementation of the 1993 Budget Act, to continue to assist in the operation of multiple-licensed systems.

53. A not-for-profit system structured to give an unlicensed manager sufficient operational control to provide for-profit service to customers without Commission approval is a violation of Section 310(d) of the Communications Act and the Commission's rules, for which the system license can be revoked. In addition, the licensee could be subject to reclassification as CMRS. *De facto* for-profit operations, on frequencies on which for-profit activities are prohibited, offends concepts of regulatory symmetry and interferes with the establishment of a level economic playing field. Such sham not-for-profit operations compete with CMRS licensees who are required to obtain their licenses through competitive bidding. With the potential expansion of our auction authority to include private radio services, the Commission thinks it is appropriate to revisit this issue. Accordingly, the Commission seeks comment on whether eliminating or modifying the multiple licensing rules would be appropriate.

54. In addition to seeking comment on the meaning of "not made commercially available," the Commission also invites comment on how it should define radio services "not made commercially available *to the public.*" In the *CMRS Second Report and Order,* the Commission determined the meaning of "available to the public" in the context of defining commercial mobile radio service. The Commission found in the CMRS proceeding that a service is available "to the public" if it is offered to the public without restriction on who may receive it. However, because in that rule making the Commission was determining the meaning of *commercial* mobile service, as defined in Section 332(d) of the Communications Act, it was required to include in its definition those services that are "effectively available to a substantial portion of the public." *See* 47 U.S.C. 332(d)(1)(B). The Commission found that if service is provided exclusively for internal use or is offered only to a significantly restricted class of eligible users, it is made available only on a limited basis to insubstantial portions of the public. Examples of services cited as being available only to insubstantial portions of the public were the Public Safety Radio Services, Special Emergency Radio Service, Radiolocation Services, most of the Industrial Radio Services, Maritime Service Stations, and Aviation Service Stations. The Commission seeks comment on whether it should interpret the requirement that public safety radio services not be made commercially available to the public to mean that such services may be made available only to an insubstantial portion of the public. Under such a definition, a public safety radio service could not be made available to the public without restriction *or* to any substantial portion of the public.

5. Resolution of Mutually Exclusive Applications for Services Exempt From Competitive Bidding

55. If applications for auction-exempt public safety radio services were to continue to be frequency coordinated prior to their filing with the Commission, the Commission would expect that under either site-based or geographic area licensing, incidents of mutual exclusivity in these services would be rare. However, because it is possible for mutual exclusivity to arise, the Commission seeks comment below on how it should avoid or resolve mutual exclusivity between applications for spectrum exempt from competitive bidding.

56. The Commission seeks comment on whether engineering solutions, negotiation, threshold qualifications, service regulations, or other means should be used to resolve mutual exclusivity in cases where frequency coordination is unsuccessful in avoiding mutually exclusive applications. As noted previously, the Balanced Budget Act terminated the Commission's authority to use lotteries to choose among mutually exclusive applications. Therefore, the Commission is foreclosed from using random selection in the event it receives mutually exclusive applications for licenses to use channels in a public safety radio service. Two of the remaining methods by which such applications could be resolved are comparative hearings and licensing on a first-come-first-served basis. The Commission seeks comment on these and other possible alternatives to resolving such applications in public safety radio services.

6. Application of Section 337

57. In addition to the statutory exemption for public safety radio services, providers of public safety services may obtain spectrum without engaging in competitive bidding if they are granted the use of a frequency under Section 337. Section 337, among other things, gives eligible providers of public safety services a means to obtain unassigned spectrum not otherwise allocated for public safety purposes. *See* 47 U.S.C. 337(c)(1).

58. In considering applications under Section 337, the Commission must make an initial determination as to whether the applicant is an "entity seeking to provide public safety services," which the statute defines as "services—

(A) The sole or principal purpose of which is to protect the safety of life, health, or property;

(B) That are provided—

(i) By State or local government entities; or

(ii) By nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) That are not made commercially available to the public by the provider."

47 U.S.C. 337(f)(1).

59. The Commission must grant applications filed pursuant to Section 337 if an eligible applicant demonstrates that (a) no other spectrum allocated to public safety services is immediately

available to satisfy the requested use, (b) the requested use will not cause harmful interference to other spectrum users entitled to protection from such interference, (c) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in that geographic area, (d) the unassigned frequency has been allocated for its present use for at least two years, and (e) granting the application is in the public interest. 47 U.S.C. 337(c)(1). If an applicant's showing fulfills these criteria, the Commission must then waive any requirement of its regulations or the Communications Act (other than regulations regarding harmful interference) to the extent necessary to permit the requested use. After analysis and consideration of these criteria, the Commission must either disapprove the request or assign the specifically requested spectrum to the applicant. The statutory criteria indicate that an eligible applicant must request specific unassigned frequencies. Thus, the Commission tentatively concludes that an eligible entity must specify the spectrum it seeks to use, and cannot simply apply for the assignment of any unassigned spectrum and require the Commission to locate and select an appropriate frequency. If any one of the five criteria is unfulfilled, the application will not be granted.

60. The Commission seeks comment on its application of the statutory criteria. The Commission particularly seeks comment regarding the showing necessary to demonstrate that the grant of the application would be in the public interest, and the requirement that the frequency applied for be "unassigned." Specifically, the Commission requests comment on whether it would be in the public interest for applicants seeking to provide public safety services to apply for frequencies that, while not yet licensed to another entity, have already been identified and designated by the Commission as frequencies to be licensed by auction.

D. Establishing the Appropriate Licensing Scheme

1. Obligation to Avoid Mutual Exclusivity

61. The Commission inquires about how the revisions to Sections 309(j)(1) and 309(j)(2) affect its licensing obligations and methodologies. As discussed above, the Balanced Budget Act makes the acceptance of mutually exclusive license applications the only criterion for auctionability, subject to the obligation to avoid mutual exclusivity. Because services previously determined to be nonauctionable are generally licensed by processes that do not result in the filing of mutually exclusive license applications, unless the Commission alters these licensing schemes, licenses in these services will not be auctionable under the Balanced Budget Act.

62. The Balanced Budget Act of 1997 simplified the Commission's determinations of which services are auctionable under Section 309(j). Section 309(j)(2) no longer requires the Commission to base its determinations on whether the service is used principally for subscriber-based services. Unless a service is expressly exempted, subject to its obligation under Section 309(j)(6)(E) avoid mutual exclusivity in the public interest, the Commission is required to assign initial licenses by auctions when it has accepted mutually exclusive applications for such licenses. Thus, if not exempted by the statute, a service will be auctionable if the Commission implements a licensing process that permits the filing and acceptance of mutually exclusive applications.

63. In revising the Commission's auction authority, Congress retained and highlighted its obligation under Section 309(j)(6)(E) to continue to use various means to avoid mutual exclusivity." The Commission seeks comment on whether the express reference to its obligation under Section 309(j)(6)(E) in the general auction authority provision changes the scope or content of that obligation. In addition, the Comission notes that the Balanced Budget Act has not altered the criteria in Section 309(j)(3) that it must use to determine that a particular licensing scheme is in the public interest. In establishing licensing schemes or methodologies under the Balanced Budget Act (for both new and existing, commercial and private services), how should the Commission apply the public interest factors in Section 309(j)(3)? With respect to services currently using licensing schemes in which mutually exclusive applications are not filed, did Congress, in emphasizing the Commission's obligation to avoid mutual exclusivity, intend that it give greater weight to that obligation and less to other public interest objectives?

64. The Commission has previously interpreted Section 309(j)(6)(E) to impose an obligation to avoid mutual exclusivity in defining licensing schemes for commercial services only when it would further the public interest goals of Section 309(j)(3). For example, in the 800 MHz Specialized Mobile Radio ("SMR") service, after considering the appropriateness of other license assignment methods, the Commission concluded that those other methods were not in the public interest and that competitive bidding was the most appropriate method of assigning licenses because it would allow the most expeditious access to the spectrum. The Commission formerly used site-by-site licensing and a "first-come, first-served" license assignment method in the 800 MHz SMR service for channels that were primarily used to provide dispatch radio service. In recent years, however, a number of SMR licensees have expanded the geographic scope of their services, aggregated channels, and developed digital networks to enable them to provide a type of service comparable to that provided by cellular and PCS operators. The Commission found site-by-site licensing procedures cumbersome for systems comprised of several hundred sites, and was concerned that site-by-site licensing impaired an SMR licensee's ability to respond to changing market conditions and consumer demand. The Commission therefore replaced site-specific licensing with geographic area licensing and adopted competitive bidding procedures for the upper 200 channels in the 800 MHz SMR band. On reconsideration of its decision, the Commission rejected arguments by petitioners contending that Section 309(j)(6)(E) prohibits it from conducting an auction unless it first attempts alternative licensing mechanisms to avoid mutual exclusivity. *See also Fresno Mobile Radio, Inc.* v. *FCC*, No. 97–1459 (D.C. Cir. Feb. 5, 1999) (Commission's decision to award geographic area licenses in the 800 MHz SMR band by auction was within its discretion).

65. In licensing direct broadcast satellite ("DBS") channels, the Commission similarly determined that it would best serve the public interest to reassign reclaimed DBS channels by auction. This decision was based on a conclusion that the pro rata distribution of reclaimed channels among existing permittees would result in too few channels to provide any single permittee sufficient capacity for a viable system. The Commission therefore decided that even if reassigning channels on a pro rata basis could avoid mutual exclusivity, it would be more consistent with the public interest to award the channels by auction, in a block large enough to provide competitive DBS service. The U.S. Court of Appeals upheld this decision, ruling that Section 309(j)(6)(E) does not require

that the Commission adhere to a particular licensing scheme or methodology that is not found to serve the public interest in order to avoid mutual exclusivity in licensing proceedings. *See DIRECTV, Inc.* v. *FCC,* 110 F.3d 816, 828 (D.C. Cir. 1997). The court of appeals held that the statutory obligation to avoid mutual exclusivity requires the Commission to do so within the framework of its existing policy of promoting competition and prompt provision of DBS service.

66. The Commission notes that its decisions to establish geographic licensing have affected its balancing of its Section 309(j)(6)(E) obligation with the public interest objectives in Section 309(j)(3). Under the 1993 Budget Act, the Commission implemented its auction authority by establishing geographic licensing for particular auctionable services, finding in each case that such a licensing scheme furthered the public interest objectives of efficient spectrum use, expeditious licensing, and rapid delivery to the public of new technologies and services as expressed in Section 309(j)(3). In particular, the Commission found that pre-defined geographic service areas for many services have significant advantages over site-by-site licensing. The Commission has also found that licensing by geographic area facilitates aggregation by licensees of smaller service areas into seamless regional and national service areas and allows development of strategic regional and national business plans. In addition, the Commission has found that geographic area licensing provides licensees with greater buildout flexibility and is easier for the Commission to administer. For a number of services, these changes represent dramatic reductions in the regulatory burdens on both licensees and the Commission. The Commission made these findings even though geographic licensing could lead to the filing of mutually exclusive applications, which, under Section 309(j)(6)(E), the Commission has an obligation to attempt to avoid.

67. Against this historical backdrop, the Commission seeks comment on whether its previous analysis of its obligation under Section 309(j)(6)(E) is still appropriate in view of the revisions to Section 309(j)(1) and 309(j)(2). When choosing a licensing scheme for new services and in deciding whether to change the licensing scheme for existing services, should the Commission continue to evaluate its obligation to avoid mutual exclusivity by weighing the public interest objectives of Section 309(j)(3)? Alternatively, does the specific incorporation in Section 309(j)(1) of the Commission's obligation under Section 309(j)(6)(E) suggest an independent obligation to pursue strategies that avoid mutual exclusivity?

2. Exclusion of Satellite Services

68. The Commission specifically notes that the authorization of satellite services, due to international concerns, may justify the use of licensing procedures that provide a means to continue to avoid mutual exclusivity. In the Direct Broadcast Satellite Service and the Digital Audio Radio Satellite Service, the Commission has found that auctions of satellite licenses would serve the public interest. In both cases, the spectrum in question had been identified in international treaties as uniquely within the regulatory authority of the United States. Most other satellite systems, however, operate in frequency bands not similarly identified, which are allocated for mobile satellite services on a world-wide basis. As a consequence, how much money entities might bid and even their willingness to bid at all will be affected by the degree of their interest in providing global service and by their expectations concerning licensing requirements and costs in other countries. For example, a satellite system operator proposing to serve only the United States may be willing to bid higher for a U.S. license than a satellite system operator proposing to serve multiple regions, because the U.S.-only system would face considerably fewer contingencies. Thus, auctions might prevent entry by satellite systems interested in providing global service, even though these systems may provide services valued more highly by consumers. Coordinated multinational auctions might properly address the interdependency between national licensing decisions and international provision of service. However, international arrangements for transnational use of such frequency bands currently are premised on coordination—using engineering solutions and other methods to avoid harmful interference—among systems. A coordinated multilateral auction is likely to demand substantial time and resources by multiple administrations, could raise national sovereignty and other spectrum access issues, and thus, could substantially delay service to the public. Thus, bearing in mind the goals of Sections 309(j)(3) (A), (B) and (D), the Commission has undertaken considerable efforts to develop solutions that would avoid mutual exclusivity among satellite systems. For these reasons, the Commission is not seeking comment in this proceeding on satellite services. Nor are any conclusions the Commission reaches in this proceeding intended to constrain its discretion under Section 309(j)(6)(E) as it relates to satellite services, or to specify any particular process for resolution of potential mutual exclusivity among satellite service applications.

3. Considerations of License Scope

69. The Commission also seeks comment on several issues that may influence its choice of a licensing scheme in some of the frequency bands currently being licensed in ways that do not allow the filing of mutually exclusive applications. The Commission asks whether the use of geographic area licensing in these bands would be feasible and whether geographic area licensing or another licensing scheme would better serve its public interest goals. In services or classes of frequencies for which the Commission may ultimately adopt geographic area licensing, it seeks comment on how to convert existing licensing to geographic licensing and on the size of the licensing area that would be desirable.

70. In light of Congress's mandate to use competitive bidding to promote rapid provision of new services to the public without administrative delay, the Commission seeks comment on whether resolution of mutually exclusive applications on a "per station" basis is feasible. Would the use of geographic area licensing speed assignment of new channels and facilitate further build-out of wide-area systems? Specifically, the Commission seeks comment on the costs and benefits of geographic licensing in the frequency bands discussed above. What are the likely effects on incumbent systems and potential new entrants for such services if geographic area licensing is utilized? The Commission also seeks comment on whether any of the shared bands are so heavily used that adopting a geographic area licensing scheme would serve no purpose, because so little "white space" would be available to geographic area licensees that there would be no interest in applying for the geographic area licenses.

71. The Commission seeks comment in particular on the PLMRS frequencies below 470 MHz that are licensed on a shared basis and are heavily used by many smaller PLMRS licensees. The Commission recently completed a complex multi-year proceeding to maximize spectrum efficiency in these bands through engineering solutions. In light of the extensive modifications to its regulatory and technical framework adopted to further the efficient use of these bands, the Commission seeks comment on whether the public interest

would best be served by retaining the current licensing scheme rather than adopting geographic licensing and competitive bidding.

72. The Commision notes that some of the spectrum currently allocated for private internal use is also used to provide subscriber-based services, pursuant to intercategory sharing or rule waiver. Similarly, for some frequencies licensed on a shared basis, a licensee can nonetheless obtain exclusive use of a frequency by meeting certain loading requirements. Thus, the Commission seeks comment on whether, in deciding if geographic area licensing would be appropriate for a given radio service or class of frequencies, it should consider the actual purpose for which the spectrum is used or proposed to be used, as well as the purpose for which the spectrum is currently allocated.

73. For services in which the Commission decides to adopt competitive bidding, is there a licensing scheme that it could use as an alternative to geographic area licensing? Are there any services in which the Commission presently uses site-specific licensing that it should continue to license on a site-by-site basis? The Commission notes, in particular, that some private users have argued that their unique geographic coverage requirements make it difficult for these needs to be met through geographic area licensing schemes. The Commission also seeks comment on how, assuming geographic area licensing is used, its implementation could affect the private land mobile radio frequency coordination process. In its *39 GHz Report and Order,* ET Docket No. 95–183, FCC 97–391, 63 FR 6079, February 6, 1998, the Commission observed that frequency coordination techniques for emerging point-to-point technologies are no longer adequate. When geographic area licenses are to be awarded through competitive bidding, what role, if any, should the frequency coordinators serve? In which services and frequency bands, and on what conditions would frequency coordination continue to serve the public interest?

74. The Commission also seeks comment on ways in which it might convert existing licensing to geographic licensing. A Petition for Rulemaking filed by the American Mobile Telecommunications Association, Inc., (AMTA) proposes to require most Part 90 licensees in the bands between 222 MHz and 896 MHz, excluding Public Safety licensees, to use technology that achieves the equivalent of one voice path per 12.5 kHz of spectrum, using a 25 kHz frequency, and to involuntarily modify to secondary status the licenses of licensees that fail to meet this requirement after a transition period. *See* AMTA Petition for Rulemaking, RM–9332, Public Notice, Report No. 2288 (rel. July 31, 1998). Alternatively, the Commission could deal with licensees that fail to migrate to more efficient equipment by relocating them to shared frequency bands, which would be more compatible with the incumbents' present use because it would prevent inefficient users from benefiting from the capacity created by other, more spectrum-efficient, licensees. Relocating incumbents to shared spectrum might also be appropriate for site-based incumbents in bands that are converted to geographic area licensing, for similar reasons of compatibility. The Commission seeks comment on the use of relocation to facilitate the conversion of spectrum to geographic licensing.

75. Because the Commission believes that the geographic definition used should correspond as much as possible to the geographic area that licensees seek to serve, it proposes to establish the size of geographic licensing areas in service-specific proceedings, as it has done in the past. However, the Commission seeks comment on whether smaller geographic areas would be desirable for private internal radio services, because they would best approximate the service area desired by the small businesses and other users that typically characterize the private radio services. The Commission also seeks comment on whether in any of the services that will be subject to competitive bidding for the first time, it would be beneficial to establish geographic licensing areas smaller than EAs. Are there any other geographic boundaries that could be used to establish smaller geographic licensing areas, such as the boundaries of existing counties or boundaries established by the U.S. Postal Service to assign zip codes?

76. The Commission has found the short-form application process used in conjunction with its auctions to be the most efficient means of determining if mutual exclusivity exists. The Commission seeks comment on whether, in those services or classes of services, if any, for which it will be required to assign licenses by competitive bidding, it should continue to use a short-form application process to determine which license applications are mutually exclusive. The Commission seeks comment on whether there is a cost-effective alternative to use of the short-form application process as a means of determining when applications are mutually exclusive. The Commission also seeks comment on whether there are any other auction designs or procedures, or service regulations that could be used to limit the occurrence of mutual exclusivity in services that have become auctionable under its expanded authority.

77. Finally, the Commission notes that it traditionally has established licensing on a service-specific basis, taking into account the particular characteristics of the service, including its purposes and the technology to be used. Similarly, although the Commission adopted a uniform set of competitive bidding rules in the *Part 1 Third Report and Order,* to provide for a more consistent and efficient licensing process for all auctionable services, it also indicated that it would continue to adopt service-specific auction procedures where it finds that its general competitive bidding procedures are inappropriate. Thus, although the Commission seeks comment in this *NPRM* on the licensing schemes and various aspects of auction design and methodology that should be applied to services newly auctionable under the revised statute, it recognizes that many issues are more appropriately addressed on a service-specific basis. The Commission may therefore use service-specific proceedings to tailor licensing, service, and auction rules of specific services or classes of services to implement decisions ultimately taken in this and any subsequent dockets.

IV. Auction Design

A. Competitive Bidding Methodology and Design

78. As explained in paragraph 23, *supra,* even though a reference to the public interest objectives outlined in Section 309(j)(3) is no longer included in Section 309(j)(2), the objectives of the Commission's competitive bidding system remain unchanged. In designing competitive bidding methodologies, Section 309(j)(3) requires that the Commission promote development and rapid deployment of new technologies and services; promote economic opportunity and competition, and ensure that new and innovative technologies are readily accessible to Americans; recover for the public a portion of the value of the spectrum; and promote efficient and intensive use of the electromagnetic spectrum. For those services that the Commission determines are potentially auctionable as a result of the Balanced Budget Act redefining its auction authority, the Commision seeks comment below on how to implement competitive bidding

in a manner that will further those objectives.

79. The Commission has previously observed that the use of competitive bidding to assign geographic overlay licenses in private radio services would promote spectrum efficiency. This approach would promote competition among licensees, which, in turn, would provide market-based incentives for efficient spectrum use. In particular, incumbents would be able to continue existing operations without harmful interference, and overlay licensees would be able to negotiate voluntary mergers, buyouts, frequency swaps, or similar arrangements with incumbents. Thus, the overlay licensee would incur an opportunity cost if spectrum is not used as efficiently as possible and would have incentives to promote spectrum efficiency. Another method for introducing market-based incentives and encouraging greater spectrum efficiency in the private radio service bands is to implement market-based user fees as an alternative to, or in conjunction with, competitive bidding. The Commission has previously sought comment on the implementation of user fees and it continues to believe that market-based user fees are a desirable means for encouraging greater spectrum efficiency. However, the Commission does not currently have statutory authority to impose spectrum user fees.

80. The Commission is cognizant of private wireless operators' concerns about their ability to compete for spectrum in the open market with commercial wireless service providers operating their systems as a direct source of revenue. The Commission realizes that some private wireless licensees may be concerned that auctioning licenses for private internal radio services will lead to a concentration of licenses in the hands of a few operators in each market to the detriment of small businesses. With these concerns in mind, the Commission seeks to develop a competitive bidding process that is tailored to the specific characteristics of the private radio services, the various purposes for which spectrum in those services is used, and the needs of the various types of entities holding licenses in those services.

81. In many of its previous auctions, the Commission has used the simultaneous multiple-round competitive bidding design. In a simultaneous multiple-round auction, bidding is open on all licenses or permits at once, and may remain open on all licenses until no more bids are received on any license. By contrast, in a sequential auction, licenses or permits are auctioned one at a time, and bidding ends on one license before bids are accepted for another license. Simultaneous multiple-round bidding has the advantage of affording bidders more information during the auction concerning the value that competing bidders place on what is being auctioned than is the case with single-round or sequential bidding. For this reason, simultaneous multiple-round bidding is more likely to result in the party that values the spectrum the most acquiring the license. Section 1.2103(a) of the Commission's rules, 47 CFR 1.2103(a), sets out the various types of auction designs from which the Commission may choose to award licenses for services or classes of services subject to competitive bidding. However, under Section 309(j) the Commission also has authority to design and test other auction methodologies. For example, in Section 3002(a) of the Balanced Budget Act, Congress directed that the Commission design and test competitive bidding using a contingent combinatorial bidding system. Combinatorial bidding, also known as package bidding, allows bidders to place single bids for groups of licenses.

82. The Commission seeks comment on whether alternate competitive bidding designs and methodologies should be considered for any private radio services that may be determined to be auctionable as a result of the Balanced Budget Act. Would the same auction methodology be appropriate for all newly auctionable services or are different methodologies warranted? Should the type of auction vary depending on the type of private service involved, the number of licenses at stake, the number of bidders that are likely to participate, and the degree to which interdependence may be important to those likely to bid on a license in a particular service or band?

83. The Commission also recognizes that private internal radio service licensees using spectrum to conduct their day-to-day business operations may not be able to wait a significant amount of time to obtain authorizations for the frequencies they need to conduct their businesses. The Commission therefore seeks comment on the frequency with which it should conduct auctions of private radio services spectrum that it determines is auctionable, and whether it should conduct such auctions at regularly scheduled intervals.

B. Eligibility Requirements

84. Because private radio services are dedicated to use by a defined group of eligible users, the Commission's service regulations set forth specific limitations on who is eligible to use each service. For private services that may be subject to competitive bidding for the first time, the Commission seeks comment below on whether such eligibility restrictions should limit who is eligible to participate in the auctions of spectrum in those services. The Commission also seeks comment on other means by which it can tailor a competitive bidding system to ensure that private wireless users have a reasonable opportunity to obtain sufficient spectrum to meet the needs of their day-to-day business operations.

85. With respect to private radio services that may be licensed using competitive bidding, the Commission seeks comment on whether it should conduct limited-eligibility auctions by establishing eligibility criteria that restrict the types of entities that may bid on such auctionable spectrum. If the Commission decides to conduct limited-eligibility auctions, how should it define the class of eligible bidders? For services that may be auctionable for the first time, should the Commission define eligibility to bid in the same manner as it has previously defined eligibility to hold an authorization in that service? For each auctionable service, should the Commission establish multiple classes of eligible applicants and assign priority status to certain classes, so that applicants with higher priority classifications would be allowed to bid on licenses before applicants with lower priority classifications?

86. Should the class or classes of entities eligible to bid in a spectrum auction for private radio services be based only on the purpose for which the spectrum will be used, or should the Commission also establish eligibility criteria based on the size of the applicant? What other standards could the Commission use to establish eligibility to bid on auctionable private radio services spectrum? If the Commission establishes size standards for eligibility, should it adopt the Small Business Administration's (SBA) size standards under the Standard Industrial Classifications ("SIC"), *see* 13 CFR 121.201, or should it establish size standards on a service-specific basis, taking into account the characteristics and capital requirements of particular private services?

87. If the Commission decides to establish size standards on a service-specific basis, should it measure an applicant's size by gross revenues, total assets, or some other standard? In the *Part 1 Third Report and Order*, the Commission decided that its service-

specific small business definitions will be expressed in terms of average gross revenues over the preceding three years "not to exceed" particular amounts, because it believes that average gross revenues provide an accurate, equitable, and easily ascertainable measure of business size. Should the Commission similarly adopt average gross revenues as a measure of business size for the purpose of determining eligibility for auctionable private radio services spectrum? If the Commission decides to use average gross revenues as its measure of applicant size, should it use the uniform definition of gross revenues that it adopted for all auctionable services in its Part 1 rules? *See* 47 C.F.R. 1.2110(m). If applicant eligibility is to be based on gross revenues or total assets, what dollar amounts should be set as the eligibility thresholds?

88. The Commission seeks comment on whether entities eligible for licenses in the public safety radio services should also be eligible to bid competitively with other applicants for frequencies allocated for private internal or commercial use. Applicants seeking spectrum for public safety radio services without bidding competitively are able to apply for spectrum that the Commission has specifically allocated for that purpose or file a waiver request for unassigned spectrum pursuant to Section 337(c). However, the Commission could allow those same entities to participate in auctions of other spectrum that it has designated for private or commercial radio services. The Commission seeks comment on this proposal.

89. The Commission also requests comment on whether providers of commercial wireless telecommunications services should be included in one or more of the classes of entities eligible to bid on auctionable private radio service spectrum. The Commission seeks comment on the criteria that should be used to distinguish between applicants seeking spectrum for use in conducting their underlying businesses and those seeking to use spectrum as providers of commercial wireless telecommunications services. Should commercial telecommunications service providers be allowed to bid on spectrum allocated for private radio services, only if they commit to using the spectrum to meet the private communications needs of other entities eligible to hold licenses in the private radio services?

90. Another approach to auctioning spectrum for private radio services would be to permit any qualified entity to bid on such spectrum, but to establish rules that either set aside specific licenses or confer certain financial benefits, such as bidding credits, on applicants that meet certain criteria. The Commission seeks comment on what eligibility criteria it should employ if it decides to establish a special class of licensee for the private internal radio services. As an alternative to business size standards, should the Commission establish spectrum caps that, if exceeded, would preclude eligibility for such spectrum set-asides or favorable financial treatment?

C. Band Manager Licenses

91. Today, applicants for PLMRS licenses must obtain a frequency recommendation from a certified coordinator in order to prosecute a license application before the Commission. The certified coordinators base their frequency recommendations on detailed operational and technical requirements set forth in Part 90 of our Rules. In considering how private radio services should be licensed to meet current and projected needs for internal communications capacity, the Commission seeks comment on whether the public interest would be served by establishing a new class of licensee called a "Band Manager."

92. As considered here, a Band Manager would be eligible to apply for a private radio license, with mutually exclusive applications subject to resolution through competitive bidding. The Commission's principal role would be to allocate spectrum for private services, establish the size and scope of the Band Manager license, and conduct auctions if mutually exclusive applications are received. As a condition of the Band Manager license, the Band Manager would be required to restrict its operations to the offering of internal communications services and/or capacity to an identified class of private radio eligibles. A Band Manager would be authorized to sublicense portions of its license to specific eligible users for a length of time not to exceed the expiration of the initial license term. Under this approach, the Band Manager would remain a Commission licensee, and would be held solely responsible for its sublicensor's compliance with the Commission's rules. The Commission notes that the Band Manager may be akin to a commercial licensee that offers capacity on its system, via resale, for example, to an end user that is not directly licensed by the Commission. Band Manager sublicense arrangements would be accomplished through private contractual arrangements between the Band Manager and eligible users, in a manner similar to agreements reached between commercial licensees and resellers.

93. At the outset, the Commission seeks comment on how the concept of a Band Manager fits within its overall spectrum management responsibilities. For example, would the creation of a Band Manager be consistent with the Commission's spectrum management obligations under various sections of the Communications Act? *See, e.g.,* 47 U.S.C. 1, 301, 303(c), (d). The Commission also seeks comment on whether this concept is consistent with its obligation to determine whether the public interest, convenience and necessity will be served by the grant of each application filed with the Commission for use of the radio spectrum. *See* 47 U.S.C. 309(a). In this regard, the Commission seeks comment on whether Band Managers, as described above, would effectively be allocating spectrum or assuming the Commission's spectrum management responsibilities, or simply acting as licensees with various types of end user customers.

94. The Commission notes that private radio systems serve a wide variety of specialized communications needs that historically have not been fulfilled by commercial service providers. Because market forces have not, to date, played a role in the availability and licensing of private spectrum, the Commission lacks a reliable method for objectively gauging current and future demand for private spectrum. Making a Band Manager license available at auction for the sole purpose of making spectrum available for private radio service users may enable the Commission to use market forces to determine private spectrum requirements.

95. Creation of the Band Manager license could further privatize the Commission's licensing of private radio spectrum. Competition among Band Managers would serve to regulate price, quality, and availability of services. Private radio users could generally benefit through assured availability of the types of quality, customized services that may not be readily available from cellular, paging, PCS or SMR service providers. Competition among Band Managers would ensure that the available spectrum is used in the most economically efficient manner to meet the varied and assorted needs of the private user community. The Commission seeks comment on the costs and benefits of Band Manager licenses relative to alternative methods of providing internal communications services. To what extent can licensees such as PCS providers currently meet

the requirements of private users with commercial services? Can such licensees already exercise some, or all, of the functions of a Band Manager licensee by sublicensing spectrum to private users? If so, to what extent are they doing so? Are they likely to expand such sublicensing arrangements in the future as the demand for private uses increases? Would restrictions on eligible users and uses attached to Band Manager licenses be an appropriate response to a market failure that discourages current licensees from acting as Band Managers? To what extent can partitioning and disaggregation of current licenses meet the demand for internal communications capacity? Compared to the current system of frequency coordination and direct licensing of private users, would Band Managers ensure that spectrum is used more efficiently? Would allowing Band Managers to charge private users for spectrum use tend to discourage spectrally wasteful and low value uses? Would Band Managers have a greater incentive than frequency coordinators to consider future spectrum requirements when making spectrum available for current uses because their profit is more closely tied to maximizing the value of the spectrum over the entire expected license term?

96. In addition to comment on the general concept of the Band Manager license, the Commission asks for comment on the full range of implementation issues. If adopted, where might Band Manager licenses best be applied? Should they be limited to any newly available spectrum for private radio services or should they be created as overlay licenses on certain bands already allocated for private radio services? Should the Commission establish any additional eligibility or use restrictions in connection with the Band Manager license, and if so, what are the public interest benefits that would result from such additional restrictions? In this respect, the Commission seeks comment on how it can ensure fair and nondiscriminatory access by private radio users to spectrum licensed to a Band Manager in the user's geographic area. Additionally, should the Commission adopt rules that limit to private uses spectrum that is licensed to Band Managers and/or sublicensed to eligible users? The Commission asks for comment on whether the Band Manager should be authorized to partition and disaggregate its license, and if so, should there be any limitations on this authority, or should the Band Manager be required to retain some portion of its license? The Commission also seeks comment on whether it should impose buildout or use requirements on Band Managers to ensure that spectrum assigned to Band Managers is used efficiently. The Commission seeks comment on other requirements that it could adopt to ensure that spectrum licensed to Band Managers would be used to meet the varied needs of the private user community. Finally, the Commission seeks comment on the enforcement measures, including license cancellation, to which a Band Manager licensee should be subject if it administers its spectrum in a manner that is inconsistent with the requirements of the Commission's service rules.

97. The Commission also seeks comment on whether an applicant for a Band Manager license should receive priority over other competing bidders through use of some level of bidding credit. Commenters should also address whether the Commission should conduct auctions that are limited to the grant of Band Manager licenses, or whether it should hold auctions for particular blocks of spectrum, with the Band Manager licenses being one of many potential uses.

98. As noted, it would be essential that each geographic area have several competing Band Managers so that market forces would substitute for regulation of rates and services. The Commission therefore seeks comment on whether it should grant more than one Band Manager license in a geographic area to allow for competition among Band Managers. The Commission also asks for comment on what types of limitations on ownership and control of Band Manager licenses should be imposed to preserve competition and market-based incentives. Commenters should address both the amount of spectrum contained in each Band Manager license, as well as the geographic area that each such license might encompass. In addition, commenters should provide recommendations for attribution of ownership and control of Band Manager licenses.

D. Processing of New Applications

99. In services where the Commission has transitioned to geographic area licensing and auction rules, it has suspended acceptance of new license applications until such time as it adopts final rules and begins accepting applications to participate in the auction for spectrum in those services. The Commission has stated that the purpose of such an application freeze is to deter speculative applications and ensure that the goals of the rule making are not compromised.

100. For services in which licenses will be assigned by auction for the first time, the Commission seeks comment on the measures it should take to prevent applicants from using the current application and licensing processes to engage in speculative activity prior to its adoption of auction rules, thus limiting the effectiveness of the decisions made in this proceeding. One approach would be to temporarily suspend acceptance of applications for new licenses, amendments, or major modifications in frequency bands for which the Commission proposes to adopt competitive bidding in the future. Alternatively, the Commission could adopt interim rules imposing shorter time periods for construction or build-out. For example, the Commission could impose a construction deadline as short as five months from licensing, which might be an effective means of ensuring that applicants seek only those licenses for which they have an immediate need. The Commission seeks comment on this proposal and on whether there are any other measures that would deter speculative applications in services where it proposes to assign licenses by auction.

V. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

101. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

B. Initial Regulatory Flexibility Analysis

102. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible impact on small entities of the proposals suggested in the *Notice of Proposed Rule Making*. The IRFA is set forth below and in Appendix A of the *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the *NPRM*, and they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *NPRM*, including the IRFA, to the

Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. 603(a).

C. Initial Paperwork Reduction Act of 1995 Analysis

103. This *NPRM* contains neither a new nor a modified information collection.

D. Comment Dates

104. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 2, 1999, and reply comments on or before August 2, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121, May 1, 1998.

105. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

106. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Room TW–A325, Washington, DC 20554. In addition, a courtesy copy should be delivered to Gary D. Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Washington, DC 20554.

107. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554.

E. Further Information

108. For further information concerning this *Notice of Proposed Rule Making*, contact Gary D. Michaels, Auctions and Industry Analysis Division, (202) 418–0660, or Scot Stone, Public Safety and Private Wireless Division, (202) 418–0680, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

F. Ordering Clauses

109. Accordingly, it is ordered that, pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C.154(i), 303(r), and 309(j), this *Notice of Proposed Rule Making* is hereby adopted.

110. It is further ordered that the Office of Public Affairs, Reference Operations Division, shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

111. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in paragraph 104. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for and Objectives of the Proposed Rules

112. This rule making proceeding is initiated to evaluate the impact of the Balanced Budget Act of 1997 on the Commission's auction authority for wireless telecommunications services. The Balanced Budget Act revised the original auction standard established under the Omnibus Budget Reconciliation Act of 1993. The *NPRM* seeks comment on how the Balanced Budget Act's amendments to Section 309(j) affect the Commission's determinations of what services are auctionable. The *NPRM* also seeks comment on the scope of the Balanced Budget Act's exemption from competitive bidding for licenses and permits issued for public safety radio services. The *NPRM* also seeks comment on a Petition for Rule Making that proposes the establishment of a new radio service pool for use by electric, gas, and water utilities, petroleum and natural gas pipeline companies, and railroads, and on implementation of Section 337(c), which provides for the licensing of unassigned frequencies under certain circumstances to entities seeking to provide public safety services. In addition, the *NPRM* seeks comment on whether the Balanced Budget Act's amendments to Section 309(j) require the Commission to revise its licensing schemes and license assignment methods to provide for competitive bidding in services that it previously determined were not auctionable, and on how such schemes for new services might be established. Additionally, the *NPRM* seeks comment on how the Commission might implement competitive bidding to award licenses in services that will be auctionable for the first time.

B. Legal Basis

113. This action is authorized under Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

114. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. *See* 5 U.S.C. 601(3). Under the Small Business Act, a "small business

concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The U.S. Bureau of the Census estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities. The policies and rules proposed in the *NPRM* would affect a number of small entities who are either licensees or who may choose to become applicants for licenses in wireless services. Below, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by the proposed policies and rules, if adopted.

a. Cellular Radiotelephone Service

115. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. *See* 13 CFR 121.201 (Standard Industrial Classification (SIC) Code 4812). The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1000 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of this IRFA that nearly all of the current cellular licensees are small entities, as that term is defined by the SBA.

116. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November, 1997, there are 804 companies reporting that they engage in cellular or PCS service. It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

b. Broadband and Narrowband PCS

117. Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F have been designated by the Commission as "entrepreneurs' blocks," and participation in auctions of C and F block licenses is limited to entities qualifying under the Commission's rules as entrepreneurs. The Commission's rules define an entrepreneur for purposes of C and F block auctions as an entity, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application is filed. For blocks C and F, the Commission has defined "small business" as a firm that had average gross revenues of less than $40 million in the three previous calendar years, and "very small business" has been defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See* 47 CFR 24.720(b)(1), (2). These definitions of "small business" and "very small business" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definitions bid successfully for licenses in blocks A and B. In the first two C block auctions, there were 90 bidders that qualified as small entities and won licenses in block C. In the first auction of D, E, and F block licenses, a total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C block bidders and the 93 winning bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

118. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

c. 220 MHz Radio Services

119. The Commission recently auctioned licenses in the 220–222 MHz band. The license blocks include five licenses in each of the 172 Economic Areas (EAs) and three EA-like areas; five licenses in six Economic Area groupings (EAGs); and three Nationwide licenses, comprising the same territory as all of the EAGs combined. For this auction, a small business was defined as an entity with average annual gross revenues of not more than $15 million for the preceding three years; and very small business was defined as a firm with average annual gross revenues of not more than $3 million for the preceding three years. *See* 47 CFR 90.1021. A total of 373 licenses were won by 39 small business bidders and 320 licenses were won by five other bidders. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this IRFA, the

Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

d. Paging

120. The Commission has adopted a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. This definition has been approved by the SBA. Under the definition, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million. A small business is defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to Telecommunications Industry Revenue data, there were 172 "paging and other mobile" carriers reporting that they engage in these services. Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

e. Air-Ground Radiotelephone Service

121. The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service. *See* 47 CFR 22.99. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

f. Specialized Mobile Radio (SMR)

122. The Commission has adopted a two-tier bidding credit in auctions for geographic area 800 MHz and 900 MHz SMR licenses. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million. A small business is defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The definitions of "small business" and "very small business" in the context of 800 MHz and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band and 800 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the 800 MHz SMR auction there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

g. Private Land Mobile Radio Services (PLMR)

123. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. The Commission has not developed a definition of small entities specifically applicable to PLMR licensees due to the vast array of PLMR users. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules could potentially impact every small business in the United States.

h. Aviation and Marine Radio Service

124. Small entities in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of the evaluations and conclusions in this IRFA, the Commission estimates that there may be at least 712,000 potential licensees that are individuals or are small entities, as that term is defined by the SBA.

i. Offshore Radiotelephone Service

125. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. *See* 47 CFR 22.1001–22.1037. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

j. General Wireless Communication Service (GWCS)

126. This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission sought and obtained SBA approval of a refined definition of "small business" for GWCS. According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than $40 million. *See* 47 CFR 26.4. The Commission will offer 875 geographic area licenses, based on Economic Areas, for GWCS. In estimating the number of small entities that may participate in the GWCS auction, the Commission anticipates that the makeup of current wireless services licensees is representative of future auction winning bidders.

k. Fixed Microwave Services

127. Microwave services includes common carrier fixed, *see* 47 CFR 101 *et seq.*, private operational fixed, *see* 47

CFR 80.1 *et seq.*, 90.1 *et seq.*, and broadcast auxiliary radio services, *see* 47 CFR 74.1 *et seq.* At present, there are 22,015 common carrier fixed licensees and approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, i.e., an entity with less than 1,500 persons. The Commission estimates that for purposes of this IRFA all of the Fixed Microwave licensees (excluding Multiple Address Systems broadcast auxiliary radio licensees) would qualify as small entities under the SBA definition for radiotelephone communications.

l. Amateur Radio Service

128. The Commission estimates that 10,000 applicants applied for vanity call signs in FY 1998. All are presumed to be individuals. Amateur Radio service licensees are coordinated by Volunteer Examiner Coordinators (VECs). The Commission has not developed a definition for a small business or small organization that is applicable for VECs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field . * * *" 5 U.S.C. 601(4). The Commission's rules do not specify the nature of the entity that may act as a VEC. All of the sixteen VEC organizations would appear to meet the RFA definition for small organizations.

m. Personal Radio Services

129. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS). *See* 47 CFR Part 95. Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. To the extent any of these licensees may be small entities under the SBA definition, the Commission is unable at this time to estimate the exact number.

n. Rural Radiotelephone Service

130. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. *See* 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). *See* 47 CFR 22.757, 22.729. The Commission will use the SBA definition applicable to radiotelephone companies; i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

o. Marine Coast Service

130. The Commission recently concluded its auction of Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of this auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. A "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

p. Wireless Communications Services (WCS)

132. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected includes these eight entities.

q. Public Safety Radio Services and Governmental Entities

133. Public Safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. *See* 47 CFR 90.15–90.27, 90.33–90.55. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As noted, governmental entities with populations of less than 50,000 fall within the SBA definition of a small entity. There are 85,006 governmental entities in the nation, as of the last census. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000; however, this number includes 38,978 counties, cities, and towns and of those, 37,566 or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 96 percent or 81,600 are small entities that may be affected by its rules.

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

134. At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of this *NPRM*. The Commission seeks comment on this tentative conclusion.

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

135. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. In addition, Section 337 gives eligible providers of public safety services a means to obtain unassigned spectrum not otherwise allocated for public safety purposes. The Commission believes the policies and rules proposed in this *NPRM* help meet those goals and promote efficient competition while maintaining the fair and efficient execution of the auctions program. The Commission seeks comment, therefore, on all proposals and alternatives described in the *NPRM*, and the impact that such proposals and alternatives might have on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

136. None.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–10989 Filed 4–30–99; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 605

[Docket No. FTA–99–5082]

RIN (2131 AA67)

School Bus Operations; Amendment of Tripper Service Definition

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) seeks to amend and clarify the definition of tripper service, set out in the Federal Transit Administration's (FTA) school bus regulation. In FTA's experience, the current definition does not sufficiently specify which student transportation operations are inconsistent with FTA requirements. This NPRM describes and requests comment on FTA's proposed amendment of the definition of tripper service.

DATES: Comments must be submitted by July 2, 1999.

ADDRESSES: The public is invited to submit written comments on this notice. Written comments should refer to the docket number appearing at the top of this notice and be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, 400 Seventh Street, SW Washington, DC 20590. All comments received will be available for examination at the above address. Docket hours at the Nassif Building are Monday through Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Martineau, Office of Chief Counsel, Federal Transit Administration, (202) 366–1936 or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION:

I. Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL):http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nars.

II. FTA's Tripper Service Requirements

Under FTA's school bus requirements, set out at 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients may not engage in school bus operations exclusively for the transportation of students. These provisions derive from 49 U.S.C. 5302(a), which authorizes FTA assistance for mass transportation, but specifically excludes school bus service from such Federal assistance.

Section 605.3 of the regulation allows grantees to provide "tripper" service, which is mass transit service modified to accommodate the needs of school students and personnel. Buses used for tripper service must be clearly marked as open to the public and may not carry designations such as "School Bus" or "School Special." These buses may stop only at a grantee's regular service stop. All routes traveled by tripper buses must be within a grantee's regular route service as indicated in their published route schedules. The purpose of this provision is to ensure that buses acquired with Federal assistance are clearly perceived by the public as available to their use.

III. FTA's Proposed Amendment

It has recently come to FTA's attention that certain grantees have been providing service to school children that is inconsistent with FTA's tripper service requirements. The results of reviews of grantee tripper operations have shown that certain grantees are providing tripper service that creates the public perception that the buses used are for the exclusive use of school children. One grantee uses swing-arm signs reading "Caution Students" on tripper buses. Another grantee's tripper buses bear markings indicating that the vehicles are transporting children certain times of day. Buses operated by other grantees pick up and discharge students on school property and not at bus stops that are accessible to the general public. FTA recognizes that such practices are not specifically proscribed under the tripper service provision; however, they do undermine its purpose, which is to ensure that the general public is aware that tripper buses are available for their use.

In order to make it clear to grantees that any type of signage that designates vehicles as school buses, and any stops that are not accessible to the general public, is impermissible exclusive school service, FTA proposes to amend the tripper service provision. Under the proposed amendment, buses used in tripper service may not carry "School Bus," "School Special," "Student," or any other markings indicating that they are carrying school children. Moreover, the buses may stop only at stops that are clearly marked by the grantee or operator as available to the public. FTA believes that tripper buses operated in accordance with this proposal will be clearly perceived by members of the general public as available for their use. FTA requests comment on this proposed amendment.

IV. Regulatory Impacts

A. Regulatory Analyses and Notices

FTA has determined that this action is not significant under Executive Order 12866 or the regulatory policies and procedures of Department of Transportation regulatory policies and procedures. Because this rule merely clarifies an existing regulatory provision, it is anticipated that the impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612. Because this rule does not mandate a business process change or require modifications to computer systems, its issuance will not affect a recipient's ability to respond to Year 2000 issues.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act, because it requires only minor adjustments to the manner in which certain grantees are providing tripper service.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

List of Subjects in 49 CFR Part 605

Mass transit: grants; school bus.

Accordingly, for the reasons described in the preamble, Part 605 of Title 49 of

the Code of Federal Regulations is proposed to be amended as follows:

PART 605—[AMENDED]

1. By revising the authority citation to read as follows:

Authority: 49 U.S.C. 5323(f); 49 CFR 1.51.

2. In § 605.3, revise the definition for "tripper service" in paragraph (b) to read as follows:

605.3 Definitions.

* * * * *

Tripper service means regularly scheduled mass transportation service that is open to the public and designed or modified to accommodate the needs of school students and personnel, using various fare collection or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry destination signs such as "school bus," "school special," "student," or any other marking indicating that they are carrying school children. These buses may stop only at stops that are accessible to the public and that are clearly marked as available to the public. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules.

* * * * *

Issued on: April 28, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–10996 Filed 4–30–99; 8:45 am]

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Plan Amendment for the Curlew National Grassland; Caribou National Forest, Oneida County, Idaho

AGENCY: Forest Service; Department of Agriculture.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of the proposed actions to amend the direction for resource management on the Curlew National Grassland (Grassland) as contained in the Land and Resource Management Plan for the Caribou National Forest and Curlew National Grassland. The Grassland is located approximately 17 air miles west of Malad City, Idaho. The proposed actions are located entirely within the 47,600-acre Grassland. The need for the proposal is to amend existing and create new management direction for the vegetation, riparian, livestock grazing, wildlife and other resources and uses on the Grassland based on a proposed desired range of future conditions.

Direction from the Chief of the Forest Service requires that a separate management plan for each of the National Grasslands be developed. The Caribou National Forest proposes to complete an EIS to amend existing and create new management direction for the Curlew National Grassland. Current direction is found in the 1985 Land and Resource Management Plan for the Caribou National Forest and Curlew National Grassland.

The EIS will address ecological patterns, processes, and management direction for both riparian and upland resources; develop direction for restoration of rangeland vegetation composition; develop and implement livestock grazing standards; develop soil and watershed management direction; develop and implement direction for sagebrush associated/obligate wildlife species habitat; and develop policy for future utility proposals. The amendment will include ecosystem management goals, objectives, standards and guidelines, and monitoring strategies specific to the Grassland.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before June 2, 1999.

ADDRESSES: Send written comments to: Forest Supervisor, Caribou National Forest, Curlew National Grassland Amendment, Federal Building, 250 South 4th Avenue, Pocatello, Idaho 83201. Electronic mail may be sent to: pcomment/r4__caribou@fs.fed.us. Please reference the Curlew Amendment on the subject line.

FOR FURTHER INFORMATION: Questions concerning the proposed action and EIS should be directed to Scott Feltis, Interdisciplinary Team Leader, Caribou National Forest, Pocatello, Idaho, phone: (208) 236–7500.

SUPPLEMENTARY INFORMATION: This EIS will tier to the final 1985 EIS for the Land and Resource Management Plan for the Caribou National Forest and Curlew National Grassland (Forest Plan). This Forest Plan provides the overall guidance (goals, objectives, standards and guidelines, and management area direction) to achieve the desired future condition for the area being analyzed, and contains specific management area prescriptions for the Grassland. The specific objectives of this proposal are:

- To develop direction for restoration of rangeland vegetation composition.
- To develop and implement livestock grazing standards.
- To develop soil and watershed management direction.
- To develop direction for sagebrush associated/obligate wildlife species habitat.
- To develop policy for future utility proposals.
- To develop management direction for both riparian and upland resources.

Public scoping for this proposal will be initiated with the publication of this Notice. An Analysis of the Management Situation (AMS) was released to the public on February 25, 1999 and is available electronically at www.fs.fed.us/r4/curlew or by written request to the address provided above. Opportunities will be provided to discuss the Grassland Plan with the public. The public is invited to help identify issues that will be considered in defining the range of alternatives in the Environmental Impact Statement.

Preliminary Issues/Concerns

- Riparian Condition. Some riparian areas and stream channels have deteriorated and are no longer functioning properly. This has resulted in a deterioration or loss of deep-rooted riparian vegetation, reduced water quality, and degraded habitat for many aquatic and terrestrial species. Some upper watersheds, not managed by the Forest Service, have contributed to past flooding, channel scouring and sediment within the Grassland.
- Sage Grouse and Other Sagebrush-Associated Species and Habitats. Sage grouse populations on and adjacent to the Grassland have declined over the past 20–25 years. Historic expansion of agriculture on non-federal lands has reduced the extent of sagebrush habitats in the Curlew Valley area. Changes in some of the remaining habitat from fragmentation, invasion of exotic plant species, disruption of natural fire cycles, use by livestock and loss of native species diversity have contributed to declines in sagebrush habitat quality and wildlife species, some to the point of needing special attention.
- Forage Utilization. Grazing utilization standards for seeded and native vegetation types currently do not exist in the 1985 Forest Plan. Livestock forage utilization needs to consider, and be compatible with, other resource values and needs. During the analysis of Grassland resources, a determination of rangeland capability and suitability will be made.
- Vegetation Composition and Structure. Vegetation seedings have changed species composition, reduced biological diversity, changed species interactions, reduced wildlife habitat quality and forage availability. When compared with native plant communities, seedings have reduced the system's ability to buffer against changes. Sagebrush structure is trending toward older age classes, resulting in a lack of understory diversity, reduced herbaceous production and reduced watershed condition due to losses of

ground cover. Bulbous bluegrass, a non-native grass species, was seeded on 18,000 acres of the Grassland during the 1940's and 1950's. While having value as a sod forming, ground cover species, it is not desirable from a wildlife habitat or forage production perspective. Opportunities exist to treat bulbous bluegrass-dominant sites and revegetate with a desirable mix of native and non-native grass, forb and shrub species.

• Intermingle Lands. A mix of private and state and federal land ownerships lie within, and surround the Grassland. Activities on adjacent ownerships within the Curlew Valley are not always compatible with Grassland management objectives and sometimes influence activities, management options and resource conditions on the Grassland. Because of these influences, ability to fully implement the 1985 Forest Plan direction is hindered in some instances.

• Cumulative Effects. Cumulative impacts of the proposal need to be identified and evaluated, including past, ongoing, and future management on the Grassland, given the geographic setting of the Grassland in relation to the ownerships and activities.

The Forest Service is seeking information and comments from Tribes, Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register.**

Preparation of the EIS will include the following steps:

1. Define the purpose and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 1 and 2 have started; steps 2 through 4 will be completed through the scoping process. Step 5 will consider a range of alternatives developed from the key issues. To date, two alternatives have been drafted The No Action Alternative continues the direction and management of the 1985 Forest Plan. The Proposed Action was developed in response to issues listed above. Step 6 will described the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected. Step 7 will analyze the environmental effects of each alternative. The direct, indirect and cumulative effects of each alternative will be analyzed and documented. Additional alternatives will be developed in response to public issues, management concerns, and resource opportunities identified during the scoping process. In describing alternatives, desired vegetation and resource conditions will be defined. Preliminary information, including a map of the Proposed Action is available for review at the Westside Ranger District Offices (Malad and Pocatello) and the Supervisor's Office (Pocatello). Elements of the Proposed Action are presented below.

The Proposed Action

The Proposed Action applies a riparian/wetland areas prescription which establishes a zone of special emphasis that restricts activities to those which will not compromise prescription goals or reduce water quality below that needed to comply with state water quality requirements and sustain beneficial uses. Riparian forage utilization is not to exceed 30 percent or a 6-inch minimum stubble height (whichever is attained first) directly adjacent to the stream channel. In contrast, the 1985 Forest Plan (No Action Alternative) manages riparian areas at a minimal custodial level, limiting actions to those activities required to comply with existing laws, regulations, and executive orders. Also, no forage utilization standards are identified.

The Proposed Action applies Grassland-wide forage utilization levels not to exceed approximately 50 percent on seeded sites and 45 percent on native vegetation sites. In contrast, the 1985 Forest Plan does not specifically identify forage utilization levels. However, the Grassland has been managed (through allotment management plan direction) to not exceed 60 percent forage utilization regardless of vegetation type.

The Proposed Action sets a goal of managing for a diversity of sagebrush canopy cover class ranges on the Grassland: ten to 30 percent of the Grassland acres in early seral status (0–5 percent canopy cover; early age and structure); 40–60 percent of the Grassland acres in mid seral status (6–15 percent canopy cover; mid-age and structure); 30–50 percent of the Grassland acres in late seral status (>15 percent canopy cover; mature and overmature age and structure). In contrast, the 1985 Forest Plan does not provide management goals for sagebrush canopy cover.

Other vegetation management direction found in the Proposed Action includes an objective to treat 4,000 to 6,000 acres of bulbous bluegrass (an undesirable grass species) dominant sites and revegetate with desirable native and non-native grass, forb and shrub species over a ten year period. In contrast, the 1985 Forest Plan does not provide specific direction for the treatment of bulbous bluegrass. The 1985 Forest Plan does provide direction for revegetation proposals which includes a avoiding establishing monocultures and maintaining a variety of desirable grass, forb and shrub species; however, there is no reference to native versus non-native plan species. In addition to the treatment of bulbous bluegrass sites, the Proposed Action would treat, over a ten-year period, between 1,000 and 3,000 acres of sagebrush with canopy covers greater than 15 percent. Vegetation treatments under the Proposed Action would total between 5,000 and 9,000 acres over a ten-year period (an average of 500 to 900 acres annually). The 1985 Forest Plan proposes to treat approximately 18,700 acres over a ten-year period (1,870 acres annually).

The Proposed Action designates the Sweeten Pond and tree row acres as special wildlife areas and sets forth objectives to construct an additional impoundment in the Sweeten Pond area and establish an additional ten miles of tree rows over the next ten years. In contrast, the 1985 Forest Plan does not identify additional improvements specifically for wildlife. The Proposed Action provides guidance for the management of Forest Service designated sensitive species; the 1985 Forest Plan does not provide such guidance. The Proposed Action provides guidance for sage grouse habitat management including deferring habitat manipulation practices within a 0.25 mile radius of active sage grouse leks and provides for a seed mix that includes vegetation species preferred by upland birds during the pre-nesting, nesting and brood rearing periods, and guidance to provide residual cover to meet the needs of spring period ground nesting wildlife. In contrast, the 1985 Forest Plan guidance defers habitat manipulation practices within 1.9 miles of active sage grouse leks; no sagebrush

control where sagebrush cover is less than 20 percent or on steep slopes; no sagebrush control along streams, meadows or secondary drainages; application of sagebrush treatments in irregular patterns; and where possible, avoid complete kill or removal of sagebrush.

The Proposed Action includes the identification and development of monitoring protocols specific to Grassland resources.

The Proposed Action sets a goal to engage in collaborative efforts with adjacent landowners, Soil Conservation District and the Natural Resource Conservation Service to conserve soil, watershed and riparian resources. In contrast, the 1985 Forest Plan does not provide direction for such efforts.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process (the next 30 days following publication of this Notice in the **Federal Register**) and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review and comment in January, 2000. At that time the EPA will publish an availability notice of the Draft EIS in the **Federal Register**.

The comment period on the Draft EIS will be 45 days from the date the EPA notice of availability appears in the **Federal Register**. It is important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519:553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Incl.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can be meaningful to consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3 in addressing these points.

The Final EIS is expected to be released in August, 2000.

The Regional Forester, Intermountain Region, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reason for the decision will be documented in a Record of Decision.

Dated: April 21, 1999.

Jerry B. Reese,

Forest Supervisor, Caribou National Forest.

[FR Doc. 99–10946 Filed 4–30–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene: (1) Tuesday, May 25, 1999, at 1:00 p.m. and recess at 6:00 p.m.; and (2) reconvene Wednesday, May 26, 1999, at 9:00 a.m. and adjourn at 1:00 p.m. at the Red River Inn and Conference Center, 600 30th Avenue, Moorhead, Minnesota. The Committee will hold a two day factfinding meeting to gather information on "Civil Rights Issues Facing Minorities in Moorhead, Minnesota."

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 27, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–10931 Filed 4–30–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

1999—2001 Company Organization Survey; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Paul Hanczaryk, Bureau of the Census, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 457–2580.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose business register, known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information to the SSEL concerning the establishment composition, organizational structure, and operating

characteristics of multi-establishment companies.

The SSEL serves two fundamental purposes:

• First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the SSEL's ability to identify all known United States business establishments and their parent companies. Further, the SSEL must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, measures of size and economic activity, ownership characteristics, and contact information (for example, name and address).

• Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on a number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, states, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 1999–2001 COS in the same manner as the 1998 COS. These collections will direct inquiries to approximately 80,000 multi-establishment companies, which operate over 1.1 million establishments. This panel will be drawn from the SSEL universe of nearly 200,000 multi-establishment companies, which operate 1.6 million establishments. Additionally, the panel will include approximately 10,000 new single-establishment companies that will become active during 1999.

The mailing list for the 1999 COS will include a certainty component, consisting of all multi-establishment companies with 50 or more employees, and those multi-establishment companies with administrative record values that indicate organizational changes. The mailing list also will include new entities that are most likely to report affiliation with multi-establishment companies. A non-certainty component will be drawn from the remaining multi-establishment companies based on employment size.

All companies will receive the COS inquiries by mail, and most will respond by mail. As a test of new electronic reporting methods, a very small number of companies will receive and return responses by secure Internet transmission. Additionally, more than 1,300 larger enterprises (accounting for approximately 36 percent of covered establishments) will return their COS reports by other electronic means. All other survey respondents will return a paper questionnaire. Data content is identical for all reporting modes.

The instrument will include inquiries on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Further, the instrument will list an inventory of establishments belonging to the company and its subsidiaries, and will request updates to these inventories, including additions, deletions, and changes to information on EIN, name and address, industrial classifications, payroll, end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

Additionally, the Census Bureau will pilot certain questions in the 1999–2001 COS in order to enhance future content. We will include questions on the number of leased employees working in the multi-establishment company, questions designed to improve the accuracy of establishment-level industrial classification codes, and questions on the inventory of Federal employer identification numbers belonging to the company. These additional questions will be directed to less than 500 companies.

III. Data

OMB Number: 0607–0444.
Form Number: NC–9901.
Type of Review: Regular submission.
Affected Public: Businesses or other for-profit, not-for-profit institutions.
Estimated Number of Respondents: 90,000 enterprises.
Estimated Time Per Response: 1.55 hours.
Estimated Total Annual Burden Hours: 140,000.
Estimated Total Annual Cost: $2,100,000 @ $15/hr.
Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of United States Code, Sections 182, 195, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 27, 1999.

Linda Engelmeier,

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

[FR Doc. 99–10936 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Employment Inquiry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joyce A. Price, Bureau of the Census, 4301 Suitland Road, Room 1408, FB 2, Suitland, MD 20746, (301) 457–4899.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BC–170, Census Employment Inquiry, is used by the Census Bureau to collect information such as personal data and work experience from job applicants. The BC–170 is used throughout the census and intercensal

years for short-term time limited employment. Applicants completing the form are applying for temporary jobs in office and field positions (clerks, enumerators, crew leaders, supervisors). This form is completed by job applicants before or at the time they are tested. Selecting officials review the information shown on the form to determine the best qualified applicants.

The BC–170 is intended to facilitate speedy hiring and selection in situations requiring large numbers of temporary employees for assignments of a limited duration. The use of this form is limited to only situations which require the establishment of a temporary office and/or involve special, one-time survey operations. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management Optional Forms that are available for use by the public when applying for Federal positions.

Current efforts to hire an enormous temporary workforce for Census 2000 will significantly increase the usage of the BC–170. The 2000 Census is the largest peacetime mobilization of civilians that enumerate and account for the population of the United States. We expect to recruit approximately 2,900,000 applicants for census jobs.

Since the BC–170 is used regularly and does not change often we are planning to discontinue displaying the expiration date of the collection on the form to avoid needless reprinting. We are also redesigning the form to allow efficient keying of applicant information into the fully automated personnel/payroll system designed for use for the 2000 Census.

II. Method of Collection

We collect this information at the time of testing for temporary positions. Potential employees being tested complete a four-page paper application.

III. Data

OMB Number: 0607–0139.

Form Number: BC–170.

Type of Review: Regular submission.

Affected Public: Individuals.

Estimated Number of Respondents: 2,950,000 annually.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 737,500 hours.

Estimated Total Annual Cost: The only cost to the individual is his/her time for completing the BC–170.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, USC, Section 23.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 26, 1999.

Linda Engelmeier,

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

[FR Doc. 99–10937 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Reviews

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

ACTION: Notice of Initiation of Five-Year ("Sunset") Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC case No.	ITC case No.	Country	Product
A–583–008	A–132	Taiwan	Small Diameter Carbon Steel Pipe and Tube.
C–489–502	C–253	Turkey	Welded Carbon Steel Pipes and Tubes.
C–489–502	C–253	Turkey	Welded Carbon Steel Line Pipe.
A–549–502	A–252	Thailand	Welded Carbon Steel Pipes and Tubes.
A–533–502	A–271	India	Welded Carbon Steel Pipes and Tubes.
A–489–501	A–273	Turkey	Welded Carbon Steel Pipes and Tubes.
A–122–506	A–276	Canada	Oil Country Tubular Goods.
A–583–505	A–277	Taiwan	Oil Country Tubular Goods.
A–559–502	A–296	Singapore	Small Diameter Standard & Rectangular Pipe & Tube.
A–508–602	A–318	Israel	Oil Country Tubular Goods.
C–508–601	C–271	Israel	Oil Country Tubular Goods.
A–583–803	A–410	Taiwan	Light Walled Rectangular Tubing.
A–357–802	A–409	Argentina	Light Walled Rectangular Tubing.
A–351–809	A–532	Brazil	Circular-Welded Non-Alloy Steel Pipe.
A–580–809	A–533	Korea (South)	Circular-Welded Non-Alloy Steel Pipe.
A–201–805	A–534	Mexico	Circular-Welded Non-Alloy Steel Pipe.
A–583–814	A–536	Taiwan	Circular-Welded Non-Alloy Steel Pipe.

DOC case No.	ITC case No.	Country	Product
A–307–805	A–537	Venezuela	Circular-Welded Non-Alloy Steel Pipe.
A–588–707	A–386	Japan	Granular Polytetraflouroetheylene Resin.
A–475–703	A–385	Italy	Granular Polytetraflouroetheylene Resin.
A–351–602	A–308	Brazil	Carbon Steel Butt-Weld Pipe Fittings.
A–583–605	A–310	Taiwan	Carbon Steel Butt-Weld Pipe Fittings.
A–588–602	A–309	Japan	Carbon Steel Butt-Weld Pipe Fittings.
A–570–814	A–520	China, PR	Carbon Steel Butt-Weld Pipe Fittings.
A–549–807	A–521	Thailand	Carbon Steel Butt-Weld Pipe Fittings.
A–588–802	A–389	Japan	Micro Disks.
A–484–801	A–406	Greece	Electrolytic Manganese Dioxide.
A–588–806	A–408	Japan	Electrolytic Manganese Dioxide.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (e.g., previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address:

"http://www.ita.doc.gov/import_admin/records/sunset/"

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. Because the case number is the same for two countervailing duty orders covering differing classes or kinds of steel pipe from Turkey, we request that all submissions clearly identify the order for which the submission is being made by product name as listed above. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: April 27, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11007 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands

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

ACTION: Extension of Time Limit.

EFFECTIVE DATE: May 3, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter, Hoogovens Staal BV and Hoogovens Steel USA, Inc., and the period August 1, 1997 through July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak at (202) 482–1395 or Robert James at (202) 482–5222, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department is extending the time limit for completion of the preliminary results until Tuesday, August 31, 1999. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, April 14, 1999, on file in Room B–099 of the main Commerce building. The final results of this administrative review will continue to be due no later than 120 days after the date on which the preliminary results are published.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act, as amended.

Dated: April 16, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–11015 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: George Callen, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0180.

The Applicable Statute

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

Extension of Time Limits for Preliminary Results

The Department of Commerce (the Department) received a request to conduct an administrative review of the antidumping duty order on Gray Portland Cement and Clinker from Mexico. On September 29, 1998, the Department initiated this administrative review covering the period August 1, 1997, through July 31, 1998.

Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to August 31, 1999 (*see* Memorandum from Richard Moreland to Robert LaRussa, Re: Extension of Preliminary Results). The Department intends to issue the final results of review 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 27, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–11013 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–505; A–549–601]

Malleable Cast Iron Pipe Fittings From Brazil and Thailand: Extension of Time Limit for Preliminary Results of Five-Year Reviews

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

ACTION: Notice of extension of time limit for preliminary results of five-year ("sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset reviews on the antidumping duty orders on malleable cast iron pipe fittings from Brazil and Thailand. Based on adequate responses from domestic and respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of these orders would be likely to lead to continuation or recurrence of dumping. As a result of this extension, the Department intends to issue its preliminary results not later than July 23, 1999.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Jason M. Appelbaum or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–5050, or (202) 482–1560 respectively.

Extension of Preliminary Results

The Department has determined that the sunset reviews of the antidumping duty orders on malleable cast iron pipe fittings from Brazil and Thailand are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of these reviews until not later than July 23, 1999, in accordance with

section 751(c)(5)(B) of the Act. The final results of these reviews will, therefore, be due not later than November 30, 1999.

Dated: April 26, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11017 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–333–401]

Cotton Shop Towels From Peru: Extension of Time Limit for Preliminary Results of Five-Year Review

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

ACTION: Notice of extension of time limit for preliminary results of five-year ("sunset") review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset review on the suspended countervailing duty investigation on cotton shop towels from Peru. Based on adequate responses from domestic and respondent interested parties, the Department is conducting a full sunset review to determine whether revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. As a result of this extension, the Department intends to issue its preliminary results not later than July 23, 1999.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560 respectively.

Extension of Preliminary Results

The Department has determined that the sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of this review until not later than July 23, 1999, in accordance with section 751(c)(5)(B) of the Act. The final results of this review will, therefore, be due not later than November 30, 1999.

Dated: April 26, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11016 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–9097–04]

RIN 0625–ZA05

Market Development Cooperator Program

AGENCY: International Trade Administration (ITA), Commerce.

ACTION: Notice.

SUMMARY: ITA promotes U.S. exports and works to improve the global competitiveness of the United States, creating jobs for Americans. ITA administers the Market Development Cooperator Program (MDCP) to build public/private export marketing partnerships. The MDCP is a competitive matching grants program that provides federal assistance to export multipliers such as state trade departments, trade associations, chambers of commerce, world trade centers and other non-profit industry organizations that are particularly effective in reaching small-and medium-size enterprises (SMEs). MDCP awards help to underwrite the start-up costs of new export promotion ventures which these groups are often reluctant to undertake without federal government support.

The MDCP aims to:

- Challenge the private sector to think strategically about foreign markets;
- Be the catalyst that spurs private-sector innovation and investment in export marketing; and
- Increase the number of American companies, particularly SMEs, taking decisive export actions.

The advantage of a joint effort is that it permits the federal government to pool expertise and funds with non-federal sources so that each maximizes its market development resources. Partnerships of this sort can provide a sharper focus on long-term export market development than do traditional trade promotion activities. These partnerships also serve as a mechanism for improving government-industry relations.

While ITA sponsors, guides and partially funds MDCP projects, ITA expects applicants to develop, initiate and provide matching funding to carry out market development project activities. As an active partner, ITA will, as appropriate, provide assistance that the applicant identifies as essential to the achievement of project goals and objectives. U.S. industry is best able to assess its problems and needs in the foreign marketplace and to recommend innovative solutions and programs that can be the formula to success in international trade.

Examples of activities that might be included in an applicant's project proposal are described below under "Program Description." No one or any combination of these activities must be included for a proposal to receive favorable consideration. ITA encourages applicants to propose activities that (1) would be most appropriate to the market development needs of their industry or industries; and (2) display the imagination and innovation of the applicants working in partnership with the government to obtain the maximum market development impact.

A public meeting will be held to provide general information to potential applicants regarding MDCP procedures, selection process, and proposal preparation. No discussion of specific proposals will occur at this meeting. Attendance at this public meeting by potential applicants is not required.

DATES: *Public Meeting:* ITA will hold a public meeting to discuss MDCP proposal preparation, procedures, and selection process on May 21, 1999. The meeting will begin at 10:00 a.m. in Room 1863, at the Herbert Clark Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C.

Pre-Application Counseling: The Office of Planning, Coordination and Resource Management (OPCRM) is available to answer questions regarding the application process. ITA invites all prospective applicants to contact OPCRM as soon as possible with any questions about application requirements, evaluation factors, and the selection process. Prospective applicants are particularly encouraged to seek advice on their eligibility to apply for and receive MDCP funding. Applicants with questions are advised to continue working on their proposals. Absolutely no extensions of the deadline for submitting complete applications will be granted.

Applications: Complete applications must be received no later than 5:00 p.m.

Eastern Daylight Time, June 21, 1999. Late or incomplete applications will not be accepted. They will be returned to the sender or destroyed if the applicant prefers.

Please send complete applications (original with at least two (2) copies) to the Office of Planning, Coordination and Resource Management (OPCRM), Trade Development, Room 3221, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development, ITA, Room 3221, Washington, D.C. 20230, (202) 482–3197.

Web Site: Additional information is available at the following Internet address: http://www.ita.doc.gov/industry/opcrm/mdcp.html.

Application Kit: Application kits are now available. The application kit contains all forms necessary to participate in the MDCP application process.

Application kits are available at the web site identified above. To obtain an application kit via first class mail, send a written request with a self-addressed mailing label to Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development/OPCRM, Room 3221, U.S. Department of Commerce, Washington, D.C. 20230. Application kits can also be picked up in Room 3209, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION:

Authority: The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, Title II, sec. 2303, 102 Stat. 1342, 15 U.S.C. 4723.

Catalog of Federal Domestic Assistance (CFDA): No. 11.112, Market Development Cooperator Program.

Program Description: The goal of the MDCP as set out in authorizing legislation is to develop, maintain, and expand foreign markets for non agricultural goods and services produced in the United States. For purposes of this program, nonagricultural goods and services means goods and services other than agricultural products as defined in 7 U.S.C. 451. "Produced in the United States" means having substantial inputs of materials and labor originating in the United States, such inputs constituting at least 50 percent of the value of the good or service to be exported. The intended beneficiaries of the program are U.S. producers of non-agricultural goods or services that seek to export such goods or services.

MDCP funds should not be viewed as a replacement for funding from other sources, either public or private. An important aspect of this program is to increase the sum of federal and non-federal export market development activities. This result can best be achieved by using program funds to encourage new initiatives.

In addition to new initiatives, expansion of the scope of an existing project also may qualify for funding consideration. Eligible organizations that have previously received an MDCP award may propose a new project or expansion of an existing project (but see *Evaluation Criteria* (4) below).

ITA encourages applicants to propose activities that would be most appropriate to the market development needs of their U.S. industry or industries. Examples of activities which applicants might include in an application are set forth below. No one of these activities or any combination of these activities must be included for an application to receive favorable consideration. Many of these activities have been undertaken by current and past MDCP award winners:

(1) Opening an overseas office or offices to perform a variety of market development services for companies joining a consortium to avail themselves of such services; such an office should not duplicate the programs or services of the U.S. and Foreign Commercial Service (US&FCS) post(s) in the region, but could include co-location with a US&FCS Commercial Center;

(2) Detailing a private-sector representative to a US&FCS post in accordance with 15 U.S.C. 4723(c);

(3) Commissioning overseas market research, participating in overseas trade exhibitions and trade missions to promote U.S. exports, and/or hosting reverse trade missions;

(4) Conducting U.S. product demonstrations abroad;

(5) Conducting export seminars in the United States or market penetration seminars in the market(s) to be developed;

(6) Establishing technical trade servicing that helps overseas buyers choose the right U.S. goods or services and to use the goods or services efficiently;

(7) Conducting joint promotions of U.S. goods or services with foreign partners;

(8) Training foreign nationals to perform after-sales service or to act as distributors for U.S. goods or services;

(9) Improving market access for U.S. goods or services by working with organizations in the foreign marketplace responsible for setting standards and product testing;

(10) Publishing an export resource guide or an export product directory for the U.S. industry or industries in question, if no comparable one exists; and

(11) Establishing an electronic business information system to identify overseas trade leads and facilitate matches with foreign partners for U.S. businesses.

Funding Availability: The total funds expected to be available for this program are $2.0 million for fiscal year 1999. ITA expects to conclude a minimum of five (5) cooperative agreements with eligible entities for this competition. No award will exceed $400,000, regardless of the duration of the cooperative agreement.

Matching Requirements: To receive MDCP funding, the applicant must contribute at least two dollars for each federal dollar provided. In satisfying this matching requirement, the applicant must make at least one dollar of new cash outlays expressly for the project for each federal dollar of MDCP funding. The balance of the applicant's support may consist of in-kind contributions (goods and services). Recipient cash contributions are defined in 15 CFR Part 14, Sec. 14.2(g) as the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties. In order for a recipient to outlay cash contributed by a third party, the third party must transfer the funds to the recipient. Otherwise, expenditures for goods and services contributed by a third party are considered to be in-kind contributions. For example, an applicant requesting $200,000 of federal funds must supply, at a minimum, $200,000 of new cash outlays expressly for the project. The remaining $200,000 of the required match, and any additional match proposed, can be made up of additional new cash outlays or in-kind contributions.

Applicants may propose projects for which the matching funding will exceed two applicant dollars to each federal dollar. Applicants should note that a cost-share ratio is established for each award winner based upon the award winner's share of the total cost of the project. Funds are disbursed using this ratio. For example, a project for which the applicant will assume ¾ of the total cost will have a cost share ratio of 75 percent applicant/25 percent federal. In requesting a disbursement of federal dollars, the award winner will have to generate $3 in grant expenditures for each dollar it wants to obtain in federal grant monies.

In the proposed budget, all in-kind contributions to be used in meeting the applicant's share of costs should be listed in a separate column from cash contributions. A separate budget narrative describing these in-kind contributions should also be included with the proposal. This information should be in sufficient detail for a determination to be made that the requirements of 15 CFR Part 14.23(a), and 15 CFR Part 24.24 (a) and (b) are met.

No indirect costs will be paid with ITA funding under this program, but they may be included in the matching share. ITA will support only a portion of the direct costs of each project. Each applicant will support a portion of the direct costs (to be specified in the application). Generally, direct costs are those that are specifically associated with an award, and usually include expenses such as personnel, fringe benefits, travel, equipment, supplies and contractual obligations relating directly to program activity. Allowable costs will be determined on the basis of the applicable cost principles, i.e., OMB Circulars A–21, A–87, and A–122; 45 CFR Part 74, Appendix E; and 48 CFR Part 31.

Applicants may charge companies in the industry or other industry organizations reasonable fees to take part in or avail themselves of services provided as part of applicants' projects. Applicants should describe in detail any plans to charge fees. Fees generated under the award are program income and must be used for project-related purposes during the award period.

Type of Funding Instrument: Since ITA will be substantially involved in the implementation of each project for which an award is made, the funding instrument for this program will be a cooperative agreement. To administer each cooperative agreement, a project team is established including key personnel from the award winning organization and officials from ITA who can help the award winner achieve MDCP project objectives. If representatives from other federal agencies can make a meaningful contribution to the achievement of project objectives, they are invited to participate on the project team.

Each project team acts as a "board of directors" establishing direction for the project, recommending changes in the direction of the project, when necessary, and determining mode of project operations and other management processes, coupled with close monitoring or operational involvement during the performance of project activities. At the beginning of each fiscal year, the project team negotiates an annual operating plan setting forth specific activities that will take place, project responsibilities and the cost of each activity. In addition to participating on project teams, ITA staff may work directly on individual MDCP project activities.

Eligibility Criteria: U.S. trade associations, non-profit industry organizations, state trade departments and their regional associations including centers for international trade development, and private industry firms or groups of firms in cases where no entity described above represents that industry, are eligible to apply for cooperative agreements under this program. For the purpose of this program, a "trade association" is defined as a fee-based organization consisting of member firms in the same industry, or in related industries, or which share common commercial concerns. The purpose of the trade association is to further the commercial interests of its members through the exchange of information, legislative activities, and the like.

For the purpose of this program, a "non-profit industry organization" is an organization that is classified as a non-profit organization under Title 26 U.S.C. Section 501(c)(3), (4), (5), or (6) and operates as one of the following:

(1) A local, state, regional, or national chamber of commerce;

(2) A local, state, regional, or national board of trade;

(3) A local, state, regional, or national business, export or trade council/interest group;

(4) A local, state, regional, or national visitors bureau or tourism promotion group;

(5) A local, state, regional, or national economic development group;

(6) A Small Business Administration Small Business Development Center;

(7) A world trade center; or

(8) A port authority.

Prospective applicants are strongly encouraged to seek advice on their eligibility to enter the MDCP competition, according to the criteria above. To obtain advice regarding eligibility, the applicant should submit basic organizational documents (e.g., charters, articles of incorporation) and information on types of members, membership fees, ties to state trade departments or their regional associations, organization's purpose, and activities, and non-profit status under Internal Revenue Code provisions. All requests for advice regarding eligibility should be made as soon as possible, allowing enough time before the application deadline for a response to be useful. Applicants are advised to continue working on proposals while waiting for a response. Absolutely no extensions of the deadline for submitting complete applications will be granted.

Eligible U.S. entities may join together to submit an application as a joint venture and to share costs. For joint venture applicants, one organization meeting the above eligibility criteria must be designated as the prospective MDCP grant recipient organization for administrative purposes. For example, two trade associations representing different segments of a single industry or related industries may pool their resources and submit one application. Foreign businesses and private groups also may join with eligible U.S. organizations to submit applications and to share the costs of proposed projects.

ITA will accept applications from eligible entities representing any industry, subsector of an industry or related industries. Each applicant must permit all companies in the industry in question to participate, on equal terms, in all activities that are scheduled as part of a proposed project whether or not the company is a member or constituent of the eligible organization.

Eligible entities desiring to participate in this program must demonstrate the ability to provide an established, competent, experienced staff and other resources to assure adequate development, supervision, and execution of the proposed project activities. Applicants must describe in detail all assistance expected from ITA or other federal agencies to implement project activities successfully. Each applicant must provide a description of the membership/qualifications, structure and composition of the eligible entity, the degree to which the entity represents the industry or industries in question, and the role, if any, foreign membership plays in the affairs of the eligible entity. Applicants should summarize both the recent history of their industry or industries' competitiveness in the international marketplace and the export promotion history of the eligible entity or entities submitting the application.

Project proposals must be compatible with U.S. trade and commercial policy. ITA priorities are set forth under the "Project Funding Priorities" heading below. Additional information delineating U.S. commercial policy may be obtained from the 1998 Trade Promotion Coordinating Committee's (TPCC's) *National Export Strategy*. Copies of the *National Export Strategy*

are available from TPCC Secretariat by calling (202) 482–5455.

Award Period: Funds may be expended over the period of time required to complete the scope of work, but not to exceed three (3) years from the date of the award.

Indirect Costs: ITA funds cannot be used to pay indirect costs. The total dollar amount of the indirect costs proposed in an application under this program (using recipient funds) must not exceed the indirect cost rate negotiated and approved by a cognizant federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit: Standard Forms 424 (Rev. 4–92) Application for Federal Assistance, 424A (Rev. 4–92) Budget Information—Non-Construction Programs, 424B (Rev. 4–92) Assurances—Non-Construction Programs, SF–LLL, Disclosure of Lobbying Activities and other Department of Commerce forms (CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying), are required as part of the application. See the "**FURTHER INFORMATION**" section for instructions on getting an application kit.

Submission of Applications: Applicants must submit a signed original and two (2) copies of the application and supporting materials. In addition to the required original plus two copies, applicants are encouraged to submit four (4) additional copies. ITA recognizes that submitting four additional copies may be a financial burden for some applicants. Accordingly, the four additional copies are not required, and applicants who submit only the required original plus two copies will not be scored lower for doing so.

Retention of Applications: For each award winner, the Department of Commerce will retain the signed original of the application for seven years. Copies of winning applications will be distributed to project team members for their use in managing winning projects.

For each eligible application which does not win an award, the Department of Commerce will retain the signed original of the application for seven years and will return copies to the applicant. The return of copies of applications normally occurs immediately following a debriefing for the unsuccessful applicant. For unsuccessful applicants who do not request a debriefing, ITA returns copies normally within six months of the announcement of the winners of the awards.

If an application is found to be ineligible, ITA will retain the signed original application for seven years and will return all copies of the ineligible application within ten days of the final finding of ineligibility.

Project Funding Priorities: ITA is especially interested in receiving proposals that focus on the ITA priorities listed below. A proposal does not need to encompass all of these priorities to be competitive:

(1) Targeting export-ready SMEs, and offering export assistance services designed to meet the special needs of SMEs as opposed to just offering SMEs the opportunity to participate in activities aimed broadly at the entire export marketing community;

(2) Helping SMEs overcome obstacles to using the Internet and e-commerce effectively;

(3) Providing technical assistance to developing economies to build commercial infrastructure such as regulatory practices;

(4) Building private-sector trade finance knowledge and expertise;

(5) Developing non-traditional approaches to creating demand for the products/services developed from new U.S. technologies;

(6) Improving communication with and outreach to old and new private-sector international trade constituencies and initiating or enhancing public/private export partnerships;

(7) Monitoring foreign compliance with our trade agreements such as sector-specific agreements, the North American Free Trade Agreement, and the World Trade Organization agreements;

(8) Identifying and working to eliminate tariff and non-tariff barriers to market access for U.S. goods or services, including working with organizations in the foreign marketplace responsible for setting standards and for product testing;

Applications may be targeted for any geographic market in the world and/or any industry sector.

Background Research: Developing a project plan requires solid background research. Applications should reflect the findings of the applicant's study of the following:

(1) The market potential of the U.S. good(s) or service(s) to be promoted in a particular market(s);

(2) The competition from host-country and third-country suppliers; and

(3) The economic situation and prospects that bear upon the ability of a country to import the U.S. good(s) or service(s).

In their applications, applicants should present an assessment of industry resources that can be brought to bear on developing a market; the industry's ability to meet potential market demand expeditiously; and the industry's after-sales service capability in a particular foreign market(s).

After describing their completed basic research, applicants should develop marketing plans that set forth the overall objectives of the projects and the specific activities applicants will undertake as part of these projects. Applications should display the imagination and innovation of the private sector working in partnership with the government to obtain the maximum market development impact.

Evaluation Criteria: ITA is interested in projects that demonstrate the possibility of both significant results during the project period and lasting benefits extending beyond the project period. To that end, consideration for financial assistance under the MDCP will be based upon the following evaluation criteria:

(1) Potential of the project to generate export success stories and/or export initiatives in both the short-term and medium-term. For purposes of this program, an export initiative is defined as a significant expenditure of resources (time, people, or money) by the Chief Executive Officer (CEO) of a company in the active pursuit of export sales. Examples of export initiatives include, but are not limited to, the following:

(a) Participating in an overseas trade promotion event;

(b) Hiring an export manager;

(c) Establishing an export department;

(d) Exploring a new market through an overseas trip by the CEO;

(e) Developing an export marketing/business plan;

(f) Translating product literature into a foreign language;

(g) Making product modifications to comply with foreign market requirements;

(h) Commissioning an in-depth market research study;

(i) Advertising in a foreign business publication;

(j) Undertaking an overseas direct-mail campaign to create product awareness;

(k) Signing an agent/distributor;

(l) Getting introduced to a potential foreign buyer;

(m) Signing an export contract/filling an export order; or

(n) Co-locating with a US&FCS Commercial Center.

Applicants should provide detailed explanations of projected project results.

(2) Projected increase (multiplier effect) in the number of U.S. companies operating in the market(s) selected, particularly SMEs, and the degree to which the project will help the industry in question increase or maintain market share in the market(s) selected. Applicants should provide quantifiable estimates of projected increases.

(3) The degree to which the proposal furthers or is compatible with ITA's priorities stated above and the degree to which the proposal initiates or enhances partnership with ITA.

(4) Creativity, innovation, and realism displayed by the work plan as well as the institutional capacity of the applicant to carry out the work plan. Creativity and innovation can be displayed in a variety of ways. Applicants might propose projects that include ideas not previously tried before to promote a particular industry's goods or services in a particular market. Creativity can be demonstrated by the manner in which techniques are customized to meet the specific needs of certain client groups. A proposal can be creative in the way it brings together the strengths and resources of partners participating in project activities. Further, projects that focus on market development are inherently more creative than projects that focus only on export promotion. Market development is the process of identifying or creating emerging markets or market niches and modifying products to penetrate those markets. Market development is demand driven and designed to create long-term export capacity. In addition to promoting current sales of existing products, market development promotes future sales and future products.

Current or past MDCP applicants should be aware that to be in a position to earn the maximum number of points under this criterion, they should propose projects that are entirely new. A current or past MDCP recipient may propose an expansion of an existing or past MDCP project. In order to earn a high score on criterion (4), the expansion should be the majority of the total project for the proposal. In addition, current or past MDCP applicants that apply proposing an expansion of an existing or past project must clearly demonstrate how the expansion, standing alone, is creative and innovative in accordance with the above definition.

(5) Reasonableness of the itemized budget for project activities, the amount of the cash match that is readily available at the beginning of the project, and the probability that the project can be continued on a self-sustained basis after the completion of the award.

Current or past MDCP recipients who propose an expansion of an existing project must show how the expansion will achieve self-sustainability independent of current or past projects funded under the MDCP.

Each of the above criteria is worth a maximum of 20 points. The five criteria together constitute the application score. At 20 points per criterion, the total possible score is 100.

Evaluation and Selection Procedures: OPCRM staff will review each application for completeness as soon as practicable after the application is received. If the application deadline has not passed, OPCRM staff will endeavor to notify the applicant of any deficiency in the application that it has found. The applicant may submit additional information to correct the deficiency. ITA, however, must receive any additional information before the deadline for applications. Responsibility for submitting a complete application in a timely manner remains with the applicant.

Prior to selection, each complete application receives a thorough evaluation. The steps of the evaluation and selection process are set forth below.

(1) OPCRM staff, in consultation with the Department of Commerce's Office of General Counsel, reviews all applications to determine the eligibility of each applicant. If an applicant's eligibility is in question, the applicant is contacted to supply additional information or clarification.

(2) When the eligibility review has been completed, the OPCRM Director invites comments on applications from relevant offices within ITA (e.g,. Trade Development (TD), Market Access & Compliance (MAC), and US&FCS). This review allows ITA experts in the industry sector or geographical region to assess the claims made in the applications. The ITA staff comments also provide insights into both the potential benefits and the potential difficulties associated with the applications.

(3) At least three representatives of OPCRM review and comment on all applications. The comments of these OPCRM reviewers will include a score for each application based on the evaluation criteria identified above. The MDCP Manager prepares a summary of OPCRM staff comments and organizes all comments by ITA staff and applications for the Selection Panel. The scores, the summary, and the staff comments afford the Selection Panel the insights and breadth of experience of ITA professionals. However, they have no official weight, and the Selection Panel is free to consider or disregard them as it sees fit.

(4) The MDCP Manager forwards all of the applications, along with all related materials, to a Selection Panel of senior ITA managers. This panel is chaired by the OPCRM Director and typically includes three other members, one each from ITA's TD, MAC, and US&FCS bureaus. Panel members are Office Directors or higher.

(5) Each Selection Panel member reviews each eligible application and assigns a score for each of the five criteria stated above. The individual criteria scores are averaged to determine the total score for each application.

(6) Based on the scores assigned by Selection Panel members and deliberations by the Selection Panel, the Selection Panel forwards the applications with the ten highest total scores to the Assistant Secretary for Trade Development and recommends which of the ten proposals should receive funding. The Selection Panel's recommendation will not deviate from the rank order. This means that the Selection Panel cannot recommend funding for the application ranked 7th without recommending funding for applicants ranked 1 through 6. The Selection Panel recommendation includes the Panel's written assessment of the strengths and weaknesses of the top ten applications.

(7) From the top ten applications recommended by the Selection Panel, the Assistant Secretary for Trade Development selects those applications which will receive funding. In addition to the evaluation criteria stated above, the Assistant Secretary for Trade Development may consider the following in making his decision:

(a) The evaluations of the individual reviewers of the Selection Panel;

(b) The degree to which applications satisfy ITA priorities as established under the Project Funding Priorities listed above;

(c) The geographic distribution of the proposed awards;

(d) The diversity of industry sectors and overseas markets covered by the proposed awards;

(e) The diversity of project activities represented by the proposed awards;

(f) Avoidance of redundancy and conflicts with the initiatives of other federal agencies; and

(g) The availability of funds.

Announcement of Award Decisions: Award winners will be notified by letter. Once award winners formally

accept their awards, the Department of Commerce will issue a press release and list the award winners on the MDCP Web Site.

Within ten days of the announcement of the issuance of the press release, unsuccessful applicants will be notified in writing and invited to receive a debriefing from MDCP officers.

Performance Measures: On August 3, 1993, the Government Performance and Results Act (GPRA) was enacted into law (Public Law 103–62). GPRA requires each federal agency to submit a strategic plan for program activities to OMB. Among other things, each strategic plan must include "performance indicators to be used in measuring or assessing the relevant outputs, service levels and outcomes of each program activity." While not abandoning outputs (units of products, including services, of an activity) as a measure of achievement, OMB directed agencies to focus more on outcomes (the resulting effect of the use or application of an output) as the primary indicator of the success of programs and activities.

ITA reports results using the GPRA measures defined for its programs and activities. Many of these measures apply only to the programs and activities of ITA and have little relevance to the activities of MDCP award winners. The following performance measures, however, have particular applicability to MDCP projects:

(1) *Outcome Measures:*

a. Dollar value of exports resulting from outputs.

b. Number of new-to-export firms participating in activities.

c. Number of new-to-market firms participating in activities.

d. Degree of customer satisfaction (value of outputs determined by perception of the customer based on their expectation of the output versus the plan, an agreed-upon specification, or other criteria).

(2) *Output Measures:*

a. Number of counseling sessions.

b. Number of clients counseled.

c. Number of reports (publications) prepared.

d. Number of copies of reports (publications) distributed.

e. Number of trade events.

f. Number of firms participating in trade events.

Applicants for this year's MDCP competition should be mindful of these performance measures and should use them wherever possible when estimating projected results in their proposals. Award recipients will use these measures in their quarterly reports and in their end-of-year assessments of project accomplishments. Each applicant should describe its recording and reporting system in its proposals. In order to demonstrate the success of their projects, applicants are encouraged to develop and utilize additional performance measures. Each recipient of an award should be prepared to record and report the results achieved from project activities.

Other Requirements

(1) *Federal Policies and Procedures.* Recipients and subrecipients are subject to all federal laws and federal and Department of Commerce policies, regulations, and procedures applicable to federal financial assistance awards.

(2) *Past Performance.* Unsatisfactory performance under prior federal awards may result in an application not being considered for funding.

(3) *Pre-Award Activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

(4) *No Obligation for Future Funding.* If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(5) *Delinquent Federal Debts.* No award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to the Department of Commerce are made.

(6) *Name Check Review.* All applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(7) *Primary Applicant Certifications.* All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

a. *Non-Procurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

(8) *Lower Tier Certifications.* Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or sub-recipients should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

(9) *False Statements.* A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(10) *Intergovernmental Review.* Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(11) *Buy American-Made Equipment and Products.* Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(12) *Fly America Act.* All award recipients must comply with the provisions of the Fly America Act 49 U.S.C. 40118.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms referenced in this notice are cleared under OMB Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046 pursuant to the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: April 28, 1999.

Jerome S. Morse,

Director, Resource Management and Planning Staff, Office of Planning, Coordination and Resource Management Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 99–11018 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Technology Partnerships Program, Stop 2200, Gaithersburg, MD 20899–2200; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 97–044US.

Title: Multi-Wavelength Cross-Correlator For Ultrashort Radiation Pulses.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and the University of Colorado. The measurement of cross correlations and time delays between ultrashort laser pulses of widely different tunable wavelengths has been demonstrated in a greatly simplified device employing semiconductor photodiode materials. Two-color, two-photon induced photoconductivity in a commercial GaAsP photodiode is used for the first time to obtain femtosecond cross-correlation functions for different wavelength pairs. The invention requires no non-linear crystals, no phase matching and no separate detector, as is the case for conventional optical cross-correlation measurements. In the invention, zero time delays and accurate cross correlations were measured for 100 femtosecond laser pulses of dramatically different wavelengths, e.g. 775 nm and 1300 nm. The only restriction for applicable wavelengths is that the sum of the photon energies of the two incident laser beams is above the band gap energy of the semiconductor.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–11002 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040599C]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on December 29, 1998, to Amerada Hess Corporation, of Houston, TX; on January 27, 1999, to Taylor Energy Company, of New Orleans, LA; on March 1, 1999, to Vastar Resources, Inc., and to Sonat Exploration Co., both of Houston, TX; and on April 27, 1999, to Samedan Oil Corporation, of Houston, TX and Chevron U.S.A. Production Company, of New Orleans, LA.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or David Bernhart, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on

October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: April 27, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11030 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042699C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Allocation Committee (Committee) will hold a meeting which is open to the public.

DATES: The meeting will begin on Tuesday, May 25, 1999, at 8 a.m. and will continue through Wednesday, May 26, 1999, as necessary.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council Office, 2130 SW Fifth Avenue, Suite 224, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop preliminary options for allocations involved in rebuilding plans for lingcod and bocaccio rockfish. The Committee will discuss allocations of lingcod and bocaccio rockfish between the recreational and commercial fisheries and between gear sectors of the limited entry fleet. The Committee will begin work on a report to present to the Council at its June meeting. The Committee will also review a draft Request for Proposals for an external facilitator to assist the Council in long-term strategic planning for groundfish management.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

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

Dated: April 27, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–11027 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042699D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Stock Assessment Review (STAR) Panels will hold two work sessions which are open to the public.

DATES: The cowcod/black rockfish review panel will meet beginning at 8:00 a.m., May 24, 1999 and continue until 5 p.m. on May 28, 1999 or as necessary to complete business. The canary rockfish/ petrale sole review panel will begin at 10:00 am, June 14, 1999 and continue until 5:00 p.m. on June 18, 1999, or as necessary to complete business.

ADDRESSES: The cowcod/black rockfish review panel will be held in Room C–127 at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA. The canary rockfish/ petrale sole review panel will meet in the main conference room, Guin Library, Hatfield Marine Science Center, 2030 S Marine Science Drive, Newport, OR 97365.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review draft stock assessment documents and any other pertinent information, work with Stock Assessment Teams to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326-6352 at least 5 days prior to the meeting date.

April 27, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–11028 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042699E]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Council (Council) will hold its 71st meeting of its Scientific and Statistical Committee (SSC) in Honolulu, HI.

DATES: The SSC meeting will be held on May 18–20, 1999, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The 71st SSC meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items here. The order in which agenda items will be addressed can change.

Tuesday, 18 May 18, 1999, 8:30 a.m.

A. Draft coral reef ecosystem fishery management plan (FMP)
B. Bottomfish FMP issues
1. Draft 1998 bottomfish annual report (by island area with recommendations)
2. Addition of Bottomfish Management Unit Species [BMUS] (bottomfish common in catch but not yet listed as BMUS)
3. Status of Northwestern Hawaiian Islands (NWHI) bottomfish management system (Mau Zone limited entry)
4. Main Hawaiian Islands (MHI) bottomfish management
a. Status of NMFS list of overfished stocks
b. Final report on genetic stock structure of onaga and ehu
c. Genetic research needs for hapuupuu
d. Status of State's MHI management program (closed area concerns)
5. Recommendations of the Advisory Panel
6. Recommendations of the Plan Team
C. Precious Corals FMP issues
1. Proposed State regulations for black corals
2. Adjustments to established measures in the FMP

Wednesday, May 19, 1999, 8:30 a.m.

D. Pelagic FMP issues
1. 1st quarter reports for Hawaii and American Samoa longline fisheries
2. Akule and opelu study
3. Yellowfin and bigeye tagging in Hawaii
4. New gear application for coastal shark fishery
5. Shark incidental catch
6. Albatross/longline interactions
7. Turtle/longline interactions
8. Marine debris and protected species
9. American Samoa longline closed area
10. International meetings
11. Revision of State of Hawaii catch data forms
12. Recreational fisheries data task force
13. Pelagic Advisory Panel recommendations

Thursday, May 20, 1998, 8:30 a.m.

E. Crustaceans FMP issues (NWHI lobster fishery)
1. 1998 draft annual report
2. Bank-specific harvest guideline measure
3. NMFS 1999 harvest guidelines
4. NMFS research on NWHI lobster stocks
a. Tagging experiments
b. Spiny and slipper time-series data and stock status at Necker and Maro
5. Marine Mammal Commission's concern regarding monk seals and lobster fishing
6. Recommendations of the Advisory Panel
7. Recommendations of the Plan Team
F. Council's Program Planning document
G. Status of amendment addressing Sustainable Fisheries Act (SFA) provisions
1. Bycatch
2. Overfishing
3. Fishing communities
H. Other Business.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 27, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–11029 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042799C]

Marine Mammals; File No. 486–1506

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Brent Stewart, Hubbs-Sea World Research Institute, 2595 Ingraham St., San Diego, CA 92109, has applied in due form for a permit to take California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina richardsi*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*) and Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 2, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (phone: 562/980–4001, Fax: 562/980–4018).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant seeks authorization to continue long-term research on the demography and community ecology of California pinnipeds and to further characterize the resource and habitats used by each species, including patterns of spatial and temporal similarities and

differences. Requested activities include: tagging, blood and lavage sample collection, VHF and satellite-linked instrumentation, dye-marking, and harassment.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 27, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11026 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041699B]

Marine Mammals; File No. 540–1502–00

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that John Calambokidis has applied in due form for a permit to take several species of marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 2, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6426); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant is requesting to harass several species of cetaceans during the course of photo-identification, aerial survey, biopsy sampling, and/or tagging activities; and several species of pinnipeds during the course of aerial surveys. Blue whales (*Balaenoptera musculus*), fin whales (*Balaenoptera physalus*), humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrichtius robustus*), and sperm whales (*Physeter macrocephalus*) may be harassed during photo-identification, aerial survey, biopsy sampling, and tagging activities. Sei whales (*Balaenoptera borealis*) and Brydes whales (*Balaenoptera edeni*) may be harassed during photo-identification, aerial survey, and biopsy sampling activities. Minke whales (*Balaenoptera acutorostrata*), right whales (*Balaena glacialis*), Baird's beaked whales (*Berardius bairdii*), Cuvier's beaked whales (*Ziphius cavirostris*), Bottlenose dolphins (*Tursiops truncatus*), short-finned pilot whales (*Globicephala macrorhyncus*), false killer whales (Pseudorca crassidens), and killer whales (*Orcinus orca*) may be harassed during photo-identification and aerial survey activities. Pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), Mesoplodon beaked whales (*Mesoplodon sp.*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), northern right whale dolphins (*Lissodelphis borealis*), short-beaked common dolphins (*Delphinus delphis*), long-beaked common dolphins (*Delphinus capensis*), striped dolphins (*Stenella coeruleoalba*), Risso's dolphins (*Grampus griseus*), harbor porpoise (*Phocoena phocoena*), Dall porpoise (*Phocoenoides dalli*), Califrnia seal lions (Zalophus californianus), Steller sea lions (*Eumetopias jubatus*), northern fur seals (*Callorhinus ursinus*), harbor seals (*Phoca vitulina*), and elephant seals (*Mirounga angustirostris*) may be harassed during aerial surveys. The research will be carried out over a 5-year period in the North Pacific Ocean, including the waters off California, Oregon, and Washington.

The purposes of the proposed research are to: determine the abundance and distribution of marine mammals off the coasts of California, Oregon, and Washington; to determine the abundance, movements, population structure, diving behavior and feeding behavior of large whales in the North Pacific. These studies are a continuation of research that the applicant has been conducting over the past several years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 27, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11031 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet

on Wednesday, May 19, 1999, from 9:00 a.m. to 11:30 a.m., and from 1:00 p.m. to 4:00 p.m. The session from 9:00 a.m. to 11:30 a.m.; will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion on NTIS' long range plans. The closed session discussion is scheduled to begin at 9:00 a.m. and end at 11:30 a.m. on May 19, 1999. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on May 19, 1999, at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation from 1;00 p.m. to 4:00 p.m. on May 19, 1999. Approximately thirty minutes will be set aside on May 19, 1999, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Telephone: (703) 605–6400; Fax (703) 605–6700.

Dated: April 27, 1999.

Ron Lawson,

Director.

[FR Doc. 99–10932 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

April 27, 1999.

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

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

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used in 1998.

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 63 FR 71096, published on December 23, 1998). Also see 63 FR 59944, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 27, 1999.

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 November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on May 3, 1999, you are directed to reduce the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
336/836	74,332 dozen.
338	392,157 dozen.
339	1,637,779 dozen.
341	247,896 dozen.
345	68,888 dozen.
347/348/847	920,168 dozen.
351/851	85,893 dozen.
633/634/635	674,888 dozen.
638/639/838	2,070,000 dozen.
Sublevel in Group II	
445/446	79,444 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–10988 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Statement of Personal Injury—Possible Third Party Liability CHAMPUS; DD Form 2527; OMB Number 0720–0003.

Type of Request: Reinstatement.

Number of Respondents: 29,500.

Responses Per Respondent: 1.

Annual Responses: 29,500.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 9,833.

Needs and Uses: The Federal Medical Care Recovery Act, 42 U.S.C. 2651–2653 as implemented by Executive Order Number 11060 and 28 CFR 43 provides for recovery of the reasonable value of medical care provided by the United States to a person who is injured or

suffers a disease under circumstances creating tort liability in some third person. DD Form 2527 is required for investigating and asserting claims in favor of the United States arising out of such incidents. When a claim for CHAMPUS benefits is identified as involving possible third person liability and the information is not submitted with the claim, the TRICARE/CHAMPUS contractor requests that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government, the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated legal officer of the Uniformed Services. The responsible legal officer uses the information as a basis for asserting and settling the Government's claim. When appropriate, the information is forwarded to the Department of Justice as a basis for litigation.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD (Health Affairs), Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–2402.

Dated: April 26, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaision Officer, Department of Defense.

[FR Doc. 99–10939 Filed 4–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0070]

Submission for OMB Review; Comment Request Entitled Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Payments. A request for public comments was published at 64 FR 9132, February 24, 1999. No comments were received.

DATES: Comments may be submitted on or before June 2, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (see FAR 52.232–1 through 52.232–11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minute for small purchases and fixed-price contracts, and *30* minutes for T&M and Labor Hour contracts 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.

The annual reporting burden is estimated as follows: Respondents, *80,000*; responses per respondent, *120*; total annual responses, *9,600,000*; preparation hours per response, *.025*; and total response burden hours, *240,000*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

Dated: April 27, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–10975 Filed 4–30–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: May 13, 1999.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703)

696–1991. Electronic mail address: colliere@ndu.edu.

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: April 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–10938 Filed 4–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–391–004]

Colorado Interstate Gas Company; Notice of Tariff Filing

April 27, 1999.

Take notice that on April 22, 1999, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Sub Fourth Revised Sheet No. 176, Second Sub Third Revised Sheet No. 177, and Second Sub Third Revised Sheet No. 178 to be effective March 5, 1999.

CIG states the tariff sheets are filed in compliance with the Order issued April 7, 1999 in Docket No. RP98–391–002. This Order approved a compliance filing CIG made for Swing Service subject to conditions.

CIG states that copies of this compliance filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10957 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–321–000]

Kentucky West Virginia Gas Company, L.L.C., et. al.; Notice of Petition for Declaratory Order

April 27, 1999.

Take notice that, on April 14, 1999, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West), Nora Transmission Company (Nora), and Equitable Production Company (Equitable Production), One Oxford Center, Suite 3300, Pittsburgh, PA 15219, filed a petition pursuant to Section 1(b) of the Natural Gas Act (NGA), and Rule 207(a) (2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207). The Applicants request a declaratory order stating that after transfer to Equitable Production, all of Kentucky West's and Nora's facilities will be non-jurisdictional gathering facilities and services, exempt from the provision of the NGA. All of this is more fully set forth in the application, which is on file with the Commission and open to public inspection. The application may also be viewed on the web at http//www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Applicants state that service for existing shippers on the Kentucky West and Nora systems will continue under either negotiated contracts or default contracts. Applicants state further, that the tow year default contracts will have the same terms, conditions and service that Kentucky West and Nora are currently providing. Applicants state. that all of the facilities are located in the Appalachian region and that Kentucky West's facilities have, for the most part been recognized as performing a gathering function.

Applicants state that Nora obtained certification from the Commission because it sought to be the link permitting the flow of gas between two interstate pipelines, Kentucky West and East Tennessee Natural Gas Company. Applicants state further, that if the declaration sought in this proceeding is granted, that Kentucky West's facilities are used for non-jurisdictional gathering after transfer to Equitable Production, the circumstances which made it necessary for Nora to obtain a certificate will have been eliminated.

Any person desiring to be heard or make any protest with reference to said application should no or before May 18, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participant as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believe that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10954 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–284–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 27, 1999.

Take notice that on April 20, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets in attachment A to the filing, to be effective June 1, 1999.

The purpose of this filing is to replace Kern River's current fuel reimbursement mechanism, which is based on estimated fuel requirements and daily

fuel imbalances, with an improved fuel reimbursement mechanism that allows shippers to determine actual fuel requirements before transactions begin.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10956 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–52–004]

Pine Needle LNG Company, LLC; Notice of Filing of Substitute Tariff Sheet

April 27, 1999.

Take notice that on April 22, 1999, Pine Needle LNG Company, LLC (Pine Needle) filed Substitute Original Sheet No. 89 of its FERC Gas Tariff, Original Volume No. 1, Pine Needle requests that this sheet be made effective on May 1, 1999, which is the expected in service date for the Pine Needle facilities.

Pine Needle states that copies of this filing have been served on customers and interested state Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Internet at *http//www.ferc.fed.us/online/rims.htm* (Call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10953 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–000]

Stingray Pipeline Company; Notice of Informal Settlement Conference

April 27, 1999.

Take notice that an informal settlement conference in this proceeding will be convened on Wednesday, May 5, 1999, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold Meltz at (202) 208–2161 or Robert Young (202) 208–5705.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10958 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–20–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

April 27, 1999.

Take notice that on April 20, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to that filing to become effective April 19, 1999.

Williston Basin states that on April 19, 1999, it moved its offices from Suite 300, 200 North Third Street to 1250 West Century Avenue, Bismarck, North Dakota 58501 and obtained a post office box number, P.O. Box 5601, Bismarck, North Dakota 58506–5601. All telephone numbers at this Bismarck office have also recently been changed. The filing is being made simply to reflect this change of address and telephone numbers on the applicable sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10955 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–56–000, et al.]

Town of Norwood, Massachusetts, et al.; Electric Rate and Corporate Regulation Filings

April 23, 1999

Take notice that the following filings have been made with the Commission:

1. Town of Norwood, Massachusetts

[Docket No. EL99–56–000]

Take notice that on April 8, 1999, the Town of Norwood, Massachusetts (Norwood or Town) filed a Petition for Declaratory Order ruling (1) that the Power Contract between the New England Power Company (NEP) and Norwood of April 11, 1983 on file at the Commission expressly terminated on October 31, 1998; (2) that NEP has made no filing with the Commission of any agreement by Norwood to extend the Power Contract between the parties dated April 12, 1983 beyond its express termination date of October 31, 1998 and (3) that NEP has no basis for claiming any "contract termination charges" under its filing of March 18, 1998 in Docket No. ER98–2233–000 against Norwood subsequent to October 31, 1998.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Energy, Inc.

[Docket Nos. EC99–66–000 and ER99–2552–000]

Take notice that on April 20, 1999, Puget Sound Energy, Inc. (the Company) and PP&L Montana, LLC tendered for filing a joint application, under Part 33 of the Commission's regulations for Commission approval of disposition of certain jurisdictional transmission facilities and agreements related to a proposed transaction.

The Company states that it has provided copies of its application to the Washington Utilities and Transportation Commission, and all current firm wholesale power customers, as well as certain other potentially interested parties.

Comment date: May 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation, Niagara Mohawk Energy Marketing, Inc.

[Docket No. EL99–62–000]

Take notice that on April 19, 1999, Aquila Energy Marketing Corporation (AEMC) filed a Complaint against Niagara Mohawk Power Corporation (Niagara Mohawk) and Niagara Mohawk Energy Marketing, Inc. (NMEM). AEMC asserts in its Complaint that Niagara Mohawk unlawfully displaced AEMC's request for capacity on the Niagara Mohawk transmission system in order to provide transmission service to its affiliate NMEM.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. TransCanada Power

[Docket No. ER95–692–016]

Take notice that on April 19, 1999, the above-mentioned power marketer filed their quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Cleveland Electric Illuminating Company

[Docket No. ER96–371–004]

Take notice that on April 16, 1999, Cleveland Electric Illuminating Company, which has previously been authorized to engage in the sale of electricity at wholesale at market-based rates, notified the Federal Energy Regulatory Commission that it is now affiliated with entities that own inputs into electric power production.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Toledo Edison Company

[Docket No. ER97–455–003]

Take notice that on April 16, 1999, Toledo Edison Company, which has previously been authorized to engage in the sale of electricity at wholesale at market-based rates, notified the Federal Energy Regulatory Commission that it is now affiliated with entities that own inputs into electric power production.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Pelican Energy Management, Inc., Aurora Power Resources, Inc.

[Docket Nos. ER98–3084–003, ER98–573–001]

Take notice that on April 20, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/ online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. California Independent System Operator Corporation

[Docket No. ER99–1770–000]

Take notice that on April 19, 1999, the California Independent System Operator Corporation (ISO), tendered for filing certain documents containing information about Existing Contracts with transmission rights on Path 15. These documents were referenced in a revision to Appendix B of the Transmission Control Agreement among the ISO and Transmission Owners submitted by the ISO in the above-captioned docket on February 11, 1999. The ISO submits these documents in compliance with the Commission's letter order in the above-referenced docket, dated March 19, 1999.

The ISO states that this filing has been served upon all parties on the official service list compiled by the Secretary in the above-captioned docket.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. SCC–L1, L.L.C., SCC–L2, L.L.C., SCC–L3, L.L.C.

[Docket Nos. ER99–1914–001, ER99–1915–001, ER99–1942–001]

Take notice that on April 19, 1999, SCC–L1, L.L.C., SCC–L2, L.L.C. and SCC–L3, L.L.C. filed revised tariff sheets and code of conduct.

Comment date: May 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Cleco Trading & Marketing LLC

[Docket No. ER99–2300–000]

Take notice that on April 19, 1999, Cleco Trading & Marketing LLC (Cleco Trading), petitioned the Commission for acceptance of two amendments, First Superseding Original Sheet No. 27, dated April 17, 1999, to Rate Schedule No. 1 and Supplement No. 1, Original Sheet Nos. 1 and 2, dated April 17, 1999, to FERC Rate Schedule No. 1, to its Petition For Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The First Superseding Original Sheet No. 27 adds a new section 14.14 (Reassignment of Transmission Capacity) containing the Commission's standard form transmission capacity reassignment provision. Supplement No. 1 contains the Code of Conduct with Respect to the Relationship Between Cleco Trading & Marketing LLC and its Affiliates.

Cleco Trading intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cleco Trading is not in the business of generating or transmitting electric power. Cleco Trading is an affiliate of

Cleco Corporation, a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 791a, *et seq.*

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Genstar Energy, L.L.C.

[Docket No. ER99–2364–000]

Take notice that on April 19, 1999 Genstar Energy, L.L.C. (Genstar), tendered for filing an amendment to its petition for acceptance of Genstar Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Genstar intends to engage in wholesale electric power and energy purchases and sales as a marketer. Genstar is not in the business of generating or transmitting electric power.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Ameren Services Company

[Docket No. ER99–2544–000]

Take notice that on April 19, 1999, Ameren Services Company tendered for filing notice that effective February 26, 1999, Coordination Sales Tariff Service Agreement for Docket No. ER98-980–000, dated November 24, 1997, filed with the Federal Energy Regulatory Commission by Central Illinois Public Service Company is canceled.

Notice of the proposed cancellation has been served upon Entergy Power Marketing Corporation.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER99–2545–000]

Take notice that on April 19, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Manitoba Hydro Electric Board.

NSP requests that the Commission accept both the agreements effective March 31, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. EME Homer City Generation, L.P.

[Docket No. ER99–2546–000]

Take notice that on April 19, 1999, EME Homer City Generation, L.P., tendered for filing a long-term service agreement under its market-based rate schedule, FERC Electric Rate Schedule No. 1, with Edison Mission Marketing and Trading Company.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Orange and Rockland Utilities

[Docket No. ER99–2553–000]

Take notice that on April 20, 1999, the above-mentioned public utility filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–10991 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–117–000, et al.]

Wisest-Connecticut, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

April 21, 1999.

Take notice that the following filings have been made with the Commission:

1. Wisest-Connecticut, L.L.C.

[Docket No. EG99–117–000]

Take notice that on April 16, 1999, Wisest-Connecticut, L.L.C. (Wisest-Connecticut) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Novarco Ltd.; Starghill Alternative Energy Corporation; Texaco Energy Services; Tosco Power, Inc.; North American Energy, Inc.; PanCanadian Energy Services Inc.; Progress Power Marketing, Inc.; Spokane Energy, L.L.C.; and Western Power Services, Inc.

[Docket Nos. ER98–4139–002, ER97–4680–005, ER95–1787–013, ER96–2635–009, ER98–242–006, ER90–168–041, ER96–1618–012, ER98–4336–002, and ER95–748–016.]

Take notice that on April 19, 1999, power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Montaup Electric Company

[Docket No. ER99–1663–000]

Take notice that on April 15, 1999, Montaup Electric Company (Montaup), tendered for filing pursuant to section 205 of the Federal Power Act and part 35 of the Commission's Regulations, an Amendment to an agreement for the resale to Constellation Power Source, Inc. (CPS), of electricity which Montaup had contracted to purchase under four unit power contracts. The Amendment is being filed pursuant to the Commission's Letter Order issued April 1, 1999 in this docket directing

Montaup to file the agreement on a nonconfidential basis.

Copies of the filing have been served on the regulatory agencies of the Commonwealth of Massachusetts and the State of Rhode Island and on all parties shown on the Commission's official service list in this proceeding.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER99–2511–000]

Take notice that on April 16, 1999, Cinergy Services, Inc. (Cinergy Services), on behalf of its Operating Companies (The Cincinnati Gas & Electric Company and PSI Energy, Inc.), tendered for filing unexecuted Service Agreements for service under the Cinergy Operating Companies FERC Electric Market-Based Power Sales Tariff, Original Volume No. 6–MB applicable to customers which Cinergy Services has individual negotiated agreements for the sale of electric energy by the Cinergy Operating Companies.

Cinergy Services requests an effective date of May 1, 1999. Said date coincides with the effective date of the Notices of Cancellation for sales by the Cinergy Operating Companies under individual negotiated agreements with these counterparts.

Copies of the filing were served upon all parties listed in Attachment B of the filing.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. FirstEnergy Corp.

[Docket No. ER99–2512–000]

Take notice that on April 16, 1999, FirstEnergy Corp. (FirstEnergy), as agent for Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, submitted a Service Agreement and an Operating Agreement for Network Integration Transmission Service to be provided by FirstEnergy to American Municipal Power—Ohio, Inc. (AMP-Ohio) on behalf of the Boroughs of Ellwood City and Grove City, Pennsylvania. FirstEnergy also filed a revised Index of Customers to be incorporated into the Tariff.

FirstEnergy requests that these agreements be made effective as of April 1, 1999.

FirstEnergy states that a copy of the filing has been served on the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company

[Docket No. ER99–2513–000]

Take notice that on April 16, 1999, Central Power and Light Company (CPL), tendered for filing an Interconnection Agreement between CPL and Frontera Generation Limited Partnership (Frontera).

CPL requests an effective date for the Interconnection Agreement of March 30, 1999. Accordingly, CPL requests waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on Frontera and the Public Utility Commission of Texas.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER99–2514–000]

Take notice that on April 16, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for firm point-to-point transmission service under Maine Public's open access transmission tariff with FPL Energy Power Marketing, Inc.

Main Public requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on March 23, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER99–2515–000]

Take notice that on April 16, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Service Agreement for Long Term Firm Transmission Service on Direct Assignment Facilities (DAF Agreement) between PacifiCorp's Transmission Function and Foote Creek III, LLC (Foote Creek III) dated March 24, 1999.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Public Service Company

[Docket No. ER99–2517–000]

Take notice that on April 16, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for firm point-to-point transmission service under Maine Public's open access transmission tariff with Florida Power & Light Company.

Maine Public requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Main Public Service Company; Bangor Energy Resale, Inc.

[Docket Nos. ER99–2518–000; ER99–2526–000]

Take notice that on April 16, 1999, the above-mentioned public utilities filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER99–2519–000]

Take notice that on April 16, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the March 29, 1999, Service Agreement for Network Integration Transmission Service (Service Agreement) between PacifiCorp and Illinova Energy Partners, Inc. (Illinova) under PacifiCorp's Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER99–2520–000]

Take notice that on April 16, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Wisconsin Energy Corporation, providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective on March 19, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER99–2522–000]

Take notice that on April 16, 1999, PJM Interconnection, L.L.C. (PJM),

tendered for filing a signature page of a party to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing the party to the RAA.

PJM requests a waiver of the Commission's notice requirements to permit an effective date of February 22, 1999.

PJM states that it served a copy of its filing on all parties to the RAA, including the party for which a signature page is being tendered with this filing, and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Bangor Hydro-Electric Company

[Docket No. ER99–2523–000]

Take notice that on April 16, 1999, Bangor Hydro-Electric Company filed an executed service agreement for firm point-to-point transmission service with DukeSolutions, Inc.

Bangor Hydro requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Public Service Company

[Docket No. ER99–2524–000]

Take notice that on April 16, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with Florida Power & Light Company.

Maine Public requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Atlantic City Electric Company, Delmarva Power & Light Company, and Conectiv Energy Supply, Inc.

[Docket No. ER99–2525–000]

Take notice that on April 16, 1999, Atlantic City Electric Company (Atlantic), Delmarva Power & Light Company (Delmarva) and Conectiv Energy Supply, Inc. (CES) (collectively, the Companies) requested that the Commission eliminate the requirement for an updated market analysis in the orders granting the Companies' market-based rate authority and make the Companies subject to all future updated market analyses provided by the PJM Supporting Companies' pursuant to the Commission's order in Atlantic City Electric Company, et al., 86 FERC ¶ 61,248 (1999).

The Companies have served the affected customers and state commissions with this filing.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Bangor Hydro-Electric Company

[Docket No. ER99–2527–000]

Take notice that on April 16, 1999, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with DukeSolutions, Inc.

Bangor Hydro requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Maine Public Service Company

[Docket No. ER99–2528–000]

Take notice that on April 16, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with FPL Energy Power Marketing, Inc.

Maine Public requests waiver of the Commission's 60-day notice requirement so that the enclosed agreement can become effective on March 23, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER99–2529–000]

Take notice that on April 16, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a First Revised Supplement to its FERC Rate Schedule No. 110, with respect to Delmarva's full requirements service agreement with the Town of Berlin. The proposed change would decrease base demand and energy rates by 0.05111% or about $367.00 annually (based on actual billing data for calendar year 1995).

Delmarva proposes an effective date of June 1, 1999. Delmarva asserts that the decrease and the proposed effective date is in accord with the service agreement with the Town of Berlin as accepted for filing as Rate Schedule No. 110, eight supplements, and one exhibit in Docket No. ER96–852–000, which service agreement provides for changes in rates that correspond to the level of changes in rates approved by the Maryland Public Service Commission for Delmarva's non-residential retail customers.

Copies of the filing were served on the Town of Berlin and the Maryland Public Service Commission.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy Corp.

[Docket No. ER99–2530–000]

Take notice that on April 16, 1999, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with ACN Energy, Inc., pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–10992 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6334–9]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on May 13 and 14, 1999. The meeting will take place at the River Inn, 924 Twenty-Fifth Street, NW, Washington, DC from 9:00 am to 5:00 pm on Thursday, May 13 and Friday, May 14. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1704), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or call (202) 260–4129.

Dated: April 27, 1999.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 99–11041 Filed 4–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30477; FRL–6076–7]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 2, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30477] and the file symbols to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the 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. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Marion Johnson (PM 10)	Rm. 210, CM #2, 703–305–6788, e-mail: johnson.marion@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 247, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.
Leonard Cole (PM 4)	Rm. 211, CM #2, 703–305–5412, e-mail: cole.leonard@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 4582–TR. Applicant: Colgate-Palmolive Company, P.O. Box 1343, 909 River Road, Piscataway, NJ 08855–1343. Product Name: MNDA M-9011 Technical. Insecticide. Active ingredient: *N*-Methyl neodecanamide at 96.3%. Proposed classification/Use: None. For formulation of multipurpose cleaner/insect repellent products. (PM 10)

2. File Symbol: 4582–TN. Applicant: Colgate-Palmolive Co. Product Name: Ajax with Expel. Insecticide. Active ingredient: *N*-Methyl neodecanamide (MNDA) at 2%. Proposed classification/Use: None. Ajax is an all purpose cleaner with insect repellent for use on crawling insects in kitchens and bathrooms such as roaches and ants. (PM 10)

3. File Symbol: 100–ORE. Applicant: Novartis Crop Protection, P.O. Box 18300, Greensboro, NC 27419. Product Name: Fulfill 50 WG. Insecticide. Active ingredient: Pymetrozine at 50%. Proposed classification/Use: None. For control of certain aphids in fruiting, leafy and curcurbit vegetables, cole crops, tuberous and corn vegetables, tobacco, cotton, and hops. (PM 4)

4. File Symbol: 100–ORU. Applicant: Novartis Crop Protection. Product Name: Relay 50 WG. Insecticide. Active ingredient: Pymetrozine: 1,2,4-triazin-3(2*H*)-one,4,5-dihydro-6-methyl-4-[(3-pyridinyl methylene)amino] at 50.0%. Proposed classification/Use: None. For control of aphids and whiteflies in landscape and container grown ornamentals, non-bearing fruit and nut trees in nurseries, christmas tree plantations, ground covers, greenhouses, lath- and shade house ornamentals and interiorscapes. (PM 4)

5. File Symbol: 100–ORG. Applicant: Novartis Crop Protection. Product Name: Technical Pymetrozine.

Insecticide. Active ingredient: Pymetrozine: 1,2,4-triazin-3(2*H*)-one,4,5-dihydro-6-methyl-4-[(3-pyridinyl methylene)amino] at 98.3%. Proposed classification/Use: None. For use only in the manufacture of EPA registered insecticidal formulations. (PM 4)

6. File Symbol: 100–OER. Applicant: Novartis Crop Protection. Product Name: Acibenzolar-S-Methyl Technical. Plant activator. Active ingredient: Benzo (1,2,3) thiadiazole-7-carbothioic acid-*S*-methyl ester at 98.6%. Proposed classification/Use: None. For formulation into end-use fungicide products. (PM 22)

7. File Symbol: 100–OEE. Applicant: Novartis Crop Protection. Product Name: Actigard 50WG. Plant activator. Active ingredient: Benzo (1,2,3) thiadiazole-7-carbothioic acid-*S*-methyl ester at 50%. Proposed classification/Use: None. For protection against certain diseases of leafy vegetables, tomato, and tobacco. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30477] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30477]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: April 22, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–11042 Filed 4–30–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Consumer Compliance Task Force (we) of the Federal Financial Institutions Examination Council (FFIEC) is supplementing, amending, and republishing its Interagency Questions and Answers Regarding Community Reinvestment, as well as proposing for comment three new or revised questions and answers. The Interagency Questions and Answers have been prepared by staff of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) to answer frequently asked questions about community reinvestment. These Interagency Questions and Answers contain informal staff guidance for agency personnel, financial institutions, and the public. We seek public comment on the proposed questions and answers. In addition, we invite public comment on any of the new and revised questions and answers, as well as other community reinvestment issues that are not addressed in these Interagency Questions and Answers.

DATES: Effective date of amended Interagency Questions and Answers on Community Reinvestment: May 3, 1999. We request that comments on the proposed questions and answers be submitted on or before: July 2, 1999.

ADDRESSES: Questions and comments may be sent to Keith J. Todd, Executive Secretary, Federal Financial Institutions Examination Council, 2000 K Street, NW, Suite 310, Washington, DC 20006, or by facsimile transmission to (202) 872–7501.

FOR FURTHER INFORMATION CONTACT:

OCC: Malloy Harris, National Bank Examiner, Community and Consumer Policy Division, (202) 874–4446; or Margaret Hesse, Senior Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Review Examiner, (202) 452–3946; James H. Mann, Attorney, (202) 452–2412; or Kathleen C. Ryan, Attorney, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert W. Mooney, Senior Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942–3090; or A. Ann Johnson, Counsel, Legal Division, (202) 898–3573, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Theresa A. Stark, Project Manager, Compliance Policy, (202) 906–7054; or Richard R. Riese, Project Manager, Compliance Policy, (202) 906–6134, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

In 1995, the agencies revised the Community Reinvestment Act (CRA) regulations by issuing a joint final rule, which was published on May 4, 1995 (60 FR 22156). *See* 12 CFR parts 25, 228, 345 and 563e, implementing 12 U.S.C. 2901 *et seq.* The agencies published related clarifying documents on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362).

The revised regulations are interpreted primarily through "Interagency Questions and Answers Regarding Community Reinvestment," which provide informal staff guidance for use by agency personnel, financial institutions, and the public, and which are supplemented periodically. We published our most recent guidance on October 7, 1997 (1997 Interagency Questions and Answers). *See* 62 FR 52105. In addition to issuing the 1997 Interagency Questions and Answers, we proposed several questions and answers in the accompanying supplementary information. These questions and answers were proposed to clarify what

is meant by "primary purpose of community development." We specifically requested comment addressing the proposed questions and answers, as well as general comments and questions regarding the CRA regulations. *See* 62 FR at 52108–09.

We received 44 letters in response to our request for comments in the 1997 Interagency Questions and Answers. Comments came from financial institutions (16), community groups (14), trade associations (6), federal entities (6), and state/local agencies (2). This document supplements, revises, and republishes the 1997 Interagency Questions and Answers based, in part, on questions and comments received from examiners, financial institutions, and other interested parties, and on comments received in response to our request for comments.

This document adopts the four questions and answers proposed in 1997 and thirteen new questions and answers, revises seven other questions and answers, and proposes three new or revised questions and answers for comment. A discussion of these questions and answers follows.

Questions and answers are grouped by the provision of the CRA regulations that they discuss and are presented in the same order as the regulatory provisions. The Interagency Questions and Answers employ an abbreviated method to cite to the regulations. Because the regulations of the four agencies are substantially identical, corresponding sections of the different regulations usually bear the same suffix. Therefore, the Interagency Questions and Answers typically cite only to the suffix. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for nonmember state banks, at 12 CFR 345.26; and for thrifts, at 12 CFR 563e.26. Accordingly, the citation in this document would be to § ____.26. In the few instances in which the suffix in one of the regulations is different, the specific citation for that regulation is provided.

Adopting Questions and Answers Proposed in 1997

We are adopting the four questions and answers addressing "primary purpose" of community development activities that were proposed in 1997. The definitions of "community development loan," "community development service," and "qualified investment" all require a "primary purpose of community development." *See* 12 CFR 25.12 (i)(1), (j)(1), and (s); 228.12 (i)(1), (j)(1), and (s); 345.12 (i)(1), (j)(1), and (s); and 563e.12 (h)(1), (i)(1), and (r). In response to inquiries about whether certain activities have the necessary "primary purpose" of community development to qualify as a community development loan, qualified investment or community development service, we proposed four questions and answers (Q&As) to explain what is meant by "primary purpose." With one clarifying change, which is discussed below, we are adopting the previously proposed Q&A7 addressing §§ ____.12(i) and 563e.12(h), Q&A1 addressing § ____.22(b)(4), Q&A1 addressing § ____.23(e), and Q&A3 addressing § ____.42(b)(2).

Twenty commenters addressed topics related to the proposed Q&As. The commenters were generally in favor of the proposed Q&As. Seven commenters supported greater flexibility for examiners when considering whether to give CRA consideration to certain loans. (These seven commenters also raised issues regarding the definition of "community development" in the regulations, which is discussed below.) Three commenters, however, felt that examiners rely too heavily on mathematical formulas in making this determination, such as the amount of the low- or moderate-income set-aside, the number of units constructed, or the number of jobs for low-income persons actually created. Six commenters supported giving CRA consideration to community development loans, even if 50% or less of the proceeds are used for community development purposes. One commenter suggested, however, that an institution should receive CRA consideration only for that portion of a loan or investment expressly devoted to the community development purpose.

The agencies have generally stated that a "primary purpose" of community development exists when the loan, investment or service is divisible and measurable in terms of the number of dollars spent, housing units built, or individuals benefited, and when an identifiable majority of the dollars expended, units built or individuals benefited is clearly attributable to one of the community development purposes enumerated in the regulations. However, this answer does not address other activities that are subject to certain legal or market restraints, such that they do not reach this threshold, even though they have community development as their purpose and result in real, long-term community development benefits. Many of these projects are "designed for the express purpose" of achieving a qualifying community development purpose, even though less than half the dollars involved in the entire project are concentrated on that purpose. For example, federal tax-incentive affordable housing projects, where less than half the units or half the dollars go into the portion of the project that represents affordable housing for low- or moderate-income persons, fall into this category. Accordingly, we are adopting without change the proposed guidance that emphasizes the quantitative and qualitative distinctions to be made when evaluating eligible community development loans, qualified investments, or community development services.

Q&A 7 addressing §§ ____.12(i) and 563e.12(h) is based on the preamble to the final rule set forth at 60 FR 22,156, 22,159 (May 4, 1995), which states that activities not designed for the express purpose of community development (as defined in the regulations) are not eligible for consideration as community development loans or services or qualified investments. The preamble further states that providing indirect or short-term benefits to low- or moderate-income persons does not make an activity community development. In addition to incorporating this guidance into these Interagency Questions and Answers, the answer identifies the kind of information used to determine whether an activity was designed for the express purpose of community development. The answer adopts a simplified threshold rule (i.e., majority) and an alternative approach for finding sufficient bases to conclude that an activity possesses the requisite primary purpose.

We are also adopting Q&A1 addressing § ____.22(b)(4) and Q&A1 addressing § ____.23(e), which provide guidance on the evaluation of activities that have a primary purpose of community development, as well as the reporting of community development loans. This additional guidance emphasizes that once loans or investments are found to possess a primary purpose of community development, examiners may differentiate among community development loans or qualified investments under the relevant performance criteria. This differentiation may be based not only on the differing dollar amounts attributable to the underlying community development purpose, but also on a loan's innovation or complexity under § ____.22(b)(4) or an investment's innovation, complexity, responsiveness or non-routine characteristics under § ____.23(e).

Finally, we are adopting Q&A3 addressing § ____.42(b)(2), which

explains that a loan may be reported as a community development loan if its express primary purpose is to finance an affordable housing project for low- or moderate-income individuals, although, for example, only 40% of the project's units will actually be occupied by individuals or families with low or moderate incomes. Although an institution would report the entire amount of the loan, we are expanding upon the answer proposed in 1997 to clarify that examiners may make qualitative distinctions among community development loans on the basis of how well each loan advances its community development purpose.

New Questions and Answers

What is "affordable" housing? Institutions and others have asked how to determine whether a housing development will provide "affordable" housing for low- and moderate-income individuals, particularly in a new project where the units are not yet leased or sold, or in other projects where the income of renters cannot be verified. It has been suggested that a simple formula might be appropriate, such as if the mortgage payments or rental expenses amount to less than 30% of the income of individuals or families who are low- or moderate-income (i.e., have an income that is less than 80% of the area median income). We believe, however, that the critical consideration is the extent to which a project is or likely will be utilized by low- or moderate-income individuals. A formula based solely on rents as a percentage of median family income may determine this accurately in some circumstances, but may fail to do so in others. For example, in an area with relatively low-cost housing, such a formula may result in a calculation above even the median housing cost for the area. Therefore, we believe that it is appropriate to look at several factors, such as median rents of the assessment area and the project, the median home value of either the assessment area, low- and moderate-income geographies or the project, the low- and moderate-income population in the area of the project, or the past performance record of the organization(s) undertaking the project in determining whether a housing development does or likely will benefit low- and moderate-income individuals.

To clarify this position, we are adopting Q&A1 addressing §§ ____.12(h)(1) and 563e.12(g)(1), which discusses the types of factors that examiners consider when determining whether housing is "affordable" to low- and moderate-income individuals.

Do institutions receive consideration for originating or purchasing loans that are fully guaranteed? We are adopting a new Q&A, designated as Q&A4 addressing § ____.22(a)(2), to stress that the lending test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through the origination and purchase of specified types of loans, but that the test criteria do not take into account whether or not the loans are guaranteed.

What is the range of practices that examiners may consider in evaluating the innovativeness, complexity, or flexibility of an institution's lending? We have been asked whether contracting programs, under which institutions may commit to contracting with small business borrowers, may receive consideration under the CRA regulations. To date, examiners generally have not been considering such programs in reviewing an institution's CRA performance. New Q&A1 addressing § ____.22(b)(5) discusses the range of factors that examiners may consider in evaluating the innovativeness and flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending). It makes clear that, even though contracting programs are not, standing alone, considered in connection with a CRA evaluation, such programs may enhance the success and effectiveness of a related lending program. Therefore, certain contracting programs may warrant consideration as examiners review the innovativeness, complexity, and flexibility of an institution's lending practices. The Q&A also provides another example of when examiners may consider related program activities in connection with an evaluation of an institution's lending performance.

May an institution receive consideration for a qualified investment if it invests indirectly through a fund with a community development purpose, as that is defined in the CRA regulations? We are adopting a new Q&A, designated as Q&A1 addressing § ____.23(a), that incorporates guidance previously provided in interagency staff interpretive letters. *See, e.g.,* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 800, (1997 Transfer Binder) Fed. Banking L. Rep. (CCH), ¶ 81–227 (Sept. 11, 1997). In those letters, staff stated that the direct or indirect nature of a qualified investment does not affect whether an institution will receive consideration for the investment during its CRA evaluation. As long as the primary purpose of the investment is community development, as defined in the CRA regulations, an institution's investment in a fund, which in turn invests in a community development project (e.g., affordable housing for low- and moderate-income individuals that benefits the institution's assessment area(s) or a broader statewide or regional area that includes one or more of the institution's assessment area(s)), is a qualified investment.

How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as that is defined in the CRA regulations? Many financial institutions have made qualified investments in community development funds that operate regionally or nationally. Examiners, institutions, and the funds have asked for guidance on how to evaluate these investments. We are adopting a new Q&A, designated as Q&A2 addressing § ____.23(e), reiterating guidance previously provided in an interagency staff CRA interpretive letter. *See* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 800, *supra.*

The new Q&A explains that examiners evaluate investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s) using the investment test's four performance criteria. When determining the dollar amount of the investment (the first criterion), examiners rely on the figures the institution records according to generally accepted accounting principles. Even though different institutions may employ different investment strategies, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration.

The remaining three performance criteria—the "qualitative" criteria of innovativeness and complexity, responsiveness, and the degree to which the investment is not routinely provided by private investors—will provide the basis for examiner differentiation among investments. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

How do examiners evaluate an institution's activities in connection with "Individual Development Accounts"? Individual Development Accounts (IDAs) generally are matched savings accounts designed to help low-

and moderate-income families accumulate savings for education or job training, down-payment and closing costs on a new home, or start-up capital for a small business. Once IDA participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity, such as a state or local government, church, foundation, or financial institution. Participating depositors often receive training in the basics of money management, including budgeting, saving, and credit repair. In addition, an entity, such as a community organization, typically monitors participants' withdrawals from their IDAs.

Financial institutions may participate in IDA programs in a number of ways, including: offering accounts, which may be structured as traditional savings accounts; enhancing accounts by offering special account benefits, including higher interest rates, ATM services, or waived minimum balance requirements; providing funding in the form of matching funds for participants or operating support for community organizations running the IDA program; helping to design and implement IDA programs, including developing and teaching financial literacy courses; and making loans to participants once they have achieved their savings goals.

The extent of each financial institution's involvement in IDAs and the products and services offered in connection with the accounts will vary. Therefore, examiners will evaluate the actual services and products provided by each institution in connection with the IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans. We are adopting a Q&A, designated as Q&A2 addressing § ____.24(d), which articulates this opinion.

How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide, the purpose of which is community development, as that term is defined in the CRA regulations? We are adopting a new Q&A, designated as Q&A1 addressing § ____.25(e), memorializing guidance previously provided in interagency staff interpretive letters, which clarifies how examiners evaluate qualified investments made by wholesale or limited purpose institutions in a community development fund that invests in projects nationwide. *See, e.g.,* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 801, (1997 Transfer Binder) Fed. Banking L. Rep. (CCH), ¶ 81–228 (Sept. 11, 1997). Examiners first determine whether the institution has adequately addressed the needs of its assessment area(s). In doing so, examiners also consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s). If examiners find that the institution has adequately addressed the needs of its assessment area(s), they will give consideration to nationwide qualified investments, community development loans, and community development services.

Are innovative loan products, innovative or complex qualified investments, and innovative community development services necessary for a "satisfactory" or "outstanding" CRA rating? Two commenters expressed concern that examiners might discount community development loans if they are not considered to be "innovative." As one commenter stated, innovation is only one of the four criteria considered when examiners evaluate an institution's responsiveness to community development needs.

We are adopting a new Q&A1, addressing § ____.28, to clarify that innovative practices are not required for an "outstanding" or "satisfactory" rating. Innovative loan products, innovative or complex qualified investments, and innovative community development services may augment consideration of an institution's performance under the quantitative criteria of the performance tests, resulting in a higher level of performance and rating. The Q&A also makes clear that the lack of innovative or complex investments, loans, or services alone will not result in a "needs to improve" rating.

How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating? The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these criteria are quantitative (number and amount), while others are qualitative (innovativeness, complexity, responsiveness, or flexibility). The qualitative performance criteria recognize that certain loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a direct benefit to the community that would not otherwise be possible.

We are adopting a new Q&A, designated as Q&A2 addressing § ____.28, which explains that the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by the community. These qualitative aspects of an institution's performance may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

When collecting and reporting, if applicable, the gross annual revenue or income of small business or farm or consumer borrowers, do institutions use the gross annual or the adjusted gross annual revenue or income? In response to questions from financial institutions, we are adopting two new Q&As clarifying that institutions should collect and report gross annual revenue (for small businesses and small farms) and gross annual income (for consumers) rather than adjusted gross annual revenue or income. The new Q&As are designated as Q&A4 addressing § ____.42(a)(4) and Q&A3 addressing § ____.42(c)(1)(iv).

The purpose of collecting and reporting gross annual revenue data for small businesses and small farms is to enable examiners and the public to judge whether an institution is lending to small businesses and farms, or whether it is only making small loans to larger businesses and farms. Similarly, gross annual income information is collected from consumer borrowers to help examiners determine the distribution of the institution's consumer loans based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers.

May an institution keep the compact disc that contains its CRA Disclosure Statement, which is distributed by the FFIEC, in its public file, rather than a paper copy of the information? Several institutions asked whether they may retain the compact disc that contains the CRA Disclosure Statement provided by the FFIEC in its public file rather than a paper copy. We are adopting a new Q&A2 addressing § ____.43(b)(1), which clarifies that an institution may keep the compact disc (or a duplicate of the compact disc) in its public file at its main office and the designated branch in each state as long as the institution

can readily print the information upon request.

Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating? We are adopting a new Q&A1 addressing Appendix A to Part ____—Ratings to clarify that exceptionally strong performance by an institution in some aspects of a particular rating profile may compensate for weak performance in others, thus permitting the institution to earn that rating. The Q&A describes retail institutions that use non-branch delivery systems to obtain deposits and to deliver loans, as an example. Almost all of the loans originated by such an institution may be outside of its assessment area(s). The Q&A assumes, for purposes of illustration, that examiners may find, after considering the institution's performance context and other regulatory considerations, that such an institution shows weak performance under the lending test criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. It clarifies that the institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

Revised Questions and Answers

What does "promote economic development" mean? The CRA regulations define the term "community development" to include "activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of $1 million or less." 12 CFR 25.12(h)(3), 228.12(h)(3), 345.12(h)(3) and 563e.12(g)(3).

The 1996 Interagency Questions and Answers included a Q&A, Q&A1 addressing §§ ____.12(h)(3) and 563e.12(g)(3), concerning whether all activities that finance small businesses or farms promote economic development. The 1997 Interagency Questions and Answers revised that Q&A in response to public comments. Since publication of the 1997 Interagency Questions and Answers, we have received 11 comments about this revised Q&A.

One commenter asserted that the description of the purpose test, i.e., that the activity must promote economic development, was too restrictive. Specifically, the commenter believed that limiting the purpose test to activities that, for example, provide jobs in low- and moderate-income areas targeted for redevelopment by the government would exclude financing to open a facility in a low- or moderate-income area that is not targeted by the government for redevelopment.

We determined that the explanation of the purpose test in the 1997 Interagency Questions and Answers was incomplete. We are revising the answer to be less restrictive by stating that an activity promotes economic development if it supports "permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement *either* in low- or moderate-income geographies *or in areas* targeted for redevelopment by Federal, state, local or tribal governments."

Examiners will continue to presume that any loan or investment in or to a SBDC or SBIC promotes economic development. Funding provided in connection with other SBA programs, as well as similar state and local programs, may also promote economic development; however, examiners will make their determinations based on business types, funding purposes, and other relevant information.

Consistent with Q&A2 addressing § ____.28, Q&A1 addressing §§ ____.12(h)(3) and 563e.12(g)(3) also clarifies that examiners will make qualitative assessments in connection with an institution's community development activities in addition to the quantitative assessment of its activities.

Does "rehabilitation of affordable housing or community facilities" include the abatement of environmental hazards, such as lead-based paint, that are present in the housing or facilities? Three commenters asked us to state that loans for the removal of environmental hazards (particularly lead-based paint) may be community development loans. We believe the abatement of environmental hazards could be a part of rehabilitating affordable housing or community facilities targeted to low- and moderate-income individuals; rehabilitation of these facilities has already been identified as an example of a community development purpose. To clarify this position, we are adding a sentence to Q&A1 addressing §§ ____.12(i) and 563e.12(h).

Are an institution's activities in connection with the Federal Home Loan Banks' Affordable Housing Program (AHP) considered when the institution's CRA performance is evaluated? We have consistently stated that the mere purchase of stock in the Federal Home Loan Banks (FHLBs) does not have a sufficient connection to community development to be considered as a qualified investment.

Institutions, however, have asked us about how their activities in connection with certain specific AHP projects are considered during their CRA evaluations. Institutions that are members of a FHLB typically provide a high level of technical assistance to prospective borrowers in preparing the application for AHP funds and ensuring that the borrower meets the eligibility criteria. Although an institution does not necessarily provide a loan in connection with an AHP project, it does disburse the funds for the FHLB and monitor the continued qualified use of the funds. We believe these activities to be community development services and are revising the second bullet in Q&A 3 addressing §§ ____.12(j) and 563e.12(i) to so state.

If an institution's employees develop or teach financial education curricula for low- or moderate-income students, are such activities community development services? We are revising the fifth bullet of Q&A3 addressing §§ ____.12(j) and 563e.12(i) to incorporate guidance previously provided in interagency staff interpretive letters. *See, e.g.,* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 802, (1997 Transfer Binder) Fed. Banking L. Rep. (CCH), ¶ 81–229 (Sept. 17, 1997). Specifically, we are clarifying that institutions may receive CRA consideration for the services provided by its employees in developing financial education curricula or teaching financial education courses to low- or moderate-income students.

Is providing Electronic Transfer Accounts pursuant to the Debt Collection Improvement Act of 1996 a community development service? The terms, costs, and features of low-cost accounts offered by financial institutions may vary depending on the particular needs of the institutions' low- and moderate-income customers. In response to an inquiry we received concerning whether a particular account for federal benefits payments would be considered to be a community development service, we are revising Q&A3 addressing §§ ____.12(j) and 563e.12(i) by amending the seventh bullet to provide an example of one low-cost transaction account targeted to low- and moderate-income individuals.

Under the provisions of the Debt Collection Improvement Act of 1996 relating to electronic payment of federal

benefits payments (EFT "99), codified at 31 U.S.C. 3332, insured depository institutions may offer basic, low-cost "electronic transfer accounts" (ETAs) specified in Treasury Department regulations (63 FR 51490) to recipients of federal benefits payments. These accounts are designed to attract low-income persons who do not currently have account relationships with insured depository institutions. A demographic and market analysis commissioned by the Treasury Department in connection with EFT "99 concluded that ETA account holders are likely to be primarily individuals with less than $10,000 in annual income. Therefore, the ETA is an account targeted to low- and moderate-income individuals and providing such accounts qualifies as a community development service.

Under the lending test, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography? We received 24 letters commenting on Q&A5 addressing § ____.22(b) (2) & (3). The commenters generally were in agreement that loans to middle- or upper-income individuals in a low- or moderate-income geography should receive CRA consideration. Some commenters were concerned that requiring that there be a revitalization or stabilization plan for the area may be too restrictive, especially in rural communities, where a formal plan may not exist. However, a "formal" plan is not necessary. An informal plan, such as town council resolutions, or a plan developed by a private entity, such as a community-based development organization, may be sufficient evidence, so long as it offers evidence of a plan for development designed to ensure economic diversity among the prospective residents and not just displacement of low- and moderate-income individuals.

One commenter stated that examiners should compare an institution's percentage of lending to low- and moderate-income households to the aggregate percentage of lending by all reporting institutions to these households and to the percentage of low- and moderate-income households in the area. The agencies' examination procedures already suggest that examiners may perform these types of comparisons and others, if appropriate, to help them explain examination findings.

One commenter asked whether multifamily housing loans in low- and moderate-income geographies would be considered in the same fashion as loans for single family housing. In response to the comment, we are clarifying the answer by adding the phrase, "or multifamily housing." In addition, examiners may also consider loans for multifamily housing as community development loans if they are targeted to low- and moderate-income individuals, or if they benefit middle- or upper-income borrowers as part of a plan to encourage attracting mixed-income residents to stabilize and create an economically diverse area out of a low- or moderate-income geography.

How should an institution collect and report the location of a loan made to a small business or small farm if the borrower provides an address consisting of a post office box number or rural route and box number?

We adopted Q&A10 addressing § ____.42(a) in the 1997 Interagency Questions and Answers answering this question. In response to this Q&A, we received nine comments. Several commenters questioned the accuracy and usefulness of data collected and/or reported without the census tract or block numbering area (BNA). One commenter stated that we should allow institutions more lead time when providing interpretations of data collection and reporting provisions to allow the institutions to change their reporting systems, if necessary. We believe that data collection according to this Q&A results in the most accurate data, even though in some cases no information about census tract or BNA is provided, but agree that sufficient time should be provided to implement changes to data collection procedures, whenever possible.

In addition to formal comments on the Q&As, regulated institutions requested clarification about whether an institution should report the census tract or block numbering area (BNA) of a location, if known, even if there is no street address for that location. We are amending Q&A10 addressing § ____.42(a) to clarify that if the census tract or BNA is known, it should be reported, even if the institution does not know the street address for that particular location (or there is no street address). We are also revising the Q&A to delete obsolete 1997 data collection instructions.

What small business and small farm data should be reported?

We are making a technical change to Q&A1 addressing § ____.42(b)(1). The regulations define a "small farm loan" as those included in "loans to small farms" as defined in the instructions for preparation of the Consolidated Report of Condition and Income or the Thrift Financial Report. These instructions define such loans as having original amounts of $500,000 or less. Accordingly, we are clarifying in Q&A1 that institutions need not report small farm loan data as to loans having original amounts greater than $500,000.

What are the data requirements regarding consumer loans?

We have revised Q&A1 addressing § ____.42(c)(1) to clarify that our questions and answers written with respect to data collection (and reporting) in connection with small business and small farm loans also apply to the collection of consumer loan data.

Discussion of Other Comments Received

We received several other comments that are not addressed by specific questions and answers.

Community development. Several commenters suggested that the current definition of "community development" does not include all the types of activities that institutions engage in and that should be considered as having a community development purpose.

Before adopting the definition of "community development" in the revised regulations in 1995, the agencies received and considered a number of comments on the characteristics of activities with community development purposes. The agencies also committed to conduct a complete review of the regulations in 2002. *See* 60 FR 22,177. We will ensure that comments on the definition of "community development" are considered at that time.

Loan-to-deposit ratio. Two commenters raised issues regarding the use of a loan-to-deposit ratio as a measure of performance in the small institution performance test. One stated that the loan-to-deposit ratio should not be the only indicator of performance. The other suggested that, due to their volatility, public funds should be subtracted from the deposit side of the ratio prior to calculation.

The first concern, the relative importance of the loan-to-deposit ratio in the overall rating of a small institution, is one that the agencies routinely address in examiner training. As a general matter, we agree that the loan-to-deposit ratio is not the only indicator of lending activity performance. However, there may be cases in which a loan-to-deposit ratio is so low that it indicates that the institution is not lending. In such cases, the proportion of lending inside the institution's assessment area, together with the geographic and borrower distribution of those loans, will not excuse the low level of lending overall.

The second concern, the subtraction of public funds from the calculations of loan-to-deposit ratios, is a performance

context issue. We believe that examiners have the flexibility to consider the level of public funds on deposit, and their volatility, in determining whether a particular loan-to-deposit ratio is reasonable.

Letters of credit. One commenter asserted that lenders should receive consideration under the CRA regulations for providing letters of credit because institutions often use letters of credit to meet small business needs. Q&A1 addressing § ____.22(a)(2) specifically addresses this issue and permits information about letters of credit to be used by examiners to enhance their understanding of an institution's performance.

Loans to nonprofit organizations. One commenter suggested that loans under $1 million for business purposes, or under $500,000 for farm purposes, made to nonprofit organizations, should be considered community development loans even though they are secured by real property. Under the CRA regulations, these loans often must be counted as loans to small businesses or small farms rather than community development loans, depending on the type of property securing the loan. Q&A1 addressing § ____.12(u) addresses instances in which loans to nonprofit organizations may be considered as community development loans.

The number and dollar amount of community development loans is a criterion under the lending test that is meant to capture any loans for a community development purpose that are otherwise not reported as home mortgage, small business or small farm loans. Institutions may wish to highlight the community development purpose of particular loans that are considered as home mortgage, small business or small farm loans during an examination. Such information may be relevant to the examiners' evaluation of qualitative lending test criteria or to the performance context within which community development loans are evaluated. The regulation is clear, however, that, except for loans for multifamily housing targeted for low- and moderate-income individuals, home mortgage, small farm, and small business loans may not be reported as community development loans.

Assessment areas and non-branch delivery systems. We received several letters requesting clarification of how examiners evaluate a retail institution's lending, investment, and service activities outside the institution's assessment area(s) and the broader statewide or regional area that includes its assessment area(s). This question has been of special concern to commenters in the context of institutions that obtain deposits and deliver products and services through non-branch systems, such as the Internet. We are adopting Q&A1 addressing Appendix A to Part ____—Ratings, and are proposing a revision to Q&A5 addressing §§ ____.12(i) and 563e.12(h), which may be particularly relevant to issues arising in this context. Furthermore, we expect to address comments relating to out-of-assessment area activities through materials issued for public comment later this year.

Proposed Questions and Answers and Request for Comment

Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the assessment area(s)? Q&A5 addressing §§ ____.12(i) and 563e.12(h) in the 1997 Interagency Questions and Answers states that there does not need to be a direct benefit to the institution's assessment area(s) to satisfy the regulation's requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area.

The Q&A addresses organizations and activities, operating statewide or regionally, that may ultimately have a direct benefit on an assessment area. However, it does not specifically address local community development organizations or activities serving a locale somewhere in the broader statewide or regional area surrounding an institution's assessment area(s), which may not benefit low- and moderate-income areas or individuals located inside the assessment area(s). We are proposing to revise that Q&A to address both types of organizations or activities. The proposed Q&A would clarify that an institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in a community development organization or activity provided the purpose, mandate, or activity benefits the broader statewide or regional area by servicing geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s).

The text of the proposed Q&A follows:

Sections ____.12(i) and 563e.12(h)

Proposed Q5. *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

Proposed A5. No. The regulations, for example, recognize that community development organizations and programs are frequently efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a local, statewide, or even multi-state basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but is located in, the broader statewide or regional area that includes the institution's assessment area(s). The institution's assessment area need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the statewide or regional area that includes the institution's assessment area. Furthermore, the regulations permit a wholesale or limited purpose institution to consider community development loans, community development services, and qualified investments wherever they are located, as long as the institution has otherwise adequately addressed the credit needs within its assessment area(s).

In addition to general comments agreeing or disagreeing with the proposed revisions to this Q&A, we would like comments on whether community development organizations and programs that operate on a local, statewide, or even multi-state basis ultimately provide benefit to all surrounding areas.

May an institution receive consideration under the investment test for mortgage-backed securities backed by home mortgages that the same institution originated or purchased? We have received inquiries about whether examiners will consider as qualified investments mortgage-backed securities backed by home mortgages to low- and

moderate-income individuals that the investing institution initially originated or purchased.

The revised regulations, at 12 CFR ____.23(b), provide that activities considered under the lending or service tests may not be considered under the investment test. Examiners consider the home mortgages underlying mortgage-backed securities, if originated or purchased by the institution, under the lending test when they examine an institution. Therefore, examiners would not be permitted also to consider as qualified investments mortgage-backed securities, purchased or securitized by an institution, that are backed primarily or exclusively by loans that the institution originated or purchased, because the examiners would be considering the same activities under both the lending and investment tests.

To clarify our opinion, we are proposing, and requesting public comment specifically on, the following question and answer:

Section ____.23(b)

Proposed Q2: *If home mortgage loans to low-and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

Proposed A2: No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low-and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

Should renewals and refinancings of small business and small farm loans be collected and reported? Six commenters inquired whether loans to small businesses and small farms, when renewed or refinanced, should be reported for CRA purposes. The 1997 Interagency Questions and Answers, at Q&A5 addressing § ____.42(a), provided guidance that "refinancing" such loans should be reported as originations, but that "renewing" them should not. According to the guidance, the primary distinction between "refinancing" and "renewing" a loan is that, in connection with a loan refinancing, the existing obligation or note is satisfied, and a new note is written. Distinguishing refinancings and renewals on this basis is consistent with the guidance provided by the Board in connection with home mortgage loan data reporting pursuant to the Home Mortgage Disclosure Act (HMDA) regulation (12 CFR part 203).

Commenters asserted that small business and small farm lending practices are sufficiently different from home mortgage lending practices that renewals and refinancings of small business and small farm loans should be treated differently from renewals and refinancings of home mortgage loans for CRA reporting and evaluation purposes. Further, they suggested that there is very little distinction between refinancings and renewals of small business and small farm loans. Based on these comments and other inquiries from financial institutions, we propose that refinancings and renewals of small business and small farm loans be treated uniformly for CRA purposes. To that end, we are proposing two alternative revised Q&A5s addressing § ____.42(a).

Alternative I: The first proposed Q&A states that, for CRA purposes, financial institutions should report neither renewals nor refinancings of small business and small farm loans as loan originations. However, if institutions increase the amount of a small business or small farm loan or line of credit, the amount of the increase should be reported as a loan origination. Institutions should continue to report home mortgage loans according to the instructions provided in 12 CFR part 203.

Reporting neither renewals nor refinancings of small business or small loans reflects that the lending test's performance criteria emphasize loan originations and purchases. Renewals and refinancings, especially if made frequently, would inflate the actual amounts of small business and small farm lending. In addition, we believe that recordkeeping and reporting burden of large institutions will be lessened if they need not collect and report information about small business and small farm loan refinancings and renewals.

If this proposed Q&A is adopted, institutions would not collect or report as loan originations data on either small business and small farm loan refinancings or renewals. However, any institution could bring to its examiners' attention data on small business and small farm loan refinancing or renewals by providing "other loan data" pursuant to § ____.22(a)(2), including information about its small business and small farm loans outstanding. The text of the first alternative proposed Q&A follows:

Section ____.42(a)—Alternative I:

Proposed Q5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

Proposed A5: No. When an institution extends the term of one of its existing small business or small farm loans in the same or a lesser amount as the existing obligation, the institution should not report this event as a small business or small farm loan origination. If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, however, it should report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase; the original or remaining amount of the loan is not reported again as an origination. For example, a financial institution extends a loan (as opposed to a line of credit) for $25,000; principal payments have resulted in a present outstanding balance of $15,000. The customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report the $5,000 increase.

An institution may provide "other loan data," including information about small business or small farm loans outstanding, to examiners for consideration as part of the institution's lending test performance evaluation.

Alternative II: Several institutions have stressed that ongoing credit availability is important to the economic condition of small businesses and small farms, as well as the community as a whole. These institutions suggested that both refinancings and renewals of small business and small farm loans should be considered by examiners when evaluating an institution's small business and small farm lending performance. The second alternative proposed Q&A would take these concerns into consideration.

Because small business and small farm loan refinancings and renewals are nearly indistinguishable, Alternative II, like Alternative I, would not treat small business and small farm refinancings and renewals differently. Institutions would collect and report data about both refinancings and renewals as loan originations. However, because institutions often write small business and small farm loans for short terms and refinance or renew them at the end of the term, in order to avoid inflation of amounts actually lent, institutions

would be limited to reporting only one origination per year.

The text of the second alternative proposed Q&A follows:

Section ____.42(a)—Alternative II:

Proposed Q5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

Proposed A5: An institution should collect information about small business and small farm loans that they refinance or renew as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied, and a new note is written, while a *renewal* refers to an extension of the term of a loan.) When reporting small business and small farm loan data, however, an institution may only report one origination per loan per year unless an increase in the loan amount is granted.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a loan (as opposed to a line of credit) for $25,000; principal payments have resulted in a present outstanding balance of $15,000. The customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report the $5,000 increase. The bank may also report the renewal or refinancing of the $15,000 balance one time that year.

An institution may provide "other loan data," including information about small business or small farm loans outstanding, to examiners for consideration as part of the institution's lending test performance evaluation.

In addition to general comments about these proposed questions and answers, we would also appreciate receiving your views on the following questions:

- Are there other fair and meaningful alternative methods of collecting data on small business and small farm loan renewals and refinancings? If so, please describe.
- Does allowing collection and reporting data of one renewal or refinancing per year make sense?
- Will these proposed questions and answers increase or decrease substantially the data collection and reporting burden of financial institutions? Which alternative is less burdensome?
- Which alternative (including the guidance currently in effect) best promotes accurate data that reflects the actual lending activity of financial institutions?

Depending on what final guidance we eventually adopt, we understand that we may have to make conforming changes to other Q&As.

Until a new Q&A has been adopted through publication in the **Federal Register**, the existing Q&A5 addressing § ____.42(a) remains in effect. This means that, for the time being, financial institutions will continue to collect and report data about small business and small farm loan refinancings, but not renewals.

General Comments

In addition to the specific request for comments on the proposed questions and answers, we invite public comment on the new and revised questions and answers. We also invite public comment on a continuing basis on any issues raised by the CRA and these Interagency Questions and Answers. If, after reading the Interagency Questions and Answers, financial institutions, examiners, community organizations, or other interested parties have unanswered questions or comments about the agencies' community reinvestment regulations, they should submit them to the agencies or the FFIEC. We will consider addressing such questions in future revisions to the Interagency Questions and Answers.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA requires an agency, for each rule for which it prepares a final regulatory flexibility analysis, to publish one or more compliance guides to help small entities understand how to comply with the rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies certified that their proposed CRA rule would not have a significant economic impact on a substantial number of small entities and invited public comments on that determination. *See* 58 FR 67478 (Dec. 21, 1993); 59 FR 51250 (Oct. 7, 1994). In response to public comment, the agencies voluntarily prepared a final regulatory flexibility analysis for the joint final rule, although the analysis was not required because it supported the agencies' earlier certification regarding the proposed rule. Because a regulatory flexibility analysis was not required, section 212 of the SBREFA does not apply to the final CRA rule. However, in their continuing efforts to provide clear, understandable regulations and to comply with the spirit of the SBREFA, the agencies have compiled the Interagency Questions and Answers. The Interagency Questions and Answers serve the same purpose as the compliance guide described in the SBREFA by providing guidance on a variety of issues of particular concern to small banks and thrifts.

The text of the Interagency Questions and Answers follows:

Text of the Interagency Questions and Answers

Interagency Questions and Answers Regarding Community Reinvestment

Table of Contents

This document provides answers to questions pertaining to the following provisions and topics of the CRA regulations:

The body of the Interagency Questions and Answers Regarding Community Reinvestment follows:

§ ____.11—Authority, Purposes, and Scope

§ ____.11(c) Scope

§ 25.11(c)(3), 228.11(c)(3) & 345.11(c)(3) Certain special purpose banks.

Q1. *Is the list of special purpose banks exclusive?*

A1. No, there may be other examples of special purpose banks. These banks engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose banks typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose bank merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

Q2. *To be a special purpose bank, must a bank limit its activities in its charter?*

A2. No. A special purpose bank may, but is not required to, limit the scope of its activities in its charter, articles of association or other corporate organizational documents. A bank that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. A bank that believes it is exempt from CRA as a special purpose bank should seek confirmation of this status from its supervisory agency.

§ ____.12—Definitions

§ ____.12(a) Affiliate

Q1. *Does the definition of "affiliate" include subsidiaries of an institution?*

A1. Yes, "affiliate" includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§§ ____.12(f) & 563e.12(e) Branch

Q1. *Do the definitions of "branch," "automated teller machine (ATM)," and "remote service facility (RSF)" include mobile branches, ATMs, and RSFs?*

A1. Yes. Staffed mobile offices that are authorized as branches are considered "branches" and mobile ATMs and RSFs are considered "ATMs" and "RSFs."

Q2. *Are loan production offices (LPOs) branches for purposes of the CRA?*

A2. LPOs and other offices are not "branches" unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory agency.

§§ ____.12(h) & 563e.12(g) Community Development

Q1. *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of "community development" includes

activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas.

Q2. *Must a community development activity occur inside a low- or moderate-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities outside of low- and moderate-income areas that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these low- or moderate-income areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

Q3. *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their "primary" purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development.

§§ ____.12(h)(1) & 563e.12(g)(1) Affordable Housing (Including Multifamily Rental Housing) for Low- or Moderate-Income Individuals

Q1. *When determining whether a project is "affordable housing for low- or moderate-income individuals," thereby meeting the definition of "community development," will it be sufficient to use a formula that relates the cost of ownership, rental or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of "affordable housing" for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants is not knowable in advance, examiners will review factors such as demographic, economic and market data to determine the likelihood that the housing will "primarily" accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal or community action plan, is community development.

§§ ____.12(h)(3) and 563e.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

Q1. *"Community development" includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?*

A1. No. To be considered as "community development" under §§ ——.12(h)(3) and 563e.12(g)(3), a loan, investment or service, whether made directly or through an intermediary, must meet both a size test and a purpose test. An activity meets the size requirement if it finances entities that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the purpose test, the activity must promote economic development. An activity is considered to promote economic development if it supports permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local or tribal governments. The agencies will presume that any loan to or investment in a SBDC or SBIC promotes economic development.

In addition to their quantitative assessment of the amount of a financial institution's community development activities, examiners must make qualitative assessments of an institution's leadership in community development matters and the complexity, responsiveness, and impact of the community development activities of the institution. In reaching a conclusion about the impact of an institution's community development activities, examiners may, for example, determine that a loan to a small business in a low- or moderate-income geography that provides needed jobs and services in that area may have a greater impact and be more responsive to the community credit needs than does a loan to a small business in the same geography that does not directly provide additional jobs or services to the community.

§§ ____.12(i) and 563e.12(h) Community Development Loan

Q1. *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to:

- Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property

serving low- and moderate-income persons;

- Not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- Financial intermediaries including Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development.
- Local, state, and tribal governments for community development activities; and
- Borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located.

The rehabilitation of affordable housing or community facilities, referred to above, may include the abatement of environmental hazards, such as lead-based paint, that are present in the housing or facilities.

Q2. *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans.

Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* Q&A2 addressing § ____.42(b)(2).

Q3. *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A3. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of "community development."

Q4. *The regulation indicates that community development includes "activities that revitalize or stabilize low- or moderate-income geographies." Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A4. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a distressed area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a distressed area (or a nearby area), that employs or serves residents of the area, and thus stabilizes the area, may be considered to have a community development purpose. For example, in an underserved, distressed area, a loan for a pharmacy that employs, and provides supplies to, residents of the area promotes community development.

Q5. *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A5. No. The regulations, for example, recognize that community development organizations and programs are frequently efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multi-state basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area. Furthermore, the regulations permit a wholesale or limited purpose institution to consider community development loans, community development services, and qualified investments wherever they are located, as long as the institution has otherwise adequately addressed the credit needs within its assessment area(s).

Q6. *What is meant by a "regional area" in the requirement that a community development loan must benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A6. A "regional area" may be as small as a city or county or as large as a multistate area. For example, the "mid-Atlantic states" may comprise a regional area. When examiners evaluate community development loans that benefit a regional area that includes the institution's assessment area, however, the examiners will consider the size of the regional area and the actual or potential benefit to the institution's assessment area(s). In most cases, the larger the regional area, the more diffuse the benefit will be to the institution's assessment area(s). Examiners may view loans with more direct benefits to an institution's assessment area(s) as more responsive to the credit needs of the area(s) than loans for which the actual benefit to the assessment area(s) is uncertain or for which the benefit is diffused throughout a larger area that includes the assessment area(s).

Q7. *What is meant by the term "primary purpose" as that term is used to define what constitutes a community development loan, a qualified investment or a community development service?*

A7. A loan, investment or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or

promoting economic development by financing small businesses and farms that meet the requirements set forth in §§ ____.12(h) or 563e.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved. The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities under either approach should be prepared to demonstrate the activities' qualifications.

§§ ____.12(j) and 563e.12(i) Community Development Service

Q1. *In addition to meeting the definition of "community development" in the regulation, community development services must also be related to the provision of financial services. What is meant by "provision of financial services"?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

Q2. *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

Q3. *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

- Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other financial services education to promote community development and affordable housing;
- Establishing school savings programs and developing or teaching financial education curricula for low- or moderate-income individuals;
- Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals; and
- Providing other financial services with the primary purpose of community development, such as low-cost bank accounts, including "Electronic Transfer Accounts" provided pursuant to the Debt Collection Improvement Act of 1996, or free government check cashing that increases access to financial services for low- or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

- Serving on a loan review committee;
- Developing loan application and underwriting standards;
- Developing loan processing systems;
- Developing secondary market vehicles or programs;
- Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- Furnishing financial services training for staff and management;
- Contributing accounting/bookkeeping services; and
- Assisting in fund raising, including soliciting or arranging investments.

§ ____.12(k) & 563e.12(j) Consumer Loan

Q1. *Are home equity loans considered "consumer loans"?*

A1. Home equity loans made for purposes other than home purchase, home improvement or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

Q2. *May a home equity line of credit be considered a "consumer loan" even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a "consumer loan" if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be "double counting" because part of the line may also have been reported under HMDA.

Q3. *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a

customer to be used for both consumer and small business purposes, consistent with the Call Report and TFR instructions, the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§ ____.12(m) & 563e.12(l) Home Mortgage Loan

Q1. *Does the term "home mortgage loan" include loans other than "home purchase loans"?*

A1. Yes. "Home mortgage loan" includes a "home improvement loan" as well as a "home purchase loan," as both terms are defined in the HMDA regulation, Regulation C, 12 CFR part 203. This definition also includes multifamily (five-or-more families) dwelling loans, loans for the purchase of manufactured homes, and refinancings of home improvement and home purchase loans.

Q2. *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA–LARs, even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as "other loan data." Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider this other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§ ____.12(n) & 563e.12(m) Income Level

Q1. *Where do institutions find income level data for geographies and individuals?*

A1. The income levels for geographies, i.e., census tracts and block numbering areas, are derived from Census Bureau information and are updated every ten years. Institutions may contact their regional Census Bureau office or the Census Bureau's Income Statistics Office at (301) 763–8576 to obtain income levels for geographies. See Appendix A of these Interagency Questions and Answers for a list of the regional Census Bureau offices. The income levels for individuals are derived from information calculated by the Department of Housing and Urban Development (HUD) and updated annually. Institutions may contact HUD at (800) 245–2691 to request a copy of "FY [year number, e.g., 1996] Median Family Incomes for States and their Metropolitan and Nonmetropolitan Portions."

Alternatively, institutions may obtain a list of the 1990 Census Bureau-calculated and the annually updated HUD median family incomes for metropolitan statistical areas (MSAs) and statewide nonmetropolitan areas by calling the Federal Financial Institution Examination Council's (FFIEC's) HMDA Help Line at (202) 452–2016. A free copy will be faxed to the caller through the "fax-back" system. Institutions may also call this number to have "faxed-back" an order form, from which they may order a list providing the median family income level, as a percentage of the appropriate MSA or nonmetropolitan median family income, of every census tract and block numbering area (BNA). This list costs $50. Institutions may also obtain the list of MSA and statewide nonmetropolitan area median family incomes or an order form through the FFIEC's home page on the Internet at "http://www.ffiec.gov/".

§ ____.12(o) & 563e.12(n) **Limited Purpose Institution**

Q1. *What constitutes a "narrow product line" in the definition of "limited purpose institution"?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

Q2. *What factors will the agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental and done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the agencies will consider the following factors:

- Is the other lending provided as an incident to the institution's wholesale lending?
- Are the loans provided as an accommodation to the institution's wholesale customers?
- Are the loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

Q3. *Do "niche institutions" qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public,

but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) ("niche institutions") generally would not qualify as limited purpose (or wholesale) institutions.

§ ____.12(s) & 563e.12(r) Qualified Investment

Q1. *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

Q2. *Are mortgage-backed securities or municipal bonds "qualified investments"?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs in order to qualify.

Q3. *Are Federal Home Loan Bank stocks and membership reserves with the Federal Reserve Banks "qualified investments"?*

A3. No. Federal Home Loan Bank (FHLB) stock and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* Q&A 3 addressing §§ ____.12(j) and 563e.12(i).

Q4. *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares in or to:

- Financial intermediaries (including, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low- income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation; Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, Small Business Investment Companies (SBICs) and specialized SBICs, that promote economic development by financing small businesses;
- Facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate- income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial services education; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable people to work.

Q5. *Will an institution receive consideration for charitable contributions as "qualified investments"?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term "grant." A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

Q6. *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or "bought down" the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The agencies will, however, consider the innovativeness and complexity of the community development loan within the bounds of safe and sound banking practices.

Q7. *Will the agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the agencies will consider donated labor of employees or directors of a financial institution in the service test if the activity is a community development service.

§ ____.12(t) Small Institution

Q1. *How are the "total bank and thrift assets" of a holding company determined?*

A1. "Total banking and thrift assets" of a holding company are determined by combining the total assets of all banks and/or thrifts that are majority-owned by the holding company. An institution is majority-owned if the holding company directly or indirectly owns more than 50 percent of its outstanding voting stock.

Q2. *How are Federal and State branch assets of a foreign bank calculated for purposes of the CRA?*

A2. A Federal or State branch of a foreign bank is considered a small institution if the Federal or State branch has less than $250 million in assets and the total assets of the foreign bank's or its holding company's U.S. bank and thrift subsidiaries that are subject to the CRA are less than $1 billion. This calculation includes not only FDIC-insured bank and thrift subsidiaries, but also the assets of any FDIC-insured branch of the foreign bank and the assets of any uninsured Federal or State branch (other than a limited branch or a Federal agency) of the foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

§ ____.12(u) Small Business Loan

Q1. *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of "loan to small business" in the instructions in the "Consolidated Reports of Conditions and Income" (Call

Report) and "Thrift Financial Reports" (TFR). In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report and TFR as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and TFR purposes may be considered as community development loans if they meet the regulatory definition.

Q2. *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by "nonfarm nonresidential properties," as defined in the Call Report and TFR, in amounts less than $1 million.

Q3. *Are loans secured by nonfarm residential real estate to finance small businesses "small business loans"?*

A3. No. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as "small business" loans for Call Report and TFR purposes. The agencies recognize that many small businesses are financed by loans secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as "Other Secured Lines/Loans for Purposes of Small Business."

Q4. *Are credit cards issued to small businesses considered "small business loans"?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report or TFR instructions.

§ ____.12(w) Wholesale Institution

Q1. *What factors will the agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans; and
- The institution's revenues from extending such loans are significant when compared to its overall operations.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in Q&A2 addressing §§ ____.12(o) and 563e.12(n).

§ ____.21—Performance Tests, Standards, and Ratings, in General

§ ____.21(a) Performance Tests and Standards

Q1. *Are all community development activities weighted equally by examiners?*

A1. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance.

§ ____.21(b) Performance Context

Q1. *Is the performance context essentially the same as the former regulation's needs assessment?*

A1. No. The performance context is a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The agencies will provide examiners with much of this information prior to the examination. The performance context is not a formal or written assessment of community credit needs.

§ ____.21(b)(2) Information Maintained by the Institution or Obtained From Community Contacts

Q1. *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a needs assessment. If an institution provides information to examiners, the agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). The agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

Q2. *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the agencies will consider information obtained from interviews conducted by other agency staff and by the other agencies. In order to augment contacts previously used by the agencies and foster a wider array of contacts, the agencies will share community contact information.

§ ____.21(b)(4) Institutional Capacity and Constraints

Q1. *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's Past Performance and the Performance of Similarly Situated Lenders

Q1. *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The agencies will consider an institution's past performance in its overall evaluation. For example, an institution's past performance may support a rating of "substantial noncompliance" if the institution has not improved performance rated as "needs to improve."

Q2. *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.22—Lending Test

§ ____.22(a) Scope of Test

§ ____.22(a)(1) Types of Loans Considered

Q1. *If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the agencies still evaluate the institution's home mortgage lending performance?*

A1. Yes. The agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

Q2. *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects; and an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the agencies will evaluate them even if the institution does not so elect. The agencies interpret "substantial majority" to be so significant a portion of the institution's lending activity by number or dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan Originations and Purchases/Other Loan Data

Q1. *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The agencies consider lending commitments (such as letters of credit) only at the option of the institution. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance.

Q2. *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

Q3. *May a financial institution receive consideration under CRA for modification, extension, and consolidation agreements (MECAs), in which it obtains loans from other institutions without actually purchasing or refinancing the loans, as those terms have been interpreted under CRA?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. An institution may present information about its MECA activities to examiners for consideration under the lending test as "other loan data."

Q4: *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A4: Yes. The lending test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. The test does not take into account whether or not such loans are guaranteed.

§ ____.22(b) Performance Criteria

Q1. *How will examiners apply the performance criteria in the lending test?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this Guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ ____.22(b)(1) Lending Activity

Q1. *How will the agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ ____.22(b)(2) & (3) Geographic Distribution and Borrower Characteristics

Q1. *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels and among borrowers of different income levels and businesses of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

Q2. *Must an institution lend to all portions of its assessment area?*

A2. The term "assessment area" describes the geographic area within which the agencies assess how well an

institution has met the specific performance tests and standards in the rule. The agencies do not expect that simply because a census tract or block numbering area is within an institution's assessment area(s) the institution must lend to that census tract or block numbering area. Rather the agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

Q3. *Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

Q4. *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small institutions being evaluated under the small institution performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

Q5. *Under the lending test, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4) Community Development Lending

Q1. *When evaluating an institution's record of community development lending, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution's record of community development lending under § ____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40% of its units for low-income residents and the other project allocates 65% of its units for low-income residents. An institution would report both loans as $10 million community development loans under the § ____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65% project provides more affordable housing for more people per dollar expended.

Under § ____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.22(b)(5) Innovative or Flexible Lending Practices

Q1. *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income

geographies or individuals. For example:

- In connection with a community development loan program, a bank may establish a technical assistance program under which the bank, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, a bank may implement a program under which, in addition to providing financing, the bank also contracts with the small business borrowers. Such a contracting arrangement would not, standing alone, qualify for CRA consideration. However, it may be favorably considered as an innovation that augments the loan program's success and effectiveness, and improves the program's ability to serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

§ ____.22(c) Affiliate Lending

§ ____.22(c)(1) In General

Q1. *If an institution elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on Affiliate Lending

§ ____.22(c)(2)(i) No Affiliate May Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase

Q1. *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

§ ____.22(c)(2)(ii) If an institution elects to have its supervisory agency consider loans within a particular lending category made by one or more of the institution's affiliates in a particular assessment area, the institution shall elect to have the agency consider all loans within that lending category in that particular assessment area made by all of the institution's affiliates.

Q1. *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has one or more affiliates, such as a mortgage bank that makes loans in the institution's assessment area. If the institution elects to include the mortgage bank's home mortgage loans, it must include all of mortgage bank's home mortgage loans made in its assessment area. The institution cannot elect to include only those low- and moderate-income home mortgage loans made by the mortgage bank affiliate and not home mortgage loans to middle- and upper-income individuals or areas.

Q2. *How is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against "cherry-picking" to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a Consortium or a Third Party

Q1. *Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation ("CDC") that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. Q&A1 addressing § ____.23(b) provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests.

Q2. *How will examiners evaluate loans made by consortia or third parties under the lending test?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will only be considered if they qualify as community development loans and will only be considered under the community development criterion of the lending test. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or

purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under all the lending test criteria appropriate to them depending on the type of loan.

Q3. *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR ____.22(d), may the third party also receive consideration for these loans?*

A3. Yes, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR ____.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR ____.22(d).

§ ____.23—Investment Test

§ ____.23(a) Scope of Test

Q1: *May an institution receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1. Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between "direct" and "indirect" investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

§ ____.23(b) Exclusion

Q1. *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro-rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming a share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would only receive consideration under the investment test for the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§ ____.23(e) Performance Criteria

Q1. *When applying the performance criteria of § ____.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?*

A1. Yes. Although § ____.23(e)(1) speaks in terms of the dollar amount of qualified investments, the criterion permits an examiner to weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60% of its face value supported by loans to low- or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100% of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Public Evaluation. However, no matter how a qualified investment is handled for purposes of § ____.23(e)(1), it will also be evaluated with respect to the qualitative performance criteria set forth in § ____.23(e)(2), (3) and (4). By applying all criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the Investment Test than a qualified investment with a higher dollar amount, but with fewer qualitative enhancements.

Q2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as that is defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the

same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24—Service Test

§ ____.24(d) Performance Criteria—Retail Banking Services

Q1. *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines ("ATMs"). The principal focus is on an institution's current distribution of branches; therefore, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services, such as ATMs, are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

Q2. *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDAs)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA account holders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA account holders or prospective account holders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to § ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans.

§ ____.24(d)(3) Availability and Effectiveness of Alternative Systems for Delivering Retail Banking Services

Q1. *How will examiners evaluate alternative systems for delivering retail banking services?*

A1. The regulation recognizes the multitude of ways in which an institution can provide services, for example, ATMs, banking by telephone or computer, and bank-by-mail programs. Delivery systems other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low- and moderate-income areas and individuals. The list of systems in the regulation is not intended to be inclusive.

Q2. *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.25 Community Development Test for Wholesale or Limited Purpose Institutions

§ ____.25(d) Indirect Activities

Q1. *How are investments in third party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding §§ ____.22(d) and ____.23(b).

§ ____.25(e) Benefit to Assessment Area(s)

Q1. *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community Development Performance Rating

Q1. *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26—Small Institution Performance Standards

§ ____.26(a) Performance Criteria

Q1. *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider "lending-related activities," including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in

connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area, and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

Q2. *What is meant by "as appropriate" when referring to the fact that lending-related activities will be considered, "as appropriate," under the various small institution performance criteria?*

A2. "As appropriate" means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request.

Q3. *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

Q4. *Under the small institution performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments and letters of credit.

Q5. *Under the small institution performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purposes of determining whether the small institution receives a satisfactory CRA rating.

§ ____.26(a)(1) Loan-to-deposit Ratio

Q1. *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report/Uniform Thrift Performance Report (UBPR/UTPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR and UTPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

Q2. *How is the "reasonableness" of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area, and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

Q3. *If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?*

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26(a)(2) Percentage of Lending Within Assessment Area(s)

Q1. *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions, loan demand, the institution's size, financial condition and business strategies, and branching network and other aspects of the institution's lending record.

§ ____.26(a)(3) & (4) Distribution of Lending Within Assessment Area(s) by Borrower Income and Geographic Location

Q1. *How will a small institution's performance be assessed under these lending distribution criteria?*

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use proxies such as loan size for estimating borrower characteristics, where appropriate.

§ ____.26(b) Performance Rating

Q1. *How can a small institution achieve an "outstanding" performance rating?*

A1. A small institution that meets each of the standards for a "satisfactory" rating and exceeds some or all of those standards may warrant an "outstanding" performance rating. In assessing performance at the "outstanding" level, the agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an "outstanding"

performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a "satisfactory" rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated "outstanding" based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated "outstanding."

Q2. *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in Q&A6 addressing §§ ____.12(i) and 563e.12(h).

§ ____.27—Strategic Plan

§ ____.27(c) Plans in General

Q1. *To what extent will the agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit agency evaluation of the plan. However, the agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

Q2. *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The agencies will coordinate review of and action on the joint plan. Each agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ ____.27(f) Plan Content

§ ____.27(f)(1) Measurable Goals

Q1. *How should "measurable goals" be specified in a strategic plan?*

A1. Measurable goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan Approval

§ ____.27(g)(2) Public Participation

Q1. *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the agencies is required to solicit public comment on the plan for a period of thirty (30) days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28—Assigned Ratings

Q1. *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a "satisfactory" or "outstanding" CRA rating?*

A1. No. Moreover, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a "needs to improve" CRA rating. However, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating.

Q2. *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A2. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§ ____.28(a) Ratings in General

Q1. *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state ("multistate institution") will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each metropolitan statistical area and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will

include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate metropolitan statistical area.

Q2. *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state ("single-state institution") will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

Q3. *How do the agencies weight performance under the lending, investment and service test for large retail institutions?*

A3. A rating of "outstanding," "high satisfactory," "low satisfactory," "needs to improve," or "substantial noncompliance," based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.

COMPOSITE RATING POINT REQUIREMENTS—Continued

[Add points from three tests]

Rating	Total points
Satisfactory	11 through 19.
Needs to Improve	5 through 10
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

§ ____.29—Effect of CRA Performance on Applications

§ ____.29(a) CRA Performance

Q1. *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In cases in which CRA performance is a relevant factor, information from a CRA performance examination of the institution is a particularly important consideration in the applications process because it represents a detailed evaluation of the institution's CRA performance by its Federal supervisory agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

Q2. *What consideration is given to an institution's commitments for future action in reviewing an application by those agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ ____.29(b) Interested Parties

Q1. *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the applications process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the agencies' procedures, and are carefully considered in making the agencies' decision. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the agencies' procedures.

Q2. *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. These agreements are not monitored or enforced by the agencies.

§ ____.41—Assessment Area Delineation

§ ____.41(a) In General

Q1. *How do the agencies evaluate "assessment areas" under the revised CRA regulations compared to how they evaluated "local communities" that institutions delineated under the original CRA regulations?*

A1. The revised rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its "local community" or assessment area(s) in a particular manner. Therefore, the agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion as they did under the original regulation. Rather, the agencies will only review whether the assessment area delineated by the institution complies with the limitations set forth in the regulations at § ____.41(e).

Q2. *If an institution elects to have the agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

Q3. *Can a financial institution identify a specific ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography.

§ ____.41(c) Geographic Area(s) for Institutions Other Than Wholesale or Limited Purpose Institutions

§ ____.41(c)(1) Generally Consist of One or More MSAs or One or More Contiguous Political Subdivisions

Q1. *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts or block numbering areas ("geographies") in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

Q2. *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with § ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(d) Adjustments to Geographic Area(s)

Q1. *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (i.e., census tracts or block numbering areas) in their assessment areas and generally should include entire political subdivisions. Because census tracts and block numbering areas are the common geographic areas used consistently nationwide for data collection, the agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on Delineation of an Assessment Area

§ ____.41(e)(3) May Not Arbitrarily Exclude Low- or Moderate-income Geographies

Q1. *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include:

- Income levels in the institution's assessment area(s) and surrounding geographies;
- Locations of branches and deposit-taking ATMs;
- Loan distribution in the institution's assessment area(s) and surrounding geographies;
- The institution's size;
- The institution's financial condition; and
- The business strategy, corporate structure and product offerings of the institution.

§ ____.41(e)(4) May Not Extend Substantially Beyond a CMSA Boundary or Beyond a State Boundary Unless Located in a Multistate MSA

Q1. *What are the maximum limits on the size of an assessment area?*

A1. An institution shall not delineate an assessment area extending substantially across the boundaries of a consolidated metropolitan statistical area (CMSA) or the boundaries of an MSA, if the MSA is not located in a CMSA. Similarly, an assessment area may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within a CMSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution shall delineate separate assessment areas for the areas inside and outside a CMSA (or MSA if the MSA is not located in a CMSA) if the area served by the institution's branches outside the CMSA (or MSA) extends substantially beyond the CMSA (or MSA) boundary. Similarly, the institution shall delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

Q2. *Can an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA if the MSA is not located in a CMSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area (so, in this example, there would be three assessment areas). However, if the MSA and the two counties were in the same CMSA, then the institution could delineate only one assessment area including them all.

§ ____.42—Data Collection, Reporting, and Disclosure

Q1. *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. A small institution is a bank or thrift that, as of December 31 of either of the prior two calendar years, had total assets of less

than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

For example:

Date	Institution's asset size ($ million)	Data collection required for following calendar year? (million)
12/31/94	$240	No.
12/31/95	260	No.
12/31/96	230	No.
12/31/97	280	No.
12/31/98	260	Yes, beginning 1/01/99.

All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the subsequent year. In the example, above, the institution would report the data collected for calendar year 1999 by March 1, 2000.

The Board of Governors of the Federal Reserve System is handling the processing of the reports for all of the primary regulators. The reports should be submitted in a prescribed electronic format on a timely basis. The mailing address for submitting these reports is: Attention: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Avenue, N.W., 5th Floor, Washington, DC 20006.

Q2. *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs must follow the precise format for the new CRA data collection and reporting rules. This format may be obtained by contacting the CRA Assistance Line at (202) 872–7584.

Q3. *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported.

Q4. *Should renewals of lines of credit be reported?*

A4. No. Similar to loan renewals, renewals of lines of credit are not considered loan originations and should not be reported.

Q5. *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

• Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets of at least $250 million or was part of a holding company that had year-end banking and thrift assets of at least $1 billion.

• Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.

• Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

Q6. *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may send a written request to: Attn.: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Ave, N.W., 5th Floor, Washington, DC 20006.

They may also call the CRA Assistance Line at (202) 872–7584 or send Internet e-mail to CRAHELP@FRB.GOV.

Q7. *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions must be prepared to identify those loans, investments and services to be evaluated under the community development test.

§ ____.42(a) Loan Information Required to be Collected and Maintained

Q1. *Must institutions collect and report data on all commercial loans under $1 million at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in the Call Report, Schedule RC–C, Part II, and in the TFR, Schedule SB. Small business loans are defined as those whose original amounts are $1 million or less and that were reported as either "Loans secured by nonfarm or nonresidential real estate" or "Commercial and Industrial loans" in Part I of the Call Report or TFR.

Q2. *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain in a standardized, machine readable format information on each small business loan originated or purchased for each calendar year:

• A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

• The loan amount at origination; The loan location; and

• An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

• The location of the loan must be maintained by census tract or block numbering area. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

Q3. *Will farm loans need to be segregated from business loans?*

A3. Yes.

Q4. *Should institutions collect and report data on all agricultural loans under $500,000 at origination?*

A4. Institutions are to report those farm loans that they capture in the Call Report, Schedule RC–C, Part II and Schedule SB of the TFR. Small farm loans are defined as those whose original amounts are $500,000 or less and were reported as either "Loans to finance agricultural production and other loans to farmers" or "Loans

secured by farmland" in Part I of the Call Report and TFR.

Q5. *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution collects and reports information about refinancings but does not collect and report information about renewals. A *refinancing* typically involves the satisfaction of an existing obligation that is replaced by a new obligation undertaken by the same borrower. When an institution refinances a loan, it is considered a new origination, and loan data should be collected and reported, if otherwise required. Consistent with HMDA, however, if under the original loan agreement, the institution is unconditionally obligated to refinance the loan, or is obligated to refinance the loan subject to conditions within the borrower's control, the institution would not report these events as originations.

For purposes of the CRA data collection and reporting requirements, an extension of the maturity of an existing loan is a *renewal*, and is not considered a loan origination. Therefore, institutions should not collect and report data on loan renewals.

Q6. *Does a loan to the "fishing industry" come under the definition of a small farm loan?*

A6. Yes. Instructions for Part I of the Call Report and Schedule SB of the TFR include loans "made for the purpose of financing fisheries and forestries, including loans to commercial fishermen" as a component of the definition for "Loans to finance agricultural production and other loans to farmers." Part II of Schedule RC–C of the Call Report and Schedule SB of the TFR, which serve as the basis of the definition for small business and small farm loans in the revised regulation, capture both "Loans to finance agricultural production and other loans to farmers" and "Loans secured by farmland."

Q7. *How should an institution report a home equity line of credit, part of which is for home improvement purposes, but the predominant part of which is for small business purposes?*

A7. The institution has the option of reporting the portion of the home equity line that is for home improvement purposes under HMDA. That portion of the loan would then be considered when examiners evaluate home mortgage lending. If the line meets the regulatory definition of a "community development loan," the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as "Other Secured Lines/Loans for Purposes of Small Business."

Q8. *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

Q9. *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with "0" in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

Q10. *How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices dictate that an institution know the location of its customers and loan collateral. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to post office box numbers or rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number or post office box, the institution knows the location (i.e., the census tract or block numbering area) of the borrower or loan collateral. Once the institution has this information available, it should assign a census tract or block numbering area to that location (geocode) and report that information as required under the regulation.

For loans originated or purchased in 1998 or later, if the institution cannot determine the borrower's street address, and does not know the census tract or block numbering area, the institution should report the borrower's state, county, MSA, if applicable, and "NA," for "not available," in lieu of a census tract or block numbering area code.

§ ____.42(a)(2) Loan Amount at Origination

Q1. *When an institution purchases a small business or small farm loan, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's and TFR's use of the "original amount of the loan" to determine whether a loan should be reported as a "loan to a small business" or a "loan to a small farm" and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

Q2. *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report or TFR, which reflect loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the agencies may combine these loans for purposes of evaluation under the CRA.

Q3. *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business' employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the "small

business loan" definition in the regulation are met. The credit card program's "amount at origination" is the sum of all of the employee/business credit cards" credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The Loan Location

Q1. *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the business headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of Gross Annual Revenue

Q1. *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, the institution should not adjust the borrower's revenues for reporting purposes.

Q2. *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating "revenues not known" on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

Q3. *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue.

Q4: *When collecting and reporting the gross annual revenue of small business or farm borrowers, do institutions collect and report the gross annual revenue or the adjusted gross annual revenue of its borrowers?*

A4: Institutions collect and report the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect and report the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution would not indicate on the CRA data collection software that the gross annual revenues of the borrower are $1 million or less. (*See* Q&A2 regarding § ____.42(a)(4).)

§ ____.42(b) Loan Information Required to be Reported

§ ____.42(b)(1) Small Business and Small Farm Loan Data

Q1. *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract or block numbering area in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less;
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000;
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans; and
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community Development Loan Data

Q1. *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

Q2. *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can FHA, VA and SBA loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definitions of home mortgage, small business, or small farm loans only in those respective categories even if they also meet the definition of community development loans. As a practical matter, this is not a disadvantage for retail institutions because any affordable housing mortgage, small business, small farm or consumer loan that would otherwise meet the definition of a community development loan will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area can receive consideration under the borrower characteristic criteria of the lending test. *See* Q&A4 under § ____.22(b)(2) & (3).

Limited purpose and wholesale institutions also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories; however, they must also report any loans from those categories that meet the regulatory definition of "community development loans" as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm and consumer loans.

Q3. *When the primary purpose of a loan is to finance an affordable housing project for low-or moderate-income individuals, but, for example, only 40% of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. Yes. As long as the primary purpose of the loan is a community development purpose, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. However, as noted in Q&A1 addressing § ____.22(b)(4), examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

§ ____.42(b)(3) Home Mortgage Loans

Q1. *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional Data Collection and Maintenance

§ ____.42(c)(1) Consumer Loans

Q1. *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination or purchase;
- The loan location; and
- The gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of Borrower

Q1. *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

Q2. *May an institution list "0" in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

Q3. *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§ ____.42(c)(2) Other Loan Data

Q1. *Schedule RC–C, Part II of the Call Report and schedule SB of the TFR do not allow financial institutions to report loans for commercial and industrial purposes that are secured by residential real estate. Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. Is there a way to collect this information on the software to supplement an institution's small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the institution should collect and report information about these loans as community development loans. Otherwise, *at an institution's option*, it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by residential real estate for consideration in the CRA evaluation of its small business lending. To facilitate this optional data collection, the software distributed free-of-charge by the FFIEC provides that an institution may collect this information to supplement its small business lending data by choosing loan type, "Other Secured Lines/Loans for Purposes of Small Business," in the individual loan data. (The title of the loan type, "Other Secured Lines of Credit for Purposes of Small Business," which was found in the instructions accompanying the 1996 data collection software, is being changed to "Other Secured Lines/Loans for Purposes of Small Business" in order to accurately reflect that lines of credit and loans may be reported under this loan type.) This information should be maintained at the institution but should not be submitted for central reporting purposes.

Q2. *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner

consideration information on letters of credit and commitments.

Q3. *Are commercial and consumer leases considered laans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR § ____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as "other loan data" under 12 CFR § ____.42(c)(2) for consideration under the lending test.

§ ____.42(d) Data on affiliate lending

Q1. *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluatian, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 203 (Regulation C, implementing HMDA). At its option, the institution may either provide examiners with the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ ____.43—Content and Availability of Public File

§ ____.43(a) Information Available to the Public

§ ____.43(a)(1) Public Comments

Q1. *What happens to camments received by the agencies?*

A1. Comments received by a Federal financial supervisory agency will be on file at the agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

Q2. *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the sma!l institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s) (§ ____.26(a)(5)). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's Federal financial supervisory agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

Q3. *May an institution include a response to its CRA Performance Evaluation in its public file?*

A3. Yes. However, the format and content of the evaluation, as transmitted by the supervisory agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The institution must update the description on a quarterly basis.

§ ____.43(b) Additional Information Available to the Public

§ ____.43(b)(1) Institutions Other Than Small Institutions

Q1. *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

Q2. *May an institution retain the compact disc pravided by the Federal Financial Institution Examination Council that contains its CRA Disclosure Statement in its public file, rather than printing a hard copy of the CRA Disclosure Statement for retention in its public file?*

A2. Yes, if the institution can readily print out from the compact disc (or a duplicate of the compact disc) its CRA Disclosure Statement for a consumer when the public file is requested. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the bank should provide the CRA Disclosure Statement in a paper copy, or in another format acceptable to the requestor, within 5 calendar days, as required by § ____.43(c)(2)(ii).

§ ____.43(c) Location of Public Information

Q1. *What is an institution's "main office"?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ ____.44—Public Notice by Institutians

Q1. *Are there any placement or size requirements for an institution's public natice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ ____.45—Publication of Planned Examination Schedule

Q1. *Where will the agencies publish the planned examination schedule for the upcaming calendar quarter?*

A1. The agencies may use the **Federal Register**, a press release, the Internet, or other existing agency publications for disseminating the list of the institutions scheduled to for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory agency for information on how the agency is publishing the planned examination schedule.

Q2. *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative af whether an institution will be examined in that quarter?*

A2. No. The agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix A to Part ____—Ratings

Q1. *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution

that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area. Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending test criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

Appendix B to Part____—CRA Notice

Q1. *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: The address of the deputy comptroller of the district in which the institution is located should be inserted in the appropriate blank. These addresses can be found at 12 CFR 4.5(a).

OCC-, FDIC-, and Board-supervised institutions: "Officer in Charge of Supervision" is the title of the responsible official at the appropriate Federal Reserve Bank.

Appendix A—Regional Offices of the Bureau of the Census

To obtain median family income levels of census tracts, MSAs, block numbering areas and statewide nonmetropolitan areas, contact the appropriate regional office of the Bureau of the Census as indicated below. The list shows the states covered by each regional office.

Atlanta

(404) 730–3833

Alabama, Florida, Georgio

Boston

(617) 424–0510

Connecticut, Maine, Massochusetts, New Hampshire, Rhode Islond, Vermont

Charlotte

(704) 344–6144

District of Columbio, Kentucky, North Corolino, South Carolina, Tennessee, Virginia

Chicago

(708) 562–1740

Illinois, Indiana, Wisconsin

Dallas

(214) 640–4470 or (800) 835–9752

Louisiono, Mississippi, Texos

Denver

(303) 969–7750

Arizona, Colorado, Nebrasko, New Mexico, North Dakota, South Dakota, Utah, Wyoming

Detroit

(313) 259–1875

Michigon, Ohio, West Virginio

Kansas City

(913) 551–6711

Arkonsas, Iowo, Konsos, Minnesoto, Missouri, Oklohomo

Los Angeles

(818) 904–6339

Colifornio

New York

(212) 264–4730

New York, Puerto Rico

Philadelphia

(215) 597–8313 or (215) 597–8312

Delawore, Morylond, New Jersey, Pennsylvonia

Seattle

(206) 728–5314

Alasko, Howaii, Idaho, Montana, Nevado, Oregon, Woshington

End of Text of the Interagency Questions and Answers

Dated: April 27, 1999.

Keith J. Todd,

Executive Secretory, Federal Finoncial Institutions Exominotion Council.

[FR Doc. 99–10841 Filed 4–30–99; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 18, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Edward Salomon, Chicago, Illinois and Salvatore Scambiatterra (also known as Sam Scott), Park Ridge, Illinois, individually and as voting trustees of shares in a voting trust), to acquire additional voting shares of Greater Chicago Financial Corp., Chicago, Illinois, and thereby indirectly acquire Austin Bank of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, April 28, 1999.

Robert deV. Frierson,

Associote Secretory of the Boord.

[FR Doc. 99–11033 Filed 4–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. East Alabama Financial Group, Inc., Wedowee, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Small Town Bank, Wedowee, Alabama (in organization).

Board of Governors of the Federal Reserve System, April 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11032 Filed 4–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 9910112]

Rohm and Haas Company et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 2, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Timothy Feighery and Wallace Easterling, FTC/S–3627, 601 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3520 or (202) 326–2936.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 22, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from Rohm and Haas Company ("Rohm & Haas") and Morton International, Inc. ("Morton") to resolve competitive concerns arising out of Rohm & Haas's proposed acquisition of Morton. Under the proposed Order, Rohm & Haas and Morton ("respondents") would divest the Morton business of producing and selling acrylic water-based polymers for use in the formulation of floor care products.

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and comments received and decide whether to withdraw its acceptance of the agreement or make final the agreement's proposed Order.

The proposed complaint alleges that the acquisition, if consummated, would violate section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, as amended, in the market for the sale of acrylic water-based polymers for use in formulation of floor care products ("Water-Based Floor Care Polymers"). According to the proposed complaint, Water-Based Floor Care Polymers impart essential properties, such as hardness, slip resistance and gloss, to floor care products. Major customers of Water-Based Floor Care Polymers are product formulators, who sell finished floor care products, such as polishes, mainly to industrial and institutional users, including factories, schools and retail stores. The proposed complaint alleges that the Water-Based Floor Care Polymers market in North America is highly concentrated, with Rohm & Haas and Morton each controlling a significant share of the market. The proposed complaint further alleges that the effect of the acquisition may be to substantially lessen competition and to tend to create a monopoly by, among other things, eliminating direct competition between Rohm & Haas and Morton, increasing the likelihood that purchasers of Water-Based Floor Care Polymers will be forced to pay higher prices, increasing the likelihood that technical and sales services provided to customers will be reduced, and increasing the likelihood that innovation will be reduced. Customers have complained that the effect of the transaction, if permitted to close, would be increased prices for floor care polymers and reduced technical service, support, and innovation.

The proposed complaint further alleges that entry into the Water-Based Floor Care Polymers market would not be timely, likely, or sufficient to deter or offset the adverse effects of the acquisition on competition. Entry is difficult in this market because of the length of time it would take and the expense that would be incurred in building appropriate chemical production facilities, the difficulty in acquiring the technical expertise necessary to produce the polymers, and the difficulty in gaining recognition in a marketplace in which customers are reluctant to switch from proven suppliers.

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the North American market for Water-Based Floor Care Polymers, as alleged in the complaint, by requiring the divestiture of Morton's Water-Based Floor Care Polymers business. Under the terms of the proposed Order, respondents are required to divest, no later than ten (10) days after the date the Commission accepts the Agreement for public comment, Morton's worldwide Water-Based Floor Care Polymers business to GenCorp, Inc. ("GenCorp"). GenCorp currently produces water-based polymers for use in the graphics industry, a technology and production area closely related to Water-Based Floor Care Polymers. Divestiture of the Morton Water-Based Floor Care Polymers business to GenCorp is

designed to promote the viability and competitiveness of the divested business by taking advantage of the synergies that may be afforded through its combination with GenCorp, including expertise in related chemistries and economies of scale resulting from shared research and development, overhead and production.

The proposed Order requires that respondents divest all trade secrets, know-how, trade marks and trade names, intellectual property, intangible assets, and business information (including purchasing, sales, marketing, licensing, and similar information) relating to Morton's Water-Based Floor Care Polymers business. The proposed Order also requires that respondents provide incentives to certain employees identified by the acquirer as important to the continued competitiveness and viability of the Water-Based Floor Care Polymers business, to facilitate their transfer and the transfer of know-how, to the acquirer.

The proposed Order requires that respondents provide a transitional supply of products to the acquirer. The first supply arrangement provides that respondents supply to the acquirer, for a period not to exceed two years, the full line of Morton Water-Based Floor Care Polymers. The second transitional supply agreement requires that respondents supply to the acquirer, for a period not to exceed four years, Conrez® resin, a hard resin that enhances the flow characteristics of water-based polymers. These supply arrangements are designed to ensure the initial viability and success of the acquirer in the Water-Based Floor Care Polymers market by providing a seamless and continuous supply of Morton products to customers. The transitional supply agreements are intended to be of sufficient duration to give the acquirer time to assimilate the Morton polymers and perfect the production processes, in its own plants. This provision also provides the acquirer the time it needs to work with customers to build technical relationships and gain approvals for the products it manufactures in its own facilities, a critical requirement in this market.

The proposed Order also provides for the appointment of an Interim Trustee to ensure that respondents expeditiously perform their responsibilities under the proposed Order. The Interim Trustee will oversee the divestiture to ensure the adequacy of the transfer, to ensure that disputes between the parties will be identified and resolved quickly, clearly, and impartially, and to identify possible violations of the proposed Order.

If, following receipt and review of public comments regarding the proposed Order, the Commission determines to disapprove the divestiture to GenCorp, respondents are required to rescind the transaction with GenCorp, within five months, and divest Morton's Water-Based Floor Care Polymers business to an acquirer that receives the prior approval of the Commission. The proposed Order also provides that if respondents fail to divest the Morton Water-Based Floor Care Polymers business as required by the proposed Order, the Commission may appoint a Divestiture Trustee to divest the business, together with Morton's Greenville, South Carolina, manufacturing facility. This provision gives the Trustee the flexibility to divest the business to an entity not already in the water-based polymers business.

The proposed Order requires respondents to provide the Commission, within thirty (30) days of the date of Agreement is signed, with an initial report setting forth in detail the manner in which respondents will comply with the provisions relating to the divestiture of assets and the appointment and work of the Interim Trustee. The Order further requires respondents to provide the Commission with a report of compliance with the Order within sixty (60) days following the date the Order becomes final and every ninety (90) days thereafter until they have complied with the terms of the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–10997 Filed 4–30–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–15]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. National Birth Defects Prevention Study—(0920–0010)—Revision—National Center for Environmental Health (NCEH). The Division of Birth Defects and Pediatric Genetics (DBDPG), NCEH has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the 5 counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serve as an early warning system for new teratogens. Since 1993, the DBDPG has also been conducting the Birth Defects Risk Factor Surveillance (BDRFS) study, a case-control study of risk factors for selected birth defects.

Infants with birth defects are identified through MACDP and maternal interviews. Clinical/laboratory tests are conducted on approximately 300 cases and 100 controls per year. Controls are selected from among normal births in the same population. OMB approval (OMB 0920–0010) for MACDP and BDRFS was renewed in 1996 and will expire 30 September 1999.

This request is for a 3-year renewal with several changes listed below including a change in the study name:

1. In 1996, MACDP was still obtaining assistance from more than 10 Atlanta hospitals to conduct birth defects surveillance. Therefore, MACDP renewed its OMB approval at that time. In 1997, however, the State of Georgia exercised its option to require the reporting of birth defects under the state's disease reporting regulations, which list birth defects as a condition whose reporting is required by law. The Georgia Division of Health authorized the CDC to serve as its agent in the collection of these case reports. MACDP findings are shared with the state. Since birth defects surveillance in Atlanta is now a state requirement, the CDC is no longer requesting OMB clearance for this activity. Therefore, the Division of Birth Defects and Pediatric Genetics is not seeking renewal of its OMB clearance for the surveillance activities involved in MACDP.

2. The BDRFS is now called the National Birth Defects Prevention Study. The major components of this study have not changed. Infants with birth defects are identified through MACDP. Control infants are selected from birth hospitals in the same population. Mothers of case and control infants are interviewed by phone about their medical history, pregnancies, environmental exposures and lifestyle. The interview still takes about 1 hour but it is now a computer-based interview and answers are entered directly into the database instead of recorded on paper. Another change from the BDRFS is that we are no longer asking participants to come to a clinic for blood drawing. Instead of using blood to study genetic risk factors for birth defects, we will be studying DNA from cheek cells. After completing the interview, participants are sent a packet in the mail and are asked to collect cheek cells using small brushes from the mother, father, and infant. The brushes containing cheek cells are then sent back to the lab by mail. The cheek cell kits will include $20.00 as an incentive to complete them and send them back. The cost to the respondents is $0.00.

Forms	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)	Total Burden (in hrs.)
NBDPS case/control interview	400	1	1	400
Biologic specimen collection	1,200	2	.1666	400
Total				800

2. Case-Control Study of Lifetime Exposure to Drinking Water Disinfection By-products (DBPs) and Bladder Cancer in Pet Dogs—New—National Center for Environmental Health (NCEH). Current drinking water treatment practices in the U.S. typically include disinfection to control the pathogenic organisms responsible for waterborne diseases. Chlorine is the most commonly used chemical for drinking water disinfection; however, chlorine reacts with other drinking water contaminants to generate compounds that may cause cancer (e.g., bladder cancer) in people. The long latency period for the development of bladder cancer and the difficulty in reconstructing water consumption and exposure history make it difficult to verify the association between DBPs exposure and bladder cancer occurrence that has been reported in human epidemiologic studies. It would be useful to have an alternative method to examine this association. We propose to conduct a case-control study of pet dogs to test the hypothesis that consumption of water containing chlorination DBPs increases the dogs' risk for canine bladder cancer in a dose-dependent manner. Specifically, we are interested in examining the type of water disinfection treatment (chlorination, chloramination, or no disinfection) of the tap water consumed by dogs with and without bladder cancer. The total cost to respondents is $0.00.

Respondents	No. of respondents	Responses/respondents	Avg. burden per respondent (in hrs.)	Total burden (in hrs.)
Recruiting Project Participants	430	1	.26666	115
Telephone Interview	400	1	.08333	33
Total				148

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–10971 Filed 4–30–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–11–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Evaluation of Customer Satisfaction of the Centers for Disease Control and Prevention (CDC) Internet Home Page and Links—New—CDC proposes to conduct consumer satisfaction research

around its Internet site in order to determine whether the information, services, and materials on this web-site are presented in an appropriate technological format and whether it meets the needs, wants, and preferences of visitors or "customers" to the Internet site.

Information on the site focuses on disease prevention, health promotion, and epidemiology. The site is designed to serve the general public, persons at risk for disease, injury, and illness, and health professionals. This research will ensure that these audiences have opportunity to provide "customer feedback" regarding the value and effectiveness of the information, services, and products of the CDC web-site and whether these materials are easy to access, clear, and informative. The initial 60 day **Federal Register** Notice was solely for the evaluation of the National Center for HIV, STD, and TB Prevention (NCHSTP) website, but has since been modified to include the entire Agency. The total annual burden hours are 30,667.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
Visitors to CDC Internet Site	184,000	1	0.1

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–10970 Filed 4–30–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The 2000 FDA Science Forum—FDA and the Science of Safety: New Perspectives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA), Office of Science, is announcing the following meeting entitled "The 2000 FDA Science Forum—FDA and the Science of Safety: New Perspectives." The forum is devoted to the presentation and sharing of data, knowledge, and ideas among the diverse disciplines of risk management. The forum will bring FDA scientists together with industry, academia, government agencies, consumer groups, and the public to explore the scientific and practical issues related to the safety evaluation and risk management of FDA-regulated products.

Co-sponsored by FDA's Office of Science, the American Association of Pharmaceutical Scientists, FDA's Office of Women's Health, FDA's Chapter of Sigma Xi, and the Scientific Research Society.

Date and Time: The forum will be held on Monday, February 14, 2000, from 8:30 a.m. to 6 p.m., and Tuesday, February 15, 2000, from 8:30 a.m. to 5 p.m.

Location: Washington Convention Center, rms. 29 to 32 (lower level), and Hall C (upper level), 900 Ninth St. NW., Washington, DC 20001.

Contact: Susan A. Homire, Food and Drug Administration, Office of Science (HF–33), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3366, e-mail "shomire@oc.fda.gov".

Registration: Registration information will be provided at a later date.

SUPPLEMENTARY INFORMATION: Speakers and panelists will address emerging issues in the safety assessment of foods, drugs, biologics, and medical devices. Plenary lectures and discussion groups will provide perspectives on the following topics: (1) Walking and Talking: The Art and Science of Risk Communication, (2) Contemporary Issues in Risk Assessment, (3) Postmarket Surveillance—Beyond Passive Surveillance, (4) The Food Safety Initiative—The Risk Perspective, (5) Risk and Gender Effects, and (6) Risk Assessment in Action.

Dated: April 26, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–11057 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: The Microbiology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on May 20, 1999, 9:45 a.m. to 6:30 p.m., and May 21, 1999, 8:30 a.m. to 4:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD. 20850, 301–594–2096, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 20, 1999, the committee will discuss and make recommendations on a premarket notification submission for a qualitative in vitro diagnostic assay intended for the detection of human cytomegalovirus (CMV) deoxyribonucleic acid (DNA) in human peripheral white blood cells and its labeling. The focus of the discussion will be the appropriate use of signal amplification terminology. The committee will also discuss, make recommendations, and vote on a premarket approval application (PMA) supplement for an in vitro diagnostic target-amplified nucleic acid probe test used for the detection of *Mycobacterium tuberculosis* complex in sediments prepared from sputum (induced or expectorated), bronchial specimens, or tracheal aspirates. The device as modified is indicated for use of acid-fast bacilli (AFB) smear negative and AFB smear positive respiratory specimens for the diagnosis of active pulmonary tuberculosis disease. On May 21, 1999, the committee will discuss, make recommendations, and vote on a PMA for an in vitro diagnostic qualitative

device to detect immunoglobulin G (IgG) antibodies to parvovirus B19 as a marker of previous infection in human serum and plasma. The IgG test is indicated for use in all women where there is a suspicion of exposure to parvovirus B19. The committee will also discuss, make recommendations, and vote on a PMA for an in vitro diagnostic qualitative device to detect IgM antibodies to parvovirus B19 in human serum and plasma. The IgM test is indicated for use in conjunction with the parvovirus B19 IgG enzyme immunoassay to determine immunological status during the first trimester of pregnancy and for the testing of pregnant women who have sonographic evidence of abnormal fetal development, such as hydrops fetalis, or who had an adverse outcome, such as fetal death or premature delivery with fetal abnormalities.

Procedure: On May 20, 1999, from 9:45 a.m. to 6:30 p.m., and on May 21, 1999, from 9:30 a.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 10, 1999. On May 20, 1999, oral presentations from the public will be scheduled between approximately 11:15 a.m. and 11:45 a.m. and between approximately 3:30 p.m. and 4 p.m. On May 21, 1999, oral presentations from the public will be scheduled between approximately 10:15 a.m. and 10:45 a.m. and between approximately 2 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 10, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberation: On May 21, 1999, from 8:30 a.m. to 9:30 a.m., the meeting will be closed to the public to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to present and future agency issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 26, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–10982 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1101–N2]

Medicare Program; Meetings of the Competitive Pricing Demonstration Area Advisory Committee, Maricopa County, AZ

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

ACTION: Revised notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces meetings of the Area Advisory Committee for the Maricopa County Competitive Pricing Demonstration.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an Area Advisory Committee (AAC) in the designated area to advise on implementation of the project, including the marketing and pricing of the plan and other factors. AAC meetings are open to the public.

DATES: The revised schedule for meetings is May 18 and 19, 1999, from 8:30 a.m. until 5 p.m., m.s.t., and June 7 and 8, 1999, from 8:30 a.m. until 5 p.m., m.s.t.

ADDRESSES: The meetings on May 18 and 19, 1999, and June 7 and 8, 1999, will be held at the YWCA of the USA, Leadership Development Conference Center, 9440 North 25th Avenue, Phoenix, AZ 85021, (602) 944–0569.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Abbott, Regional Administrator, Health Care Financing Administration, 75 Hawthorne Street, 4th Floor, San Francisco, CA 94105, (415) 744–3501.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology.

Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee to make recommendations concerning the designation of areas for the project and appropriate research designs for implementation. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area and other factors.

This notice announces the revised schedule of meetings of the Maricopa County AAC. We originally published a schedule of the Maricopa County AAC meetings in the March 11, 1999, issue of the **Federal Register**, at 64 FR 12173. This notice adds one day to the third AAC meeting and adds a fourth meeting. The second day of both meetings (May 19 and June 8) may be subject to cancellation.

The Maricopa County AAC will meet for the purpose of advising the Secretary on how the project will be implemented. The AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The Maricopa County AAC members are: Joseph Anderson, Schaller Anderson Inc.; Rick Badger, Pacificare of Arizona; Reginald Ballantyne III, PMH Health Resources, Inc.; Donna Buelow, Arizona State Retirement System; Charles Cohen, Arizona Department of Insurance; John Hensing, M.D., Samaritan Health Systems; Mary Lynn Kasunic, Area Agency on Aging; Anne Lindeman, Governor's Advisory Council on Aging; Ben Lopez, Honeywell Corp., Thomas Marreel, William M. Mercer Associates; Anthony Mitten, Maricopa County Medical Society; Edward Munno, Jr., Intergroup of Arizona; Susan Navran, Blue Cross Blue Shield of Arizona; Erik Olsen, D.D.S., American Association of Retired Persons; Leland Peterson, Sun Health Corp.; Donna Redford, Arizona Bridge to Independent Living; Herb Rigberg, M.D., Health Services Advisory Group; Martha Taylor, Arizona SHIP; Clyde Wright, M.D., Cigna of Arizona; Arthur Pelberg, M.D., Schaller Anderson Inc.; Joseph Hanss, M.D., physician; and Phyllis Biedess, Director, AHCCCS. In accordance with section 4012(b) of the BBA, the AAC will exist for the duration of the project in the area, expected to be 5 years from the January 1, 2000, start date.

The Maricopa County AAC held its first two meetings on March 31, 1999, and April 20, 1999.

The third meeting will be extended for a second day. The third meeting will now take place on May 18 and 19, 1999.

However, the second day of the meeting (May 19) is subject to cancellation. The agenda will include a detailed discussion of a standard benefit package, a detailed discussion and possible decision on the government contribution, and any other issues outstanding.

A fourth meeting of the Maricopa County AAC will take place on June 7 and 8, 1999. However, the second day of the meeting (June 8) is subject to cancellation. This meeting will summarize the decisions made in earlier meetings, decide on the standard benefit package, and continue the discussions and make final decisions on any outstanding issues from the previous meetings.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues mentioned in the three preceding paragraphs should contact the San Francisco Regional Administrator by 12 noon for each of the following days:

May 7, 1999, for the third meeting.
May 27, 1999, for the fourth meeting.

Anyone who is not scheduled to speak may submit written comments to the San Francisco Regional Administrator by:

May 11, 1999, for the third meeting.
May 28, 1999, for the fourth meeting.

These meetings are open to the public, but attendance is limited to space available.

Authority: Section 4012 of the Balanced Budget Act of 1997, Pub. L. 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App.2, Section 10(a)).

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

Dated: April 28, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–11062 Filed 4–30–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

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

Proposed Project: Uncompensated Services Reporting and Recordkeeping—42 CFR 124, Subpart F (OMB No. 0915–0077): Revision

Titles VI and XVI of the Public Health Service Act, commonly known as the Hill-Burton Act, provide for government grants and loans for construction or renovation of health care facilities. As a condition of receiving this construction assistance, facilities are required to provide a "reasonable volume" of services to persons unable to pay. Facilities are also required to provide assurances periodically that the required level of uncompensated care is being provided, and to follow certain notification and recordkeeping procedures. These requirements are referred to as the uncompensated services assurance.

The regulations contain provisions for reporting to the government the amount of free care provided, as well as provisions for following certain notification and recordkeeping procedures. All of these regulations are included in this clearance request. The Uncompensated Services Assurance Report (USAR) (HRSA form 710) is one of the methods of reporting the amount of free care provided. There are no changes to the USAR form. There will be a significant reduction in the burden from the previous request for OMB approval since many facilities have met their obligations over the last 3 years. In addition, now that most now facilities are having a substantial compliance review done annually, very few facilities need to submit the USAR form. Burden estimates are as follows:

Requirement	Number of respondents	Responses per respondent	Total responses	Burden per response	Total burden hours
Disclosure requirements (42 CFR):					
Published Notices (124.504 (a))	389	1	389	.75	292
Individual Notices (124.504 (c))	389	1	389	43.6	16,960
Determinations of Eligibility (124.507)	389	396	154,044	.75	115,533
Reporting Requirements Form 710:					
USAR (124.509 (a))	10	1	10	11	110
Complaint Information 124.511 (a):					
Individuals	10	1	10	.25	3
Facilities	10	1	10	.5	5
Application for Compliance Alternative for Public Facilities (124.513 (c))	4	1	4	6	24
Annual Certification for Public Facilities (124.509 (b))	195	1	195	.5	98
Application for Compliance Alternative for Small Obligation Facilities (124.514(c))	0	0	0	0	0
Annual Certification for Small Obligation Facilities (124.509(c))	1	1	1	.5	1
Application for Compliance Alternative for Charitable Facilities (124.516(c))	2	1	2	6	12

Requirement	Number of respondents	Responses per respondent	Total responses	Burden per response	Total burden hours
Annual Certification for Charitable Facilities (124.516(c))	26	1	26	.5	13
Subtotal: Reporting and Disclosure					133,051

Requirement	Number of recordkeepers	Hours	Recordkeeping burden
Nonalternative Facilities (124.510(a))	389	50	19,450
Small Obligation Facilities (124.510(b))	*0	0	0
Public Facilities (124.510(b))	*0	0	0
Charitable Facilities (124.510(b))	0	0	0
Subtotal: Recordkeeping			19,450

*Requires facilities under the public facilities compliance alternative, the charitable facilities compliance alternative, and the small obligation compliance alternative to maintain qualification documents. These are ordinarily retained by facilities, so there is no burden.

Total burden for this project is estimated to be 152,501 hours. Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11050 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

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

Proposed Project: Progress Reports for Continuation Training Grants (OMB No. 0915–0061)—Extension

The HRSA Progress Reports for Continuation Training Grants are used for the preparation and submission of continuation applications for Title VII and VIII health professions and nursing education and training programs. The Uniform Progress Report measures grantee success in meeting (1) the objectives of the grant project and (2) the cross-cutting outcomes developed for the Bureau's education and training programs. The first part of the progress report is designed to collect information to determine whether sufficient progress has been made on the approved project objectives, as grantees must demonstrate satisfactory progress to warrant continuation of funding. The second part of the progress report contains selected tables from the Comprehensive Performance Management System (CPMS) reflecting the seven indicators that have been identified. Progress will be measured based on the objectives of the grant project and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

To respond to the requirements of GPRA, the Bureau developed goals, outcomes and indicators that provide a framework for collection of outcome data for its Titles VII and VIII programs. An outcome based performance system is critical for measuring whether program support is meeting national health workforce objectives. At the core of the performance measurement system are found cross-cutting goals with respect to workforce quality, supply, diversity and distribution of the health professions workforce. A demonstration project to assess availability of the data needed to support the indicators was conducted, and data from this project are currently being analyzed.

The progress report will be completely automated in fiscal year 2000, allowing the grantees to obtain, complete, and submit the report electronically.

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report	800	1	800	20	16,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11051 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

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

Proposed Project: Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms (OMB No. 0915–0044)—Revision

The HPSL Program provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, an associate degree, a baccalaureate degree, or a graduate degree in nursing. Participating HPSL and NSL schools are responsible for determining eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. The deferment form (HRSA form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR—HRSA form 501) provides the Federal Government with information from participating and non-participating schools (schools that are no longer granting loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due the Federal Government are returned) relating to HPSL and NSL program operations and financial activities.

The estimated annual response burden is as follows:

Form	Number of responses	Responses per respondent	Total responses	Hours per respondent	Total burden hours
Deferment 519	10,358	1	10,358	10 minutes ..	1,726
AOR 501	1,302	1	1,302	4	5,208
Total			11,660		6,934

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11052 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)—Extension

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions schools may enter into a contract under which HRSA, with the Department of Health and Human Services, will make payments on eligible graduate educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of a health professions school. Applicants must complete an application and provide information on all eligible education loans. Upon selection of participants, HRSA will

request verification from their lenders of loan balances and terms of their outstanding educational loans.

The estimated response burden is as follows:

Respondent	Number of respondents	Responses per response	Total responses	Hours per response	Total burden hours
Applicants	75	1	75	1	75
Lenders	112	1	112	.5	56
Total			187		131

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11053 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form (OMB No. 0915–0036)—Revision

This clearance request is for a revision of two forms that are currently approved by OMB. HEAL lenders use the Lenders Application for Insurance Claim to request payment from the Federal Government for federally insured loans lost due to borrowers' death, disability, bankruptcy, or default. The Lenders Application for Insurance Claim form (HRSA form 510) has been revised to reflect information necessary to approve a claim and identify supporting documentation submitted with the claim request. These revisions will facilitate the Department's efforts towards electronic claim request submissions. The Request for Collection Assistance form (HRSA form 513) is used by HEAL lenders to request federal assistance with the collection of delinquent payments from HEAL borrowers. No changes are proposed for the Request for Collection Assistance form.

The estimates of annualized burden are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HRSA—510	20	75	1,500	30 minutes	750
HRSA—513	20	1,260	25,200	10 minutes	4,208
Total Burden	20				4,958

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11054 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy) (0915–0047)—Revision

The regulations for the Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program contain a number of reporting and recordkeeping requirements for schools and loan applicants. The requirements are essential for assuring that borrowers are aware of rights and responsibilities, that

schools know the history and status of each loan account, that schools pursue aggressive collection efforts to reduce default rates, and that they maintain adequate records for audit and assessment purposes. Schools are free to use information technology to manage the information required by the regulations. The estimated burden is as follows:

Estimated total annual burden: 47,471 hours. There have been no changes in the reporting requirements. The burden is reduced because the number of schools participating in the programs has been reduced.

RECORDKEEPING REQUIREMENTS

Regulatory/section requirements	Number of recordkeepers	Hours per year	Total burden hours
HPSL Program:			
57.206(b)(2) Documentation of Cost of Attendance	281	1.17	329
57.208(a) Promissory Note	281	1.25	351
57.210(b)(1)(i) Documentation of Entrance Interview	281	1.25	351
57.210(b)(1)(ii) Documentation of Exit Interview	*307	0.33	101
57.215(a) and (d) Program Records	*307	10	3,070
57.215(b) Student Records	*307	10	3,070
57.215(c) Repayment Records	*307	18.75	5,756
HPSL Subtotal	307	42.44	13,028
NSL Program:			
57.306(b)(2)(ii) Documentation of Cost of Attendance	382	0.3	115
57.308(a) Promissory Note	382	0.5	191
57.310(b)(1)(i) Documentation of Entrance Interview	382	0.5	191
57.310(b)(1)(ii) Documentation of Exit Interview	*814	0.17	138
57.315(a)(1) and (a)(4) Program Records	*814	5	4,070
57.315(a)(2) Student Records	*814	1	814
57.315(a)(3) Repayment Records	*814	2.5	2,035
NSL Subtotal	814	9.28	7,554

*Includes active and closing schools.

REPORTING REQUIREMENTS

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total burden hour
HPSL Program:					
57.205(a)(2) Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.206(a)(2) Student Financial Aid Transcript	5,000	1	5,000	0.25	1,250
57.208(c) Loan Information Disclosure	281	74.73	21,000	0.0833	1,749
57.210(a)(3) Deferment Eligibility	[Burden included under 0915–0044]				
57.210(b)(1)(i) Entrance Interview	281	74.73	21,000	0.167	3,507
57.210(b)(1)(ii) Exit Interview	*307	16.28	5,000	0.5	2,500
57.210(b)(1)(iii) Notification of Repayment	*307	35.83	11,000	0.167	1,837
57.210(b)(1)(iv) Notification During Deferment	*307	29.32	9,000	0.0833	750
57.210(b)(1)(vi) Notification of Delinquent Accounts	*307	15.28	5,000	0.167	835
57.210(b)(1)(x) Credit Bureau Notification	*307	13.03	4,000	0.6	2,400
57.210(b)(4)(i) Write-off of Uncollectible Loans	24	1.67	40	0.5	20
57.211(a) Disability Cancellation	12	1	12	.75	9
57.215(a) Reports	[Burden included under 0915–0044]				
57.215(a)(2) Administrative Hearings	0	0	0	0	0
57.216(a)(d) Administrative Hearings	0	0	0	0	0
HPSL Subtotal	5,307	15.27	81,052	0.183	14,857
NSL Program:					
57.305(a)(2) Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.306(a)(2) Student Financial Aid Transcript	3,000	1	3,000	0.25	750
57.310(b)(1)(i) Entrance Interview	382	31.41	12,000	0.167	2,004
57.310(b)(1)(ii) Exit Interview	*814	4.91	4,000	0.5	2,000
57.301(b)(1)(iii) Notification of Repayment	*814	8.23	6,700	0.167	1,119
57.310(b)(1)(iv) Notification During Deferment	*814	0.86	700	0.083	58
57.310(b)(1)(vi) Notification of Delinquent Accounts	*814	6.14	5,000	0.167	835
57.310(b)(1)(x) Credit Bureau Notification	*814	11.06	9,000	0.6	5,400
57.310(b)(4)(i) Write-off of Uncollectible Loans	40	1.0	40	0.5	20
57.311(a) Disability Cancellation	10	1.0	10	0.8	8
57.312(a)(3) Evidence of Educational Loans	[Inactive provision]				
57.315(a)(1) Reports	[Burden included under 0915–0044]				
57.315(a)(1)(ii) Administrative Hearings	0	0	0	0	0
57.316(a)(d) Administrative Hearings	0	0	0	0	0

REPORTING REQUIREMENTS—Continued

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
NSL Subtotal	3,814	10.61	40,450	0.30	12,194

*Includes active and closing schools.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11055 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: May 5, 1999.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg., Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara Detrick, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11043 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: June 3, 1999.

Time: 8:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Room 6AS25S, 9000 Rockville Pike, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11044 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1 (M3)P.

Date: May 5–7, 1999.

Time: May 5, 1999, 7:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Westin Copley Place, 10 Huntington Avenue, Boston, MA 02116.

Contact Person: Carolyn Miles, Scientific Research Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–43A, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11045 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–51, Review of F32, R03s.

Date: April 28, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–52, F30, K23, K24, R03.

Date: May 3, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–36, Review of F32, K24, R03.

Date: May 4, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–35, Review of R03, K24, T32.

Date: May 5, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–44, Review of R01.

Date: May 5, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–43 Review of R01s.

Date: May 6, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: PHILIP WASHKO, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–53, Review of F32, K23, K24, T35.

Date: May 6, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–56, RFP NIH–NIDCR–12–99–2R.

Date: May 21, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. GEORGE HAUSCH, PHD, CHIEF, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel Review of RFA DE98–009.

Date: June 7–10, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton Hotel, Darnestown Conference Room, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: YASAMAN SHIRAZI, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11046 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Prevention Trials Network—Leadership Group

Date: June 7–8, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Kevin W. Ryan, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C12, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8694.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11047 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Vaccine Trials Network-Leadership Group.

Date: June 3–4, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Hagit S. David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, HIAID, NIH, Solar Building, Room 4C03, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–4596.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11048 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases, Notice of Close Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Research on Topical Microbicides for Prevention of STDs/HIV.

Date: May 19–20, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person Anna Ramsey-Ewing, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C37, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8536.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11049 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Technical Assistance Workshop

AGENCY: Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

Notice is hereby given of a workshop for the provision of technical assistance to potential applicants for SAMHSA grants.

The Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment and Center for Substance Abuse Prevention are offering a regional Technical Assistance Workshop for prospective applicants. The workshop will be conducted to provide support to prospective applicants in preparing their applications to respond to published grant announcements.

The following three SAMHSA grant announcements will be featured at the workshop:

Center for Substance Abuse Treatment

Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services Community-Based Substance Abuse and HIV/AIDS Outreach Program

Center for Substance Abuse Prevention

Substance Abuse Prevention/HIV Care Targeted Capacity Expansion Cooperative Agreements

These GFAs are available from the SAMHSA Web Site at www.SAMHSA.gov or from the National Clearinghouse for Alcohol and Drug Information (NCADI) at 800–729–6686. Potential participants are strongly encouraged to check these resources and be familiar with the GFAs in which they are interested prior to attending the workshop.

The Technical Assistance Workshop will be held on May 10, 1999 at the U.S. Court of International Trade, 1 Federal

Plaza, New York, NY 10278. On-site registration will begin at 12:30 p.m.; workshop hours are 1 p.m. to 4 p.m.

Preliminary Agenda Highlights for the TA Workshop include: (1) Review of SAMHSA programs and priorities; (2) technical/practical aspects of the grant application process; (3) discussion of specific grant announcements; and (4) opportunity for questions and answers.

TA Workshop Arrangements and Contacts

There is no registration fee for the workshop. Participants do not need to preregister but are encouraged to call in advance to indicate their intention to attend; please call Ms. Renee Bell at (301) 984–1471, extension 353. Registrants will be responsible for costs associated with their own travel, meals, and lodging. For information regarding the content of the TA Workshop, please contact Mr. Stephen Sawmelle at (301) 443–1249.

SAMHSA suggests that the attendees be those persons having the responsibility for conceptualizing and writing the application.

Dated: April 28, 1999.

Sandra Stephens,

Team Leader, Extramural Activities Team, SAMHSA.

[FR Doc. 99–11056 Filed 4–30–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Revise the Comprehensive Conservation Plan and To Prepare an Environmental Impact Statement for Kodiak National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice and Solicitation of Comments.

SUMMARY: The U.S. Fish and Service is revising the comprehensive conservation plan (comprehensive plan) for Kodiak National Wildlife Refuge, Alaska. This notice advises agencies and the public of our intent to gather information necessary to revise the plan and associated environmental impact statement (EIS) pursuant to the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3100 *et seq.*), the National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd-668ee), and the National Environmental Policy Act, as amended (42 U.S.C. 4321–4347) and its implementing regulations. Specifically, we are seeking suggestions and information regarding the scope of issues to be addressed in the revised comprehensive plan and EIS. The comprehensive plan, completed in 1987, needs to be updated in response to new and revised laws, regulations and policies, and changing circumstances, and to provide management direction for about 175,000 acres of land acquired since completion of the comprehensive plan. In addition, we will re-evaluate the wilderness review and wild and scenic rivers study that were completed previously for refuge lands and waters.

DATES: Comments should be received no later than June 30, 1999.

ADDRESSES: Address comments to: Mike Haase, Refuge Planning, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; fax: 907/786–3965; electronic mail (E-mail): Mikel__Haase@fws.gov (submit as ASCII without special characters or any form of encryption or as WordPerfect files up to Version 8).

FOR FURTHER INFORMATION CONTACT: Contact Mike Haase at 907/786–3402.

SUPPLEMENTARY INFORMATION: On August 19, 1941, President Franklin D. Roosevelt established Kodiak National Wildlife Refuge by Executive Order 8857. The purpose of the refuge was to preserve the natural feeding and breeding range of the brown bear and other wildlife.

The Alaska National Interest Lands Conservation Act (ANILCA) was signed into law on December 2, 1980. This law clarified how federally owned lands in Alaska would be managed and used. Section 303 of ANILCA redesignated Kodiak National Wildlife Refuge and added about 50,000 acres on Afognak and Ban islands to the refuge. The purposes for which Kodiak Refuge was established and shall be managed, as stated in ANILCA, include: to conserve fish and wildlife populations and habitats in their natural diversity; to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; to provide the opportunity for continued subsistence use by local residents; and to ensure water quality and necessary water quantity within the refuge.

Section 304(g) of ANILCA states that comprehensive plans shall be prepared and "from time to time" revised for each refuge. Before these comprehensive plans are prepared the following shall be identified and described: the populations and habitats of the fish and wildlife resources of the refuge; the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge; areas of the refuge that are suitable for use as administrative sites or visitor facilities, or for visitor services; present and potential requirements for access; and significant problems which may adversely affect the populations and habitats of fish and wildlife. The comprehensive plans shall: designate areas within the refuge according to their respective resources and values; specify programs for conserving fish and wildlife and maintaining the special values of the refuge; specify uses which may be compatible with the major purposes of the refuge; and identify opportunities to be provided for fish and wildlife-oriented recreation, ecological research, environmental education and interpretation of refuge resources and values, if they are compatible with the purposes of the refuge.

The National Wildlife Refuge System Improvement Act of 1997, which amended the Refuge Administration Act, includes provisions for system wide refuge planning. This direction is being incorporated into national planning policy for the refuge system and will apply to refuges in Alaska. Should any provisions of the Refuge Administration Act conflict with the provisions of ANILCA, the provisions of ANILCA shall prevail for refuges in Alaska.

The Kodiak comprehensive plan, wilderness review, and environmental impact statement was completed in 1987. A public use management plan was prepared for the refuge and approved in 1993.

In preparing and revising comprehensive plans ANILCA requires consultation with appropriate State agencies and Native corporations and public hearings are to be held at appropriate locations to insure that those primarily affected by administration of the refuge (residents of local villages and political subdivisions of the State) have the opportunity to present their views with respect to the comprehensive plan revision. Before adopting a comprehensive plan, public notice in the **Federal Register** and an opportunity for public review and comment are required.

The comprehensive plan states that a full review and updating of the comprehensive plan will occur every 10 to 15 years, more often if necessary.

In late 1998 we began reviewing the comprehensive plan for the refuge to determine if it should be revised.

Implementation of on-the-ground management actions is generally moving forward and refuge objectives are being accomplished. However, some of the management direction provided in the comprehensive plan needs to be updated. New and amended laws (e.g., the Refuge Improvement Act), new or revised regulations and policies, and changes in circumstances (e.g., federal management of subsistence hunting on Alaska refuges) need to be included in the management policies and guidelines. Management direction for approximately 175,000 acres of land acquired since the comprehensive plan was completed also needs to be incorporated into the plan. In addition, we believe that a re-evaluation of the wild and scenic river study (completed in the late 1970's) and the wilderness review (part of the original comprehensive plan/EIS) is necessary, given the amount of time that has passed since the original recommendations were made. Therefore, the Service has decided that a revision of the Kodiak comprehensive plan is necessary.

This notice formally begins the revision of the comprehensive plan for the Kodiak National Wildlife Refuge. As the first step, we are soliciting comments on the issues to be addressed in the revised plan/EIS. Comments should be specific and should address refuge resources, how we manage those resources, and how the public is affected. In addition to soliciting public comments through this notice, public comments will be solicited through a newsletter to be mailed to approximately 2,000 individuals and organizations on our mailing list. The comprehensive plan revision will be addressed during a series of community meetings to be held in Akhiok, Karluk, Larsen Bay, Old Harbor, Ouzinkie, and Port Lions in March and April 1999. Meetings will be scheduled during May in Kodiak and Anchorage. Once issues are identified, we will develop options to address the issues and prepare a draft comprehensive plan/EIS. This document is scheduled to be released for public review in the fall of 2000. After public review and comment on the draft comprehensive plan/EIS, including public hearings, a final comprehensive plan/EIS will be prepared and released.

Hannibal Bolton,

Acting Deputy Regional Director, Anchorage, Alaska.

[FR Doc. 99–10947 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–6688–A]

Alaska Native Claims Selection

In accordance with Departmental regulations 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, (ANCSA), 43 U.S.C. 1601, 1613(e), will be issued to Ouzinkie Native Corporation for approximately 79.99 acres. The lands involved are in the vicinity of Port Lions, Alaska, situated on Kodiak Island.

U.S. Survey No. 9278, Alaska.

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the *Kodiak Daily Mirror.* Copies of the decisions 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 decisions, shall have until June 2, 1999 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 in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 99–10966 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–99–1610–00; GP9–0171]

Notice of Prohibited Acts in the Lakeview District, Bureau of Land Management

AGENCY: Bureau of Land Management.

SUMMARY: The Lakeview District is publishing certain closures and restrictions for the purpose of establishing a supplemental rule for the protection of persons and resources. Pursuant to 43 CFR 8365.1–6, all camping within 300 feet of any water source is prohibited, except where designated. Water sources are defined, for this rule, as any fenced spring exclosure, flowing spring, or man-made metal or concrete water tank/trough. Camping is defined, for this rule, as any establishment of occupancy on public lands in the Lakeview Resource Area. The intent of this rule is (1) to protect water sources from overuse and pollution, and (2) to provide free and unimpeded access for wildlife who are dependent on these water sources in a dry, desert environment.

AUTHORITY AND PENALTIES: Authority for this penalty is found in 43 CFR 8365.1–6 and section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)). Any person who violates this supplemental rule may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more that 12 months, or both. Such violations may also be subject to the enhanced fines provided for by Title 18 U.S.C. 3571. This supplemental rule is issued under the approval and authority of the Oregon State Office, State Director.

EFFECTIVE DATE: This supplemental rule will become effective 30 days from the published date to allow for consideration of public comments.

FOR FURTHER INFORMATION CONTACT: Steven A. Ellis, District Manager, Lakeview District, HC 10, Box 337, Lakeview, Oregon 97630, or telephone (541) 947–2177.

Dated: April 16, 1999.

M. Joe Tague,

Acting District Manager.

[FR Doc. 99–10943 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–99–1610–00: GP9–0172]

Notice of Correction, Lakeview District

AGENCY: Bureau of Land Management (BLM).

SUMMARY: The following represents corrections to previous **Federal Register** notices published by the Lakeview District, BLM:

(1) **Federal Register** notice: October 20, 1998, Volume 63, Number 202, Page 56042, under Penalties: The appropriate regulation citation should be 43 CFR 8365.1–6.

(2) **Federal Register** notice: June 12, 1998, Volume 63, Number 113, Pages 32244–32245, under Penalties: The appropriate regulation citation should be 43 CFR 8364.1(d).

(3) All **Federal Register** notices related to the publication of supplemental rules previously issued from the Lakeview District, BLM were issued under the approval and authority of the Oregon State Office, State Director.

DATES: These corrections will become mandatory after a 30-day public review period.

FOR FURTHER INFORMATION CONTACT: Steven A. Ellis, District Manager, Lakeview District, HC 10, Box 337, Lakeview, Oregon 97630, or telephone (541) 947–2177.

Dated: April 16, 1999.

M. Joe Tague,

Acting District Manager.

[FR Doc. 99–10944 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[T–926–09–1420–00]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted April 14, 1999, of the following described lands, are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Tps. 1, 2, 3, and 4 S., Rs. 21, 22, 23, and 24 W.

The plat, representing the Amended Protraction Diagram 52 Index of unsurveyed Townships 1, 2, 3, and 4 South, Ranges 21, 22, 23, and 24 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 1 S., R. 23 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 1 South, Range 23 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 1 S., R. 24 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 1 South, Range 24 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 2 S., R. 23 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 2 South, Range 23 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 2 S., R. 24 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 2 South, Range 24 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 3 S., R. 23 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 3 South, Range 23 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 3 S., R. 24 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 3 South, Range 24 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 4 S., R. 21 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 4 South, Range 21 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 4 S., R. 22 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 4 South, Range 22 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 4 S., R. 23 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 4 South, Range 23 West, Principal Meridian, Montana, was accepted April 14, 1999.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams, accepted April 14, 1999, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted April 14, 1999, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests. These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: April 20, 1999.

Daniel T. Mates,

Chief Cadastral Surveyor,

Division of Resources.

[FR Doc. 99–10945 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 28487]

Public Land Order No. 7387; Withdrawal of National Forest System Land for Oak Creek Canyon Recreation Area; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 10,500 acres of National Forest System land from location and entry under the United States mining laws for 20 years to protect the Oak Creek Canyon Recreation Area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Oak Creek Canyon Recreation Area:

Gila and Salt River Meridian

Coconino National Forest

T. 17 N., R. 6 E.,
- Sec. 2, lots 3 to 6, inclusive, lots 11 to 14, inclusive, and lots 19 and 20;
- Sec. 3, lots 1 to 12, inclusive, and S½; sec. 4, lots 1 to 8, inclusive, and W½;
- Sec. 5, lots 1 to 5, inclusive, S½N½, NE¼SW¼, N½N½NW¼SW¼, N½SE¼SW¼, N½SE¼, and SE¼SE¼;
- Sec. 8, NE¼, S½NE¼NE¼NE¼NW¼, SE¼NE¼NE¼NW¼, SE¼NE¼NW¼, E½SE¼NW¼, E½SW¼SE¼NW¼, SW¼SW¼SE¼NW¼, E½NE¼SW¼, N½SE¼SW¼, N½S½SE¼, and N½SE¼;
- Sec. 9, lots 1 to 9, inclusive, and NW¼;
- Sec. 10, N½, N½N½SW¼, N½NW¼SE¼, and NW¼NE¼SE¼;
- Sec. 11, lots 3 and 4.

T. 18 N., R. 6 E.,
- Sec. 4, lots 2 and 5, SE¼NW¼, and SW¼;
- Sec. 5, lot 1, S½NE¼, and SE¼, excluding HES 579;
- Sec. 8, E½ and E½E½W½, excluding HES 369 and HES 579;
- Sec. 9, W½NW¼;
- Sec. 16, W½NW¼, SW¼, and SW¼SE¼, excluding HES 368;
- Sec. 17, E½, excluding HES 368;
- Sec. 20, E½NE¼NE¼;

Sec. 21, NE¼, N½NW¼, E½SW¼NW¼, SE¼NW¼, N½NE¼SW¼, SE¼NE¼SW¼, and SE¼, excluding HES 367;
Sec. 22, W½SW¼;
Sec. 23, SE¼SW¼SW¼, NE¼SE¼SW¼, S½SE¼SW¼, S½NE¼SE¼, SE¼NW¼SE¼, and S½SE¼;
Sec. 24, S½S½NE¼ and S½;
Sec. 25, N½N½NE¼, SE¼NE¼NE¼, N½NE¼NW¼, SW¼NE¼NW¼, and NW¼NW¼;
Sec. 26, N½, N½SW¼, N½S½SW¼, SW¼SW¼SW¼, and N½NW¼SE¼;
Sec. 27, lots 2, 3, 4, N½, SE¼, and those portions of lot 5, Tract 37, and HES 94 reconveyed to the U.S. by warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within lot 5, Tract 37, HES 94, and SE¼;
Sec. 28, E½NE¼, E½W½NE¼, E½E½SE¼, and those portions of HES 94 reconveyed to the U.S. in warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within HES 94;
Sec. 33, lots 1, and 2, and lots 6 to 11, inclusive, E½E½NE¼, SW¼SE¼NE¼, and SE¼SW¼NE¼, excluding Pat. No. 731068;
Sec. 34, lot 1, lots 3 to 5, inclusive, lots 8 to 10 inclusive, NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, and those portions of Tract 37, lot 7, and NW¼SW¼ reconveyed to the U.S. by warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within Tract 37, lot 7, and NW¼SW¼;
Sec. 35, lots 3 and 4.
T. 18 N., R. 7 E.,
Sec. 20, lots 6, 7, and 12;
Sec. 29, lot 1.
T. 19 N., R. 6 E.,
Sec. 14, lot 8 and lots 16 to 19, inclusive;
Sec. 15, E½SE¼;
Sec. 22, lots 2, 3, 4, 11, 12, 15, 16, 23 and 24;
Sec. 27, lots 1 to 3, inclusive, lots 10 to 15, inclusive, lots 21 to 25, inclusive and those portions of HES 95 reconveyed to the U.S. by warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within HES 95;
Sec. 34, lots 2 to 5, inclusive, lots 9, 17, 18, and 25, and those portions of lots 10, 11, 12, 19, 20, 23, and 24, reconveyed to U.S. by warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within lots 10, 11, 12, 19, 20, 23, and 24.

The area described contains 10,500 acres in Coconino County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: April 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–10999 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–05; N–63252]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance 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 City of Las Vegas proposes to use the land for a Public Park to include soccer fields, playgrounds, administration building, parking area, boundary fence, picnic areas and restrooms.

Mount Diablo Meridian, Nevada

T. 20S. R. 60E.
Sec. 22, SE¼NW¼
Containing 40 acres, more or less.

The land is not required for any federal purpose. Although the land is currently withdrawn (60 FR 25149) under Public Land Order 7142 for a Bureau of Land Management administrative office site, it has been determined that the lands are no longer needed for that purpose. Concurrence has been received to allow for a lease/patent for the Public Park while the withdrawal is in process of revocation. The lease/conveyance 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:

An easement 50 feet in width along the South boundary, 40 feet in width along the East boundary, 50 feet in width along the West boundary, 30 feet in width along the North boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes. This lease/conveyance will also be subject to the Nevada Power Co., right-of-way case file NEV–061618. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 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/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material 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 regarding the proposed lease/ conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Dr., Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a Public Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Public Park.

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/conveyance until after the classification becomes effective.

Dated: April 15, 1999.

Sharon DiPinto,

Acting Assistant Field Office Manager Division of Lands, Las Vegas, NV.

[FR Doc. 99–10950 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at The Westin Alyeska Prince in Girdwood, Alaska, on May 26–27, 1999.

The agenda will cover the following principal subjects:

—Secretary's Lands Legacy Proposal
—Distribution of OCS Revenues: Alternative Coastal Impact Assistance Proposals
—Future Role of Natural Gas
—DOE Projections
—Supply—Lower 48/North Slope/Canada
—State of the Oil and Gas Industry
—Global Perspective
—U.S. Perspective
—Alaska Specific
—MMS Response
—Georges Bank Review Board: "What Can We Learn from the Canadian Experience on Georges Bank?"
—Exxon Valdez: 10 Years After the Oil Spill
—Outlook for Energy Production from Alaska
—Future Role of Alaska in National Energy Policy
—Environmental Perspective
—State and Local Government Outlook
—Challenges in Arctic Development
—Alyeska Pipeline System
—Unique Technological/Environmental Issues
—North Slope Inupiat/Native Views
—Onshore/Offshore
—Importance of Subsistence
—Traditional Knowledge
—MMS Regional Updates: Alaska, Gulf of Mexico, and Pacific Regions
—Hard Minerals Update
—OCS Scientific Committee Update
—Congressional Updates

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than May 14, 1999, to the Minerals Management Service, 381 Elden Street, MS–4001, Herndon, Virginia 20170, Attention: Jeryne Bryant.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Jeryne Bryant at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon.

DATES: Wednesday, May 26 and Thursday, May 27, 1999.

ADDRESSES: The Westin Alyeska Prince, 1000 Arlberg Avenue, Girdwood, Alaska 99587—(907) 754–1111 or (800) 880–3880.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant at the address and phone number listed above.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: April 27, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–10940 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Portage National Monument; Intent To Prepare a General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare a General Management Plan and Environmental Impact Statement for Grand Portage National Monument, Minnesota.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an associated Environmental Impact Statement (EIS) for Grand Portage National Monument, Minnesota, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Mr. Tim Cochrane, Superintendent, Grand Portage National Monument, PO Box 668, Grand Marais, Minnesota 55604–0668, 218–387–2788, tim____cochrane@nps.gov

FOR FURTHER INFORMATION CONTACT: Superintendent, Grand Portage National Monument, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Grand Portage National Historic Site was designated September 15, 1951. It was redesignated Grand Portage National Monument when it was established September 2, 1958 (72 Stat. 1751). The park consists of three distinct contiguous areas: (1) The site of the Northwest Company's Lake Superior trading post where, during the late 18th and early 19th centuries, trade goods were offloaded for transport by the voyageurs into western Canada and the United States and where furs from the interior were loaded for the return trip east, (2) the route of the nine mile portage that connected the trading post to Fort Charlotte, and (3) the site of Fort Charlotte at the northern end of the portage where goods were loaded into canoes for the trip into the interior and furs from the interior collected for shipment down the portage to Lake Superior. In all, the National Monument consists of 709.97 acres, all in Federal ownership.

In accordance with NPS park planning policy, the GMP will ensure Grand Portage National Monument has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts,

and costs of alternative courses of action.

The environmental review of the GMP/EIS for Historic Site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The NPS estimates the draft GMP and draft EIS will be available to the public by November 2000.

Dated: April 26, 1999.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 99–10973 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

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 April 24, 1999. 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, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by May 18, 1999.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Sebastian County

Fort Smith National Cemetery (Civil War Era National Cemeteries MPS), 522 Garland Ave. and S. 6th St., Fort Smith, 99000578

CALIFORNIA

Los Angeles County

Willmore, The, 315 W. Third St., Long Beach, 99000579

Modoc County

Jess Valley Schoolhouse, Cty. Rd. 64, Likely vicinity, 99000582

San Francisco County

Building at 465 Tenth St., 465 Tenth St., San Francisco, 99000581

Santa Clara County

Allen, Theophilus, House, 601 Melville Ave., Palo Alto, 99000580

FLORIDA

Broward County

Nyberg—Swanson House, 102 W. Dania Beach Blvd., Dania Beach, 99000583

ILLINOIS

Fulton County

Palmer, Hiram, House, 703 E. Fort St., Farmington, 99000589

Kane County

Holy Cross Church, 14 N. Van Buren St., Batavia, 99000587

Macon County

Union Church, 2.5 mi. SE of Oreana, on Kirby Rd., Oreana vicinity, 99000588

Stephenson County

Central House, 210 W. High St., Orangeville, 99000585

Tazewell County

Third St. Bridge, Third St., bet. Pine and Elm Sts., Delavan, 99000586

LOUISIANA

East Baton Rouge Parish

Port Hudson National Cemetery (Civil War Era National Cemeteries MPS), 20978 Port Hickey Rd., Zachary, 99000591

Southern University Historic District, Netterville Dr. and Swan Ave., Baton Rouge, 99000590

La Salle Parish

Trout—Good Pine School, School Rd., Good Pine, 99000592

MASSACHUSETTS

Suffolk County

Woodbourne Historic District, Roughly bounded by Walk Hill, Goodway, and Wachusett Sts., Boston, 99000593

MISSISSIPPI

Wilkinson County

Woodville Historic District (Boundary Increase II), Roughly along Depot, First West, Main, Second South, Sligo, Third South, and Water Sts., Woodville, 99000594

MISSOURI

Buchanan County

St. Joseph Public Library—Carnegie Branch, 316 Massachusetts St., St. Joseph, 99000595

MONTANA

Gallatin County

Adams Block, 123 Main St., Three Forks, 99000597

Lewis and Clark County

Mann Gulch Wildfire Historic District,

Mann Gulch, tributary of the Missouri River, Helena vicinity, 99000596

NEW MEXICO

Santa Fe County

Jackson, J.B., House, 268 Los Pinos Rd., Santa Fe vicinity, 99000598

NORTH CAROLINA

Carteret County

Cape Lookout Village Historic District, Cape Lookout, from Lighthouse to Cape Point, Harkers Island vicinity, 99000599

Perquimans County

Belvidere Historic District,

Roughly bounded by the Perquinmans R., NC 37, NC 1200, and NC 1213, Hertford vicinity, 99000600

OKLAHOMA

Muskogee County

Fort Gibson National Cemetery (Civil War Era National Cemeteries MPS), 1423 Cemetery Rd., Fort Gibson, 99000601

OREGON

Clatsop County

Leinenweber, Christian, House, 3480 Franklin Ave., Astoria, 99000604

Deschutes County

Moore, Robert D., House, 545 NW Congress St., Bend, 99000603

Lincoln County

Pacific Spruce Saw Mill Tenant Houses, 146, 162, 178, and 192 NE Sixth St., Toledo, 99000602

Multnomah County

Cobb, Samuel, House, 1314 SE 55th Ave., Portland, 99000607

Holden, William B., House, 6347 SE Yamhill, Portland, 99000605

Miller, Claude Hayes, House, 13051 SE Claybourne St., Portland, 99000606

PENNSYLVANIA

Bradford County

Welles, Ellen and Charles F., House, 1 Grovedale Ln., Wyalusing Township, 99000608

Philadelphia County

SS UNITED STATES (Steamship), Pier 82, Philadelphia, 99000609

TEXAS

Hardin County

Kirby—Hill House, 210 Main St., Kountze, 99000610

Waller County

Anderson, L.C., Hall (Praire View A&M University MPS), L.W. Minor St., building #0541, Prairie View, 99000611

Banks, W.R., Library (Praire View A&M University MPS), L.W. Minor St., building #0508, Prairie View, 99000612

Evans, Annie Laurie, Hall (Praire View A&M University MPS), L.W. Minor St., building #0544, Prairie View, 99000613

Fry—Thomas Power Plant (Praire View A&M University MPS), A.G. Cleaver St., Building #0529, Prairie View, 99000615

Hilliard Hall (Praire View A&M University MPS), A.G. Cleaver St., building #0537, Prairie View, 99000614

Veterinary Hospital (Praire View A&M University MPS), E.M. Norris St., building #0517, Prairie View, 99000617

Woolfolk, G.R., Social and Political Science Building (Praire View A&M University MPS), A.G. Cleaver St., building t0503, Prairie View, 99000616

UTAH

Carbon County

Clerico Commercial Building, 4985 N. Spring Glen Rd., Spring Glen, 99000619
Manina, Camillo, House, Approx. 1756 W 400 N, Spring Glenn, 99000618

Salt Lake County

Ramsey, Lewis A., House, 128 S 1000 E, Salt Lake City, 99000621
Silver Brothers' Iron Works Office and Warehouse (Salt Lake City Business District MRA), 550 W 700 S, Salt Lake City, 99000622

Summit County

House at 463 Park Ave. (Mining Boom Era Houses TR), 463 Park Ave., Park City, 99000620

VERMONT

Caledonia County

Mathewson Block, Jct. of Main St. and Maple St., Lyndon, 99000623

A Request for a Move has been made for the following resource:

FLORIDA

Dade County

Halissee Hall, 1700 NW 10th Ave., Miami, 74000618

[FR Doc. 99–10990 Filed 4–30–99; 8:45 am]
BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Realty Action: Proposed Exchange of Federally-Owned Lands for State Owned Lands Within the Commonwealth of Virginia, and Boundary Revision at Fredericksburg and Spotsylvania County Battlefields National Military Park

I. The following described Federally owned land acquired by the National Park Service, has been determined to be suitable for exchange. The authority for this exchange is the Land and Water Conservation Fund Act, as amended (16 U.S.C. 460l–22b).

These selected Federal lands lie and will remain inside the boundaries of Fredericksburg and Spotsylvania County Battlefields National Military Park (NMP), Appomattox Court House National Historical Park (NHP), and Colonial National Historical Park (NHP). There are no threatened or endangered species or other species of management concern. No cultural or archeological resources are known to exist on these properties.

The United States-owned property to be exchanged to the Commonwealth of Virginia Department of Transportation (VDOT) is located in three parks. All three parks are located within the Commonwealth of Virginia. The first tract is at Appomattox Court House NHP. It is a 0.89 of an acre parcel needed for the widening of Route 701. The next tract is located at Fredericksburg and Spotsylvania County Battlefields NMP. Tract 01–159 is a 0.51 of an acre tract needed for the widening of Route 3. The next tract is at Colonial NHP. It is Tract 01–134 and is a 0.51 of an acre tract needed for the widening of Route 634.

The exchange will protect park resources and facilitate the administration of the park. The National Park Service will retain mineral rights. A reverter clause will be included in the deed to the Commonwealth of Virginia Department of Transportation in the circumstance where the roads are no longer needed.

Title will be conveyed subject to reservations and exceptions as contained in the original deeds as well as existing easements for public roads and highways, public utilities and pipelines. VDOT is responsible for the provision and maintenance of the respective roads.

The values of the properties to be exchanged were determined to be equal by a current fair market value appraisal.

II. In exchange for the lands identified in Paragraph I, the United States will acquire Tracts 01–171, 01–172 and 06–118 at Fredericksburg and Spotsylvania County Battlefields NMP. Tract 01–171 is a 0.06 of an acre tract currently outside the boundary near the historic Salem Church. Tract 01–172 is a 0.63 of an acre tract near the Salem Church and located within the Fredericksburg and Spotsylvania County Battlefields NMP boundary. This will allow for better protection of this historic structure. Tract 06–118 is a 0.11 of an acre tract near the 15th New Jersey monument and is located within the Fredericksburg and Spotsylvania County Battlefields NMP boundary. This will provide a buffer area for this monument.

Acquisition will include all right, title and interest to mineral rights. Also the Commonwealth of Virginia will convey to the National Park Service an easement over tract 01–135 at Colonial NHP. This is that portion of Old Surrender Road (Route 634) from the intersection with Route 704, continuing 1.5 miles north until an intersection again with Route 704. This will provide a tour road for the park.

III. Section 5 of Pub. L. 95–42, dated June 10, 1977, authorizes the Secretary of the Interior to make minor revisions of the boundary of an area, whenever he determines that to do so will contribute to, and is necessary for, the proper preservation, interpretation, or management of the unit. A minor boundary revision to Fredericksburg and Spotsylvania County Battlefields NMP involves land that is needed to protect the historic Salem Church by providing sufficient land area between the Church and the adjacent roads to enable visitors to gain access. The tract proposed for addition is Tract 01–171 and contains 0.06 of an acre of land. It is depicted on a map entitled Boundary Revision for Fredericksburg and Spotsylvania County Battlefields National Military Park No. 326–80,050, dated May 1998.

This parcel of land is located near the Old Salem Church property, which is within the boundary of the park. Old Salem Church was the site of a Union and Confederate encounter that proved pivotal to Lee's ultimate success, believed to be the South's greatest victory, in Chancellorsville, just a few short miles to the west. The Church is surrounded in a sea of commercialism, all but destroying any historic scene. The park is in the process of establishing natural scenes along its boundary to preserve what is left of this valuable resource. This small tract is needed to add to this important preservation effort.

Detailed information concerning this exchange, and boundary revision, including precise legal descriptions, Land Protection Plans, environmental assessments and cultural reports are available at the following parks: Superintendent, Appomattox Court House, PO Box 218, Route 24, Appomattox, VA 24522; or Superintendent, Fredericksburg and Spotsylvania County Battlefields National Military Park, 120 Chatham Lane, Fredericksburg, VA 22405; or Superintendent, Colonial National Historical Park, PO Box 210, Yorktown, VA 23690.

Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: April 12, 1999.

Warren D. Beach,

Acting Regional Director, Northeast Region.

[FR Doc. 99–10974 Filed 4–30–99; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: Preview of the draft programmatic EIS/EIR, including the draft preferred alternative, Phase II report and Water Management Strategy. There will also be an in-depth discussion with Policy Group members on major issues. This meeting is open to the public. Interested persons may make oral statements to the BRAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9 a.m. to 5 p.m. on Wednesday, May 12, 1999.

ADDRESSES: The Bay-Delta Advisory Council will meet at the DoubleTree Hotel, 2001 Point West Way, Sacramento, CA (916) 929–8855.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystems, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 27, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–10972 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information under 30 CFR Part 705, Restriction on financial interests of State employees. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 2, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to approve the collection of information in 30 CFR Part 705, Restriction on financial interests of State employees. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information will be placed on the forms once approved and the control number assigned.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on October 27, 1998 (63 FR 57311). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 705—Restrictions on financial interests of State employees.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any state regulatory authority employee or

member of advisory boards or commissions established in accordance with state law or regulation to represent multiple interests who performs any function or duty under the Act.

Total Annual Responses: 3,321.

Total Annual Burden Hours: 1,111.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Office, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: April 27, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–11036 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Commission has requested OMB approval of this submission by COB May 7, 1999.

EFFECTIVE DATE: April 26, 1999.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–406, Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Committee on Ways and Means of the U.S. House of Representatives. The Commission expects to deliver the results of its investigation to the Committee by September 17, 1999.

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* one.

(2) *Title of form:* Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan—Telephone Survey for U.S. Businesses.

(3) *Type of request:* new.

(4) *Frequency of use:* Telephone survey, single data gathering, scheduled for 1999.

(5) *Description of respondents:* Representative selection of U.S. firms which do business with India and Pakistan.

(6) *Estimated number of respondents:* 100.

(7) *Estimated total number of hours to complete the forms:* 100.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Scott Ki, Industry Coordinator, USITC (202–205–2160). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone No. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: April 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11005 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–389 (Review)]

3.5″ Microdisks From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on 3.5″ microdisks from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on 3.5″ microdisks from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–008, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1989, the Department of Commerce issued an antidumping duty order on imports of 3.5″ microdisks from Japan (54 FR 13406). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined a single Domestic Like Product: 3.5 inch microdisks and coated media therefor, irrespective of density. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined a single Domestic Industry: producers of coated media for 3.5 inch microdisks and converters of coated media into 3.5 inch microdisks. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is April 3, 1989.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the

Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1988.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in units and value data inthousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s'') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s'') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s'') production; and

(b) The quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11009 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310 and 520–521 (Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–007, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to

consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, the Department of Commerce issued antidumping duty orders on the subject imports:

Order date	Product/country	Investigation No.	FR Cite
12/17/86	Carbon steel butt-weld pipe fittings/Brazil	731–TA–308	51 FR 45152.
12/17/86	Carbon steel butt-weld pipe fittings/Taiwan	731–TA–310	51 FR 45152.
2/10/87	Carbon steel butt-weld pipe fittings/Japan	731–TA–309	52 FR 4167.
7/6/92	Carbon steel butt-weld pipe fittings/China	731–TA–520	57 FR 29702.
7/6/92	Carbon steel butt-weld pipe fittings/Thailand	731–TA–521	57 FR 29702.

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil, China, Japan, Taiwan, and Thailand.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined a single Domestic Like Product: carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, whether finished or unfinished.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations concerning Brazil, Japan, and Taiwan, the Commission defined a single Domestic Industry: producers of finished and unfinished carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, including integrated producers, converters, and combination producers which perform both integrated production and conversion. One Commissioner defined the Domestic Industry differently in the determinations concerning Brazil, Japan, and Taiwan. In its original determinations concerning China and Thailand, the Commission defined a single Domestic Industry: producers of finished and unfinished carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, including integrated producers, converters, and combination producers which perform both integrated production and conversion. However, in the determinations concerning China and Thailand, the Commission excluded two domestic producers, Tube Line and Weldbend, from the Domestic Industry under the related parties provision. For purposes of this notice, you should report information separately on each of the following two Domestic Industries: (1) the Domestic Industry including Tube Line and Weldbend and (2) The Domestic Industry excluding Tube Line and Weldbend.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews

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the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Brazil, Japan, and Taiwan that currently export or have exported Subject Merchandise to the United States or other countries since 1986. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in China and Thailand that currently export or have exported Subject Merchandise to the United States or other countries since 1991.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties)

of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11010 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–20–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–406 and 408 (Review)]

Electrolytic Manganese Dioxide From Greece and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On April 17, 1989, the Department of Commerce issued antidumping duty orders on imports of electrolytic manganese dioxide from Greece and Japan (54 FR 15243). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Greece and Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–009, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Subject Merchandise. In its original determinations, the Commission defined a single Domestic Like Product: electrolytic manganese dioxide.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single Domestic Industry: producers of electrolytic manganese dioxide.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is April 17, 1989.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service list

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the

Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1988.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to inportation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11008 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–385–386 (Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm.*

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–006, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov)*.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1988, the Department of Commerce issued an antidumping duty order on imports of granular polytetrafluoroethylene resin from Japan (53 FR 32267). On August 30, 1988, the Department of Commerce issued an antidumping duty order on imports of granular polytetrafluoroethylene resin from Italy (53 FR 33163). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Italy and Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined a single Domestic Like Product: granular polytetrafluoroethylene resin.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single Domestic Industry: producers of granular polytetrafluoroethylene resin.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In the review concerning Japan, the Order Date is August 24, 1988. In the review concerning Italy, the Order Date is August 30, 1988.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one

Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1987.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11012 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–253 and 271 (Review) and 731–TA–132, 252, 271, 273, 276–277, 296, 318, 409–410, 532–534, and 536–537 (Review)]

Certain Pipe and Tube From Argentina, Brazil, Canada, India, Israel, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on certain pipe and tube from Argentina, Brazil,

Canada, India, Israel, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on certain pipe and tube from Argentina, Brazil, Canada, India, Israel, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm.*

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, the Department of Commerce issued countervailing duty and antidumping duty orders on the subject imports:

Order date	Product/Country	Inv. No	F.R. cite
5/7/84	Small diameter carbon steel pipe & tube/Taiwan	731–TA–132	49 F.R. 19369
3/7/86	Welded carbon steel pipe & tube/Turkey	701–TA–253	51 F.R. 7984
3/7/86	Welded carbon steel line pipe/Turkey	701–TA–253	51 F.R. 7984
3/11/86	Welded carbon steel pipe & tube/Thailand	731–TA–252	51 F.R. 8341
5/12/86	Welded carbon steel pipe & tube/India	731–TA–271	51 F.R. 17384
5/15/86	Welded carbon steel pipe & tube/Turkey	731–TA–273	51 F.R. 17784
6/16/86	Oil country tubular goods/Canada	731–TA–276	51 F.R. 21782
6/18/86	Oil country tubular goods/Taiwan	731–TA–277	51 F.R. 22098
11/13/86	Small diameter standard & rectangular pipe & tube/Singapore	731–TA–296	51 F.R. 41142
3/6/87	Oil country tubular goods/Israel	731–TA–318	52 F.R. 7000
3/6/87	Oil country tubular goods/Israel	701–TA–271	52 F.R. 6999
3/27/89	Light-walled rectangular tube/Taiwan	731–TA–410	54 F.R. 12467
5/26/89	Light-walled rectangular tube/Argentina	731–TA–409	54 F.R. 22794
11/2/92	Circular welded nonalloy steel pipe/Brazil	731–TA–532	57 F.R. 49453
11/2/92	Circular welded nonalloy steel pipe/Korea	731–TA–533	57 F.R. 49453
11/2/92	Circular welded nonalloy steel pipe/Mexico	731–TA–534	57 F.R. 49453
11/2/92	Circular welded nonalloy steel pipe/Taiwan	731–TA–536	57 F.R. 49454
11/2/92	Circular welded nonalloy steel pipe/Venezuela	731–TA–537	57 F.R. 49453

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Argentina, Brazil, Canada, India, Israel, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. The Domestic Like Products the Commission defined in its original affirmative determinations are listed below:

Investigation	Domestic like product
Small diameter carbon steel pipe and tube/Taiwan.	One Domestic Like Product: circular welded carbon steel pipes and tubes with an outside diameter of at least 0.375 inch but not more than 4.5 inches.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–005, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Investigation	Domestic like product
Welded carbon steel line pipe and pipe and tube/Turkey.	One Domestic Like Product: circular welded carbon steel standard pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches. The countervailing duty determination with respect to Turkey found a second Domestic Like Product, defined as circular welded carbon steel line pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches.
Welded carbon steel pipe and tube/Thailand	
Welded carbon steel pipe and tube/India	
Oil country tubular goods/Canada	Two Domestic Like Products: (1) oil country tubular goods (OCTG), i.e., green tubes and finished, seamless and welded, casing and tubing, and (2) drill pipe. Certain Commissioners defined the Domestic Like Product differently. The Commission examined the impact of the subject imports on all OCTG because the available data in the investigations did not permit the identification of drill pipe as a separate industry.
Oil country tubular goods/Taiwan	
Oil country tubular goods/Israel	One Domestic Like Product: all OCTG, including drill pipe. Certain Commissioners defined the Domestic Like Product differently. The Commission examined the impact of the subject imports on all OCTG because the available data in the investigations did not permit the identification of drill pipe as a separate industry.
Small diameter standard and rectangular pipe and tube/Singapore.	One Domestic Like Product: rectangular welded carbon steel pipes and tubes having less than 0.156 inch wall thickness.
Light-walled rectangular tube/Taiwan	
Light-walled rectangular tube/Argentina	
Circular welded nonalloy steel pipe/Brazil	One Domestic Like Product: standard and structural pipes and tubes, including unfinished conduit pipe.
Circular welded nonalloy steel pipe/Korea	
Circular welded nonalloy steel pipe/Mexico	
Circular welded nonalloy steel pipe/Taiwan	
Circular welded nonalloy steel pipe/Venezuela	

For purposes of this notice, you should report information separately on each of the following Domestic Like Products: (1) Circular welded carbon steel pipes and tubes with an outside diameter of at least 0.375 inch but not more than 4.5 inches, (2) circular welded carbon steel standard pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches, (3) circular welded carbon steel line pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches, (4) OCTG excluding drill pipe, i.e., green tubes and finished, seamless and welded, casing and tubing, (5) drill pipe, (6) OCTG including drill pipe, (7) rectangular welded carbon steel pipes and tubes having less than 0.156 inch wall thickness, and (8) standard and structural pipes and tubes, including unfinished conduit pipe.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. The Domestic Industries the Commission defined in its original determinations are listed below:

Investigation	Domestic industry
Small diameter carbon steel pipe and tube/Taiwan.	One Domestic Industry: producers of circular welded carbon steel pipes and tubes with an outside diameter of at least 0.375 inch but not more than 4.5 inches.
Welded carbon steel line pipe and pipe and tube/Turkey.	One Domestic Industry: producers of circular welded carbon steel standard pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches. The countervailing duty determination with respect to Turkey found a second Domestic Industry, defined as producers of circular welded carbon steel line pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches.
Welded carbon steel pipe and tube/Thailand	
Welded carbon steel pipe and tube/India	
Oil country tubular goods/Canada	Two Domestic Industries: (1) producers of OCTG, i.e., green tubes and finished, seamless and welded, casing and tubing, and (2) producers of drill pipe. Certain Commissioners defined the Domestic Industry differently. The Commission examined the impact of the subject imports on all OCTG because the available data in the investigations did not permit the identification of drill pipe as a separate industry.
Oil country tubular goods/Taiwan	
Oil country tubular goods/Israel	One Domestic Industry: producers of all OCTG, including drill pipe. Certain Commissioners defined the Domestic Industry differently. The Commission examined the impact of the subject imports on all OCTG because the available data in the investigations did not permit the identification of drill pipe as a separate industry.
Small diameter standard and rectangular pipe and tube/Singapore.	One Domestic Industry: producers of rectangular welded carbon steel pipes and tubes having less than 0.156 inch wall thickness.
Light-walled rectangular tube/Taiwan	
Light-walled rectangular tube/Argentina	
Circular welded nonalloy steel pipe/Brazil	One Domestic Industry: producers of standard and structural pipes and tubes, including unfinished conduit pipe.
Circular welded nonalloy steel pipe/Korea	
Circular welded nonalloy steel pipe/Mexico	
Circular welded nonalloy steel pipe/Taiwan	
Circular welded nonalloy steel pipe/Venezuela	

For purposes of this notice, you should report information separately on each of the following Domestic Industries: (1) Producers of circular welded carbon steel pipes and tubes with an outside diameter of at least 0.375 inch but not more than 4.5 inches, (2) producers of circular welded carbon steel standard pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches, (3) producers of circular welded carbon

steel line pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches, (4) producers of OCTG excluding drill pipe, i.e., green tubes and finished, seamless and welded, casing and tubing, (5) producers of drill pipe, (6) producers of OCTG including drill pipe, (7) producers of rectangular welded carbon steel pipes and tubes having less than 0.156 inch wall thickness, and (8) producers of standard and structural pipes and tubes, including unfinished conduit pipe.

(5) The Order Date is the date that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any

known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since the years the petitions were filed. The Subject Merchandise, the Subject Countries, and the years the petitions were filed are listed below:

Subject merchandise/subject country	Years
Small diameter carbon steel pipe and tube/Taiwan	1983
Welded carbon steel pipe and tube/Turkey	1985
Welded carbon steel line pipe/Turkey	1985
Welded carbon steel pipe and tube/Thailand	1985
Welded carbon steel pipe and tube/India	1985
Welded carbon steel pipe and tube/Turkey	1985
Oil country tubular goods/Canada	1985
Oil country tubular goods/Taiwan	1985
Small diameter standard and rectangular pipe and tube/Singapore	1985
Oil country tubular goods/Israel	1986
Oil country tubular goods/Israel	1986
Light-walled rectangular tube/Taiwan	1988
Light-walled rectangular tube/Argentina	1988
Circular welded nonalloy steel pipe/Brazil	1991
Circular welded nonalloy steel pipe/Korea	1991
Circular welded nonalloy steel pipe/Mexico	1991
Circular welded nonalloy steel pipe/Taiwan	1991
Circular welded nonalloy steel pipe/Venezuela	1991

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s'') production; and

(b) the quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s'') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s'') production; and

(b) the quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad) Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11011 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Revisions to Existing Collection in Use Without an OMB Control Number; Comment Request

ACTION: Notice of information collection under review; Notice of entry of Appearance as Attorney or representative Before the Board of Immigration Appeals, Executive Officer for Immigration Review.

Notice of this existing collection in use without an OMB Control Number is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 2, 1999.

The agency requests written comments and suggestions from the public and affected agencies concerning this existing collection of information in use without an OMB Control Number. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the revised information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) Type of Information Collection: *Revisions to existing collection in use without an OMB Control Number.*

(2) Title of the Form/Collection: Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–27, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information collected on EOIR–27 will be used (i) to determine whether or not a responding attorney or representative is duly authorized to represent aliens before the Board of Immigration Appeals, (ii) to provide the responding represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative as required by law, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 26,000 responses per year at 6 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated; April 28, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–10976 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Revisions to Existing Collection In Use Without an OMB Control Number; Comment Request

ACTION: Notice of information collection under review; Notice of entry of appearance as attorney or representative before the immigration court.

Notice of this existing collection in use without an OMB Control Number is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 2, 1999.

The agency requests written comments and suggestions from the public and affected agencies concerning this existing collection of information in use without an OMB Control Number. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the revised information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) Type of Information Collection: *Revisions to existing collection in use without an OMB Control Number.*

(2) Title of the Form/Collection: Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–28, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information collected on EOIR–28 will be used (i) to determine whether or not a responding attorney or representative is duly authorized to represent aliens before the Immigration Court, (ii) to provide the responding represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative as required by law, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 77,000 responses per year at 6 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 7,700 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 28, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–10977 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; Immigration practitioner complaint form, Executive Office for Immigration Review.

Notice of this new information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 2, 1999.

The agency requests written comments and suggestions from the public and affected agencies concerning this new collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone (703) 305–0470. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) Type of Information Collection: *New Collection of Information.*

(2) Title of the Form/Collection: Immigration Practitioner Complaint Form, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–44, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information on this form will be used to determine whether or not, assuming the truth of the factual allegations raised therein, the Office of the General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 500 responses per year at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 28, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–10978 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; Immigration practitioner appeal form from decision of adjudicating official, Board of Immigration Appeals, Executive Office for Immigration Review.

Notice of this new information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 2, 1999.

The agency requests written comments and suggestions from the public and affected agencies concerning this new collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone (703) 305–0470. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) Type of Information Collection: *New Collection of Information.*

(2) Title of the Form/Collection: Immigration Practitioner Appeal Form from Decision of Adjudicating Official, Board of Immigration Appeals, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–45, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information on this form will be used by immigration practitioners to appeal an adverse decision of an Adjudicating Official in a disciplinary proceeding to the Board of Immigration Appeals, Executive Office for Immigration Review.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses per year at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 50 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 28, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–10979 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 9:00 a.m. to 5:00 p.m. on Monday, June 7, 1999; and 9:00 a.m. to 12 noon on Tuesday, June 8, 1999.

Place: Raintree Plaza Hotel & Conference Center, 1900 Ken Pratt Boulevard, Longmont, Colorado 80501.

Status: Open.

Matters to be Considered: FY 2000 Service Plan Recommendations; Updates on Strategic Planning and Interstate Compact Activities; Discussions of Mentally Ill in Jails and Prisons and Policy Regarding Private-for-Profit Organizations and NIC Services; and Program Division Reports.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director,

[FR Doc. 99–10949 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–36–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR part 35, "Medical Use of Byproduct Material."

2. Current OMB approval number: 3150–0010.

3. How often the collection is required: Required reports are collected and evaluated on a continuing basis as needed due to a change in programs or as events occur.

4. Who is required or asked to report: Physicians and medical institutions who are applicants for, or hold, an NRC license authorizing the administration of byproduct material, or its radiation to humans for medical use.

5. The number of annual respondents: 1,891 NRC licensees and 4,728 Agreement State licensees.

6. The number of hours needed annually to complete the requirement or request: 369,916 hours for NRC licensees and 924,765 hours for Agreement State licensees, for a total burden of 1,294,681 hours (196 hours per licensee).

7. Abstract: 10 CFR part 35, "Medical Use of Byproduct Material," contains requirements that apply to NRC licensees who are authorized to administer byproduct material or its radiation to humans for medical use. The information in the required reports and records is used by the NRC to ensure that the health and safety of the public is protected, and that the licensee's possession and use of byproduct material is in compliance with the license and regulatory requirements. The revision is a net decrease adjustment in burden resulting from a decrease in the number of affected licensees.

Submit, by July 2, 1999 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Md., this 27th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer

[FR Doc. 99–11024 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corp; Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Florida Power Corporation (FPC) to withdraw its October 16, 1998, application, with supplement dated December 22, 1998, for an amendment to Facility Operating License No. DPR 72, issued to FPC for operation of the Crystal River Nuclear Generating Unit 3 (CR–3) located in Citrus County, Florida. Notice of consideration of issuance of this amendment was published in the **Federal Register** on November 18, 1998 (63 FR 64116).

The proposed amendment would have changed the CR–3 Final Safety Analysis Report (FSAR), Improved Technical Specifications (ITS) and ITS Bases to resolve an Unreviewed Safety Question (USQ). This USQ was created by changing the normal standby position of valves DHV–34 and DHV–35 (low pressure injection (LPI) pump suction valves from borated water storage tank) from normally open to normally closed. Maintaining these valves normally closed had been determined to be necessary to ensure assumptions used in fire protection analyses remain valid. The proposed amendment would have also added new ITS surveillance requirements for verifying on a periodic basis that the LPI system components and piping, and the

building spray suction piping, were full of water.

FPC's letter of April 12, 1999, informed the staff that the request was being withdrawn because FPC had resolved the fire protection analyses concerns in a manner that allows valves DHV–34 and DHV–35 to be restored to the normally open standby configuration. With restoration of the valves to the normally open standby position, the need for the proposed amendment no longer existed.

For further details with respect to this action, see the application for amendment dated October 16, 1998, as supplemented December 22, 1998, and FPC's withdrawal letter dated April 12, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, MD, this 27th day of April 1999.

For the Nuclear Regulatory Commission.

Leonard A. Wiens,

Senior Project Manager, Section 2, Project Directorote II, Division of Licensing Project Monogement, Office of Nuclear Reoctor Regulotion.

[FR Doc. 99–11021 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company (San Onofre Nuclear Generating Station, Unit Nos. 2 and 3); Exemption

I

Southern California Edison Company (SCE, the licensee) is the holder of Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station, Units 2 and 3. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized water reactors located at the licensee's site in San Clemente, California.

II

Section 50.71 of Title 10 of the Code of Federal Regulations (10 CFR), "Maintenance of records, making reports," paragraph (e)(4) states, in part, that "Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months." The two San Onofre Nuclear Generating Station (SONGS) units share a common Final Safety Analysis Report (FSAR); therefore, this rule requires the licensee to update the same document within six months after a refueling outage for each unit.

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states that:

> The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) Authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.* * *" The licensee's proposed schedule for FSAR updates, 6 months following every Unit 3 refueling outage, but not exceeding 24 months, will ensure that the SONGS FSAR will be maintained current within 24 months of the last revision. The proposed schedule fits within the 24-month duration specified by 10 CFR 50.71(e)(4). Literal application of 10 CFR 50.71(e)(4) would require the licensee to update the same document within 6 months following a refueling outage for either unit, a more burdensome requirement than intended. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii).

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Southern California Edison Company an exemption from the requirements of 10 CFR 50.71(e)(4) to submit updates to the SONGS UFSAR within 6 months following every Unit 3 refueling, not to exceed 24 months, beginning 6 months after the next Unit 3 refueling outage or 24 months from the last update of the SONGS UFSAR, whichever is sooner.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the environment (64 FR 14470).

This exemption is effective upon issuance.

Dated at Rockville, MD, this 27th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Monagement, Office of Nuclear Reoctor Regulotion.

[FR Doc. 99–11022 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2 (50–280/281)]

Virginia Electric and Power Co. Surry Independent Spent Fuel Storage Installation; Exemption

I

Virginia Electric and Power Company (Virginia Power), the licensee, holds Materials License SNM–2501 for receipt and storage of spent fuel from the Surry Power Station at an independent spent fuel storage installation (ISFSI) located on the Surry Power Station site. The facility is located in Surry County, Virginia.

II

Pursuant to 10 CFR 72.7, the Nuclear Regulatory Commission (NRC) may grant exemptions from the requirements of the regulations in 10 CFR part 72 as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Section 72.72(d) of 10 CFR part 72 requires each licensee to keep duplicate records of spent fuel and high-level radioactive waste in storage. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. The applicant stated that, pursuant to 10 CFR 72.140(d), the Virginia Power Operational Quality Assurance (QA) Program Topical Report will be used to satisfy the QA requirements for the ISFSI. The QA Program Topical Report states that QA records are maintained in accordance with commitments to ANSI N45.2.9–1974. ANSI N45.2.9–1974 allows for the storage of QA records in a duplicate storage location sufficiently remote from

the original records or in a record storage facility subject to certain provisions designed to protect the records from fire and other adverse conditions. The applicant seeks to streamline and standardize recordkeeping procedures and processes for the Surry Power Station and ISFSI spent fuel records. The applicant states that requiring a separate method of record storage for ISFSI records diverts resources unnecessarily.

ANSI N45.2.9–1974 provides requirements for the protection of nuclear power plant QA records against degradation. It specifies design requirements for use in the construction of record storage facilities when use of a single storage facility is desired. It includes specific requirements for protection against degradation mechanisms such as fire, humidity, and condensation. The requirements in ANSI N45.2.9–1974 have been endorsed by the NRC in Regulatory Guide 1.88, "Collection, Storage and Maintenance of Nuclear Power Plant Quality Assurance Records," as adequate for satisfying the recordkeeping requirements of 10 CFR Part 50, Appendix B. ANSI N45.2.9–1974 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant QA records.

III

By letter dated September 10, 1998, Virginia Power requested an exemption from the requirement in 10 CFR 72.72(d) which states in part that "Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records." The applicant proposes to maintain a single set of spent fuel records in storage at a record storage facility that satisfies the requirements set forth in ANSI N45.2.9–1974.

IV

The staff considered the applicant's request and determined that granting the proposed exemption from the requirements of 10 CFR 72.72(d) is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. The staff grants the exemption, subject to the following conditions:

(1) Virginia Power may maintain records of spent fuel and high-level radioactive waste in storage either in duplicate as required by 10 CFR 72.72(d), or alternatively, a single set of records may be maintained at a record storage facility that satisfies the standards set forth in ANSI N45.2.9–1974.

(2) All other requirements of 10 CFR 72.72(d) shall be met.

The documents related to this proposed action are available for public inspection and for copying (for a fee) at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the Local Public Document Room at the College of William and Mary, Swem Library, Williamsburg, Virginia 23185.

Pursuant to 10 CFR 51.32, NRC has determined that granting this exemption will have no significant impact on the quality of the human environment (64 FR 14277).

This exemption is effective upon issuance.

Dated at Rockville, MD, this 22nd day of April 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11023 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–80 and DPR–82 that were issued to Pacific Gas and Electric Company (the licensee) for operation of the Diablo Canyon Power Plant (DCPP) Units 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Pacific Gas and Electric Company (PG&E) from the requirements of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, to allow use of the American Society of Mechanical Engineers (ASME) Code Case N–514 as an alternate method for establishing the setpoints for the low temperature overpressure protection (LTOP) systems that have been installed for overpressure protection of the DCPP reactor coolant pressure boundary.

The proposed action is in accordance with the licensee's application for exemption dated September 3, 1998, as supplemented by letters dated January 22, February 5, and March 17, 1999.

The Need for the Proposed Action

The provisions of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, restrict the operating conditions for the DCPP reactor coolant systems from exceeding the pressure/temperature (P/T) limits established in compliance with Appendix G to Section XI of the ASME Boiler and Pressure Vessel Code. The requirements in 10 CFR Part 50 were established to protect the integrity of the reactor coolant pressure boundary in nuclear power plants. As part of these requirements, 10 CFR Part 50, Appendix G, requires that the P/T limits be established for reactor pressure vessels during normal and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states that "The appropriate requirements on . . . the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Pressurized water reactor licensees have installed cold overpressure mitigation systems(COMS)/low temperature overpressure protection systems (LTOP) in order to protect the reactor coolant pressure boundaries from being operated outside of the boundaries established by the P/T limit curves and to provide pressure relief of the reactor coolant pressure boundaries during low temperature overpressurization events. DCPP technical specifications require them to update and submit the changes to its LTOP setpoints whenever PG&E is requesting approval for amendments to the P/T limit curves. The use of Code Case N–514 would provide an acceptable level of safety against overpressurization events of the DCPP reactor pressure vessels. Based on the conservatism that is incorporated into the methods of Appendix G of the Section XI to the ASME Code for calculating P/T limit curves, it is concluded that permitting the LTOP setpoints to be established in accordance with the Code Case (e.g., at a level ≤110 percent of the limit defined by the P/T limit curves) would provide an adequate margin of safety against brittle fracture failure of the reactor pressure vessels. Therefore, the requirements of 10 CFR Part 50, Appendix G and Appendix G to Section XI of the ASME Code, are not necessary

to prevent brittle fracture of the reactor pressure vessel from occurring during low temperature operation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the use of Code Case N–514 as an alternative method for establishing the setpoints for the LTOP systems at DCPP Units 1 and 2 would provide an adequate margin of safety against brittle fracture of the DCPP reactor vessels.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Diablo Canyon Power Plant dated May 1973, and the Addendum dated May 1976.

Agencies and Persons Consulted

In accordance with its stated policy, on April 22, 1999, the staff consulted with the California State official, Mr. Steve Hsu of the Radiologic Health Branch of the State Department of Health Services, regarding the environmental impact of the proposed amendments. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed amendments will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated September 3, 1998, as supplemented dated January 22, February 5, and March 17, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11117 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Co., South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–76 and Facility Operating License No. NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of the South Texas Project (STP), Units 1 and 2, located in Matagorda County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt STP Nuclear Operating Company from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) § 50.60, which requires all power reactors to meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in appendices G and H to 10 CFR part 50. The proposed exemption would allow STP Nuclear Operating Company to apply American Society of Mechanical Engineers (ASME) Code Case N–514 for determining STP's cold overpressurization mitigation system (COMS) pressure setpoint.

The proposed action is in accordance with the licensee's application for exemption dated March 18, 1999.

The Need for the Proposed Action

The proposed exemption is needed to support an amendment to the STP Technical Specifications which will revise the heatup, cooldown, and COMS curves. The use of ASME Code Case N–514 would allow an increased operating band for system makeup and pressure control.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of South Texas Project, Units 1 and 2," dated August 1996, in NUREG–1171.

Agencies and Persons Consulted

In accordance with its stated policy, on March 30, 1999, the staff consulted with Texas State Official, Mr. Arthur C. Tate of the Texas Department of Health regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 18, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas.

Dated at Rockville, Md., this 27th day of April 1999.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11025 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on May 26, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of this meeting may be closed to public attendance to discuss Electric Power Research Institute (EPRI) proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, May 26, 1999—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the: (1) Proposed resolution of Generic Safety Issue 23, "Reactor Coolant Pump Seal Failures," (2) proposed rule to revise Appendix K to 10 CFR 50.46 to allow small, cost beneficial power uprates, and (3) status of the EPRI RETRAN–3D transient thermal-hydraulic code review and proposed ACRS Structured Discussion on development of code review guidelines. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 27, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–11019 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Severe Accident Management; Meeting

The ACRS Subcommittee on Severe Accident Management will hold a meeting on May 27, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Thursday, May 27, 1999—8:30 a.m. until the conclusion of business.

The Subcommittee will review the application of the Southern California Edison Company for an exemption to the hydrogen control requirements for the San Onofre Nuclear Generating Station. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Southern California Edison Company, the NRC staff, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are

urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 27, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–11020 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27010]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 23, 1999.

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 under the Act. 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 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 May 18, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, 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 should 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 May 18, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Energy Group, et al. (70–9127)

Columbia Energy Group ("Columbia"), 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, a registered holding company, and its nonutility subsidiary companies, Columbia Energy Group Service Corporation, Columbia LNG Corporation, CLNG Corporation, Columbia Atlantic Trading Corporation, Columbia Energy Services Corporation, Columbia Energy Power Marketing Corporation, Columbia Energy Marketing Corporation, Energy.Com Corporation, Columbia Service Partners, Inc., Columbia Assurance Agency, Inc., Columbia Energy Group Capital Corporation, Columbia Deep Water Services Corporation, Columbia Electric Corporation, Columbia Electric Pedrick Limited Corporation, Columbia Electric Pedrick General Corporation, Columbia Electric Binghamton Limited Corporation, Columbia Electric Binghamton General Corporation, Columbia Electric Vineland Limited Corporation, Columbia Electric Vineland General Corporation, Columbia Electric Rumford Limited Corporation, Columbia Electric Limited Holdings Corporation, Columbia Electric Liberty Corporation, all located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600; Columbia Energy Resources, Inc., Columbia Natural Resources, Inc., Alamco-Delaware, Inc., Hawg Hauling & Disposal, Inc., Clarksburg Gas, L.P., Phoenix-Alamco Ventures, L.L.C., Columbia Natural Resources Canada, Ltd. ("CNR Canada"), all located c/o 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Gas Transmission Corporation, 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146; Columbia Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057; Columbia Network Services Corporation and CNS Microwave, Inc., both located at 1600 Dublin Road, Columbus, Ohio 43215–1082; Columbia Propane Corporation, 9200 Areboretum Parkway, Suite 140, Richmond, Virginia 23236; and Columbia Insurance Corporation, Ltd., Craig Appin House, 8 Wesley Street, Hamilton HM EX, Bermuda, have filed a post-effective amendment with this Commission under section 9(a) of the Act and rules 45 and 54 under the Act to an application-declaration filed under sections 6(a), 7, 9(a), 10 and 13(b) of the Act, and rule 54 under the Act.

By order dated January 23, 1998 (HCAR No. 26820), the Commission authorized Columbia to invest up to $5 million to acquire oil and natural gas leasehold interests in properties located in southern Ontario, Canada from Paragon Petroleum Corporation, a Canadian corporation. These interests were acquired through CNR Canada, which is currently pursuing oil and gas exploration activities on the properties.

Columbia now seeks authority to expand its oil and gas exploration activities to other properties in Canada. These activities would be conducted by one or more, direct or indirect, existing or to-be-formed, non-utility subsidiaries. In connection with the proposed expansion, Columbia also seeks authority to increase its investment in these activities from $5 million to $55 million.

Columbia plans to use the increased investment for three purposes. The first purpose is for development activities on previously acquired properties with proven reserves. The second purpose is for drilling and development of proven and probable undeveloped reserves. Third, Columbia plans to invest in the acquisition of additional acreage, or the drilling rights to additional acreage.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10987 Filed 4–30–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41325 ; File No. SR–CBOE–98–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Update and Reorganize Its Rules Relating to Designated Primary Market-Makers

April 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[3] On February 18, 1999, the Exchange submitted an amendment to the proposed rule filing.[4] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As discussed below, CBOE filed a substantially similar proposal in 1998, which it subsequently withdrew. See note 5 below.

[4] The amendment deleted a proposed change to CBOE Rule 8.7.07 because the proposed change amended language proposed by another pending CBOE rule filing that has not been approved by the Commission. Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE is Kelly McCormick, Division of Market Regulation, SEC, dated February 11, 1999 ("Amendment No. 1").

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to update and reorganize its rules relating to designated primary market-makers ("DPMs"). The text of the proposed rule change is as follows. Additions are italicized, deletions are bracketed.

Chapter III—Membership

* * * * *

Rule 3.27.—Membership Options Trading Permits

* * * * *

(c) DPMs. *The DPM trading system described in Section C of Chapter VIII* [Modified Trading System established in Rule 8.80] will be employed in NYSE Options. Each specialist firm to which a Permit is issued pursuant to subparagraph (a)(2) of this Rule shall be appointed as the DPM in the same classes of NYSE Options as those for which it was designated as a specialist on NYSE. Subject to the provisions of the Rules, a Permit holder qualified to act as a DPM pursuant to the Rules shall be appointed to act as the DPM for each class of equity options designated by the Exchange pursuant to the last sentence of paragraph (b) of this Rule. Each specialist firm appointed as a DPM in a class of NYSE Options pursuant to the foregoing two sentences shall, subject to the provisions of the Rules, continue to act as such DPM during the term of the Permits and thereafter so long as it is a regular member or member organization of the Exchange.

* * * * *

Chapter VI—Doing Business on the Exchange Floor

* * * * *

Rule 6.8.—RAES Operations in Equity Options

* * * * *

[(a)(iii) This rule shall apply to RAES in classes handled by DPM's except that the MTS Appointments Committee may make available additional series or raise the size of eligible orders in a DPM's classes pursuant to Rule 8.80.]

* * * * *

Chapter VIII—Market-Makers, Trading Crowds and Designated Primary Market-Makers

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Section A: Market-Makers

* * * * *

Rule 8.3.—Appointment of Market-Makers

* * * * *

[Interpretations and Policies:]

[01 The Exchange has adopted the policy that no Market-Maker may act as an independent Market-Maker in a class of options for which the Market-Maker has been approved to act as a DPM.]

* * * * *

Rule 8.16.—RAES Eligibility in Option Classes Other Than DJX

* * * * *

(a)(ii) The Market-Maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. Each individual member of the joint account must be physically present in the trading crowd while that member is signed onto RAES and each joint account member is subject to all of the following provisions of this rule. [DPM participation shall also be governed by the MTS Committee as provided in Rule 8.80.]

* * * * *

Section C: *Designated Primary Market-Makers* [Modified Trading System]

DPM Defined

Rule 8.80. A "Designated Primary Market-Maker" or "DPM" is a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker (as defined in Rule 8.1), as a Floor Broker (as defined in Rule 6.70), and as an Order Book Official (as defined in Rule 7.1). Determinations concerning whether to grant or withdraw the approval to act as a DPM are made by the Modified Trading System Appointments Committee ("MTS Committee") in accordance with Rules 8.83 and 8.90. DPMs are allocated securities by the Allocation Committee and the Special Product Assignment Committee in accordance with Rule 8.95.

DPM Designees

Rule 8.81. (a) A DPM may act as a DPM solely through its DPM Designees. A "DPM Designee" is an individual who is approved by the MTS Committee to represent a DPM in its capacity as a DPM. The MTS Committee may subclassify DPM Designees and require that certain DPM Designees be subject to specified supervision and/or be limited in their authority to represent a DPM.

(b) Notwithstanding any other rules to the contrary, an individual must satisfy the following requirements in order to be a DPM Designee of a DPM:

(i) The individual must be a member of the Exchange;

(ii) The individual must be a nominee of the DPM or of an affiliate of the DPM or must own a membership that has been registered for the DPM or for an affiliate of the DPM;

(iii) The individual must be registered as a Market-Maker pursuant to Rule 8.2 and as a Floor Broker pursuant to Rule 6.71;

(iv) On such form or forms as the Exchange may prescribe, the DPM must authorize the individual to enter into Exchange transactions on behalf of the DPM in its capacity as a DPM, must authorize the individual to represent the DPM in all matters relating to the fulfillment of the DPM's responsibilities as a DPM, and must guaranty all obligations arising out of the individual's representation of the DPM in its capacity as a DPM in all matters relating to the Exchange; and

(v) The individual must be approved by the MTS Committee to represent the DPM in its capacity as a DPM.

Notwithstanding the provisions of subparagraph (b)(ii) of this Rule, the MTS Committee shall have the discretion to permit an individual who is not affiliated with a DPM to act as a DPM Designee for the DPM on an emergency basis provided that the individual satisfies the other requirements of subparagraph (b) of this Rule.

(c) The approval of an individual to act as a DPM Designee shall expire in the event the individual does not have trading privileges on the Exchange for a six month time period.

(d) Each DPM shall have at least two DPM Designees who are nominees of the DPM or who own a membership that has been registered for the DPM.

(e) A DPM Designee of a DPM may not trade as a Market-Maker or Floor Broker in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. When acting on behalf of a DPM in its capacity as a DPM, a DPM Designee is exempt from the provisions of Rule 8.8.

MTS Committee

Rule 8.82. (a) The MTS Committee shall consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine members elected by the membership of the Exchange.

(b) The nine elected MTS Committee members shall include: four members whose primary business is as a Market-Maker, two members whose primary business is as a Market-Maker or as a DPM Designee, one member whose primary business is as a Floor Broker and who is not associated with a member organization that conducts a

public customer business, and two persons associated with member organizations that conduct a public customer business. No more than two of the nine elected MTS Committee members may be associated with a DPM. The nine elected MTS Committee members shall have three-year terms, three of which shall expire each year.

(c) The election procedures for the nine elected MTS Committee members shall be the same as the election procedures for elected Directors that are set forth in Article IV and Article V of the Exchange Constitution. Accordingly, the following shall occur as part of these procedures: During October of each year, the Nominating Committee shall select nominees to fill expiring terms and vacancies on the MTS Committee. Nominations may also be made by petition, signed by not less than 100 members and filed with the Secretary of the Exchange no later than 5:00 p.m. (Chicago time) on November 15, or the first business day thereafter in the event November 15 occurs on a holiday or a weekend. The election to fill the expiring terms and vacancies on the MTS Committee shall be held as part of the annual election.

Approval To Act as a DPM

Rule 8.83. (a) A member organization desiring to be approved to act as a DPM shall file an application with the Exchange on such form or forms as the Exchange may prescribe.

(b) The MTS Committee shall determine the appropriate number of approved DPMs. Each DPM approval shall be made by the MTS Committee from among the DPM applications on file with the Exchange, based on the MTS Committee's judgment as to which applicant is best able to perform the functions of a DPM. Factors to be considered in making such a selection may include, but are not limited to, any one or more of the following:

(i) Adequacy of capital;

(ii) Operational capacity;

(iii) Trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM;

(iv) Number and experience of support personnel of the applicant who will be performing functions related to the applicant's DPM business;

(v) Regulatory history of and history of adherence to Exchange Rules by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM;

(vi) Willingness and ability of the applicant to promote the Exchange as a marketplace;

(vii) Performance evaluations conducted pursuant to Rule 8.60; and

(viii) In the event that one or more shareholders, directors, officers, partners, managers, members, DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, DPM Designee, or other principal in another DPM, adherence by such DPM to the requirements set forth in this Section C of Chapter VIII respecting DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the DPM.

(c) Each applicant for approval as a DPM will be given an opportunity to present any matter which it wishes the MTS Committee to consider in conjunction with the approval decision. The MTS Committee may require that a presentation be solely or partially in writing, and may require the submission of additional information from the applicant or individuals associated with the applicant. Formal rules of evidence shall not apply to these proceedings.

(d) In selecting an applicant for approval as a DPM, the MTS Committee may place one or more conditions on the approval, including, but not limited to, conditions concerning the capital, operations, or personnel of the applicant and the number or type of securities which may be allocated to the applicant.

(e) Each DPM shall retain its approval to act as a DPM until the MTS Committee relieves the DPM of its approval and obligations to act as a DPM or the MTS Committee terminates the DPM's approval to act as a DPM pursuant to Rule 8.90.

(f) If a member organization resigns as a DPM or if pursuant to Rule 8.90 the MTS Committee terminates or otherwise limits its approval to act as a DPM, the MTS Committee shall have the discretion to do one or both of the following:

(i) Approve an interim DPM, pending the final approval of a new DPM pursuant to paragraphs (a) through (d) of this Rule; and

(ii) Allocate on an interim basis to another DPM or to other DPMs the securities that were allocated to the affected DPM, pending a final allocation of such securities pursuant to Rule 8.95.

Neither an interim approval or allocation made pursuant to this paragraph (f) should be viewed as a prejudgment with respect to the final approval or allocation.

Conditions on the Allocation of Securities to DPMs

Rule 8.84. (a) The MTS Committee may establish (i) restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and to affiliated DPMs and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel.

(b) The MTS Committee has the authority under other Exchange rules to restrict the ability of particular DPMs to receive allocations of securities, including but not limited to, Rules 8.88(b) and 8.60, Rule 8.83(d), and Rule 8.90.

DPM Obligations

Rule 8.85. (a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(i) assure that disseminated market quotations are accurate;

(ii) assure that each displayed market quotation is honored for at least the number of contracts prescribed pursuant to Rule 8.51;

(iii) in the case of option contracts, comply with the bid/ask differential requirements of Rule 8.7(b)(iv);

(iv) assure that the number of DPM Designees and support personnel continuously present at the trading station throughout every business day is not less than the minimum required by the MTS Committee;

(v) trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity;

(vi) segregate in a manner prescribed by the MTS Committee (A) all transactions consummated by the DPM in securities allocated to the DPM and (B) any other transactions consummated by or on behalf of the DPM that are related to the DPM's DPM business;

(vii) with respect to any security traded pursuant to Chapter XXX that is allocated to the DPM, fill any odd lot portion combined with a round lot order in that security at a price determined in accordance with Rule 30.22, Interpretation and Policy .05;

(viii) participate at all times in any Exchange sponsored automated order handling system, including the Retail Automatic Execution System (RAES); and

(ix) determine a formula for generating automatically updated

market quotations and disclose the following components of the formula to the other members trading at the trading station at which the formula is used: option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying.

Notwithstanding the provisions of subparagraph (a)(ix) of this Rule, the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems. In addition, to the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)(ix) of this Rule and the general obligations of a Market-Maker under the Rules, subparagraphs (a)(i) through (a)(ix) of this Rule shall govern.

(b) Agency Transactions. Each DPM shall fulfill all of the obligations of a Floor Broker (to the extent that the DPM acts as a Floor Broker) and of an Order Book Official under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(i) place in the public order book any order in the possession of the DPM which is eligible for entry into the book unless (A) the DPM executes the order upon its receipt or (B) the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were a displayed order in the public order book;

(ii) not remove from the public order book any order placed in the book unless (A) the order is canceled, expires, or is executed or (B) the DPM returns the order to the member that placed the order with the DPM in response to a request from that member to return the order;

(iii) accord priority to any order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority;

(iv) not charge any brokerage commission with respect to the execution of any order for which the DPM has acted as both agent and principal, unless the customer who placed the order has consented to paying a brokerage commission to the DPM with respect to the DPM's execution of the order while acting as both agent and principal;

(v) act as a Floor Broker to the extent required by the MTS Committee; and

(vi) not represent discretionary orders as a Floor Broker or otherwise. Notwithstanding the provisions of subparagraph (b)(vi) of this Rule, the MTS Committee shall have the discretion to authorize a DPM, on a temporary basis, to accept and represent types of orders in one or more of the securities allocated to the DPM which vest the DPM with limited discretion, if the MTS Committee determines that unusual circumstances are present and that the acceptance and representation of such orders by the DPM is necessary in order to assure that there will be adequate representation in such securities of those types of orders. In addition, to the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vi) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vi) of this Rule shall govern.

(c) Other Obligations. In addition to the obligations described in paragraphs (a) and (b) of this Rule, a DPM shall fulfill each of the following obligations:

(i) resolve disputes relating to transactions in the securities allocated to the DPM, subject to Floor Official review, upon the request of any party to the dispute;

(ii) promote the Exchange as a marketplace, including meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, and performing other like activities;

(iii) act to increase the Exchange's order flow in the securities which are allocated to the DPM and respond to competitive developments by improving market quality and service and otherwise acting to increase the Exchange's market share in those securities;

(iv) promptly inform the MTS Committee of any desired change in the DPM Designees who represent the DPM in its capacity as a DPM and of any material change in the financial or operational condition of the DPM;

(v) supervise all persons associated with the DPM to assure compliance with the Rules;

(vi) segregate in a manner prescribed by the MTS Committee the DPM's business and activities as a DPM from the DPM's other businesses and activities; and

(vii) continue to act as a DPM and to fulfill all of the DPM's obligations as a DPM until the MTS Committee relieves the DPM of its approval and obligations to act as a DPM or the MTS Committee terminates the DPM's approval to act as a DPM pursuant to Rule 8.90.

(d) Obligations of DPM Associated Persons. Each person associated with a DPM shall be obligated to comply with the provisions of this Rule when acting on behalf of the DPM.

** * * Interpretations and Policies:*

.01 The Exchange may make personnel available to assist a DPM in the DPM's performance of the obligations of an Order Book Official, for which the Exchange may charge the DPM a reasonable fee.

DPM Financial Requirements

Rule 8.86. Each DPM shall maintain (i) net liquidating equity in its DPM account of not less than $100,000, and in conformity with such guidelines as the MTS Committee may establish from time to time, and (ii) net capital sufficient to comply with the requirements of Exchange Act Rule 15c3–1. Each DPM which is a Clearing Member shall also maintain net capital sufficient to comply with the requirements of the Clearing Corporation.

Participation Entitlement of DPMs

Rule 8.87. (a) Subject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.

(b) To the extent established pursuant to paragraph (a) of this Rule, each DPM shall have a right to participate for its own account with the Market-Makers present in the trading crowd in transactions in securities allocated to the DPM that occur at the DPM's previously established principal bid or offer.

Review of DPM Operations and Performance

Rule 8.88. (a) The MTS Committee or a subcommittee of the MTS Committee may conduct a review of a DPM's operations or performance at any time and at a minimum shall conduct a review of each DPM's operations and performance on an annual basis. A DPM and its associated persons shall submit to the MTS Committee such information requested by the Committee in connection with a review of the DPM's operations or performance.

(b) The MTS Committee shall perform the market performance evaluation and remedial action functions set forth in Rule 8.60 with respect to DPMs and the Market-Makers and Floor Brokers that regularly trade at DPM trading stations.

The MTS Committee may combine a review conducted pursuant to paragraph (a) of this Rule with an evaluation conducted pursuant to Rule 8.60.

(c) Members of the MTS Committee may perform the functions of a Floor Official at DPM trading stations.

Transfer of DPM Appointments

Rule 8.89. (a) A DPM proposing any sale, transfer, or assignment of any ownership interest or any change in its capital structure, voting authority, or distribution of profits or losses shall give not less than thirty (30) days prior written notice thereof to the MTS Committee. No such transaction that is deemed to involve the transfer of a DPM appointment within the meaning of paragraph (b) of this Rule may take place unless (i) the transferee is qualified to act as a DPM in accordance with the Rules, and (ii) the transaction has received the prior approval of the MTS Committee.

(b) For purposes of this Rule 8.89, the following transactions are deemed to involve the transfer of a DPM appointment: (i) any sale, transfer, or assignment of any significant share of the ownership of a DPM; (ii) any change or transfer of control of a DPM; [sic](iii) any merger, sale of assets, or other business combination or reorganization of a DPM. A sale, transfer, or assignment of a five percent (5%) or more interest in the equity or profits or losses of a DPM (or any series of smaller changes that in the aggregate amount to a change of five percent or more) shall be deemed to be a sale, transfer, or assignment of a significant share of the ownership of the DPM; provided, however, that any sale, transfer, or assignment of a less than five percent interest may also be found by the MTS Committee to represent a significant share of the ownership of a DPM depending on the surrounding facts and circumstances, in which event the MTS Committee shall notify the DPM within fifteen (15) days after receiving notice thereof that the approval of the transaction by the MTS Committee is required.

(c) An application for the approval of a transaction deemed to involve the transfer of a DPM appointment shall be submitted in writing to the MTS Committee at least thirty (30) days prior to the proposed effective date of the transaction, unless the MTS Committee approves a shorter period for its review. The application shall contain a full and complete description of the proposed transaction, including (i) the identity of the transferee, (ii) a description of the transferee's ownership and capital structure, (iii) the identity of those persons who will be the partners, shareholders, directors, officers, and other managers or affiliates of the transferee, as well as those persons who will be responsible for performing the duties of the DPM following the transfer, (iv) the terms of the transaction including the consideration proposed to be paid by the transferee, (v) the terms of any other business relationships between the parties to the transaction, and (vi) any other material information pertaining to the transaction that the MTS Committee may request.

(d) Promptly after receipt of a completed application for the approval of a proposed transfer of a DPM appointment, the MTS Committee shall post notice of the proposed transfer on the Exchange Bulletin Board and in the Exchange Bulletin. The MTS Committee shall not ordinarily consider a proposed transfer sooner than ten (10) business days following the day notice is posted on the Bulletin Board, unless the MTS Committee finds it necessary to give earlier consideration to the matter in the interest of the maintenance of fair and orderly markets and the protection of investors. During this period, the MTS Committee will accept written comments on the proposed transfer from any member, and will accept written proposals from other members or from Market-Maker crowds who wish to be considered for appointment in some or all of the classes that are the subject of the proposed transfer.

(e) No application shall be finally approved by the MTS Committee until it is accompanied by complete and final documents pertaining to the transfer (all corporate or partnership documents and amendments thereto, voting trust, "buy-sell" or similar agreements, employment agreements, pro forma financial statements), except as the MTS Committee may agree to defer the delivery of specific documents for good cause shown. In considering the approval of a proposed transfer of a DPM appointment, the MTS Committee shall give due consideration to all relevant facts and circumstances, including but not limited to each of the following factors, if applicable: (i) the financial and operational capacity of the transferee; (ii) continuity of control, management, and persons responsible for the operation of the DPM; (iii) avoiding undue concentration of DPM appointments on the Exchange; (iv) available alternatives for reallocating the DPM's appointment taking into account comments made and alternatives proposed by other members during the posting period; and (v) the best interests of the Exchange. If the proposed transferee is not approved to act as a DPM at the time the application is considered by the MTS Committee, the approval of the transfer may be made contingent on the transferee's being so approved within a stated period of time.

(f) The approval or failure to approve a proposed transfer of a DPM appointment is subject to direct review by the Board of Directors upon receipt by the Secretary of the Exchange, within ten (10) days of the time the decision of the MTS Committee is announced, of (i) a written request for such review made by the applicant, specifying why the applicant believes the decision of the Committee should be reversed or modified (in the case of a failure to approve an application as submitted) or (ii) a request for review made by at least five Directors of the Exchange (in any case).

** * * Interpretations and Policies*

.01 For purposes of paragraph (b) of this Rule, a transfer of an interest in the profits (but not the ownership) of a DPM to an associated person of the DPM solely as compensation for the associated person's services in support of the business of the DPM shall not ordinarily be deemed to be a sale, transfer, or assignment of a significant share of the ownership of the DPM.

Termination, Conditioning, or Limiting Approval to Act as a DPM

Rule 8.90. (a) The MTS Committee may terminate, place conditions upon, or otherwise limit a member organization's approval to act as a DPM under any one or more of the following circumstances:

(i) if the member organization incurs a material financial, operational, or personnel change;

(ii) if the member organization fails to comply with any of the requirements under this Section C of ChapterVIII, including, but not limited to, any conditions imposed under Rule 8.83(d), Rule 8.84(a)(ii), or this Rule; or

(iii) if for any reason the member organization should no longer be eligible for approval to act as a DPM or to be allocated a particular security or securities.

Before the MTS Committee takes action to terminate, condition, or otherwise limit a member organization's approval to act as a DPM, the member organization will be given notice of such possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take such action. Such proceedings shall be conducted in the same manner as MTS

Committee proceedings concerning DPM approvals which are governed by Rule 8.83(c).

(b) Notwithstanding the provisions of paragraph (a) of this Rule, the MTS Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as a DPM if it incurs a material financial, operational, or personnel change warranting such action or if the member organization fails to comply with any of the financial requirements of Rule 8.86.

(c) Limiting a member organization's approval to act as a DPM may include, among other things, limiting or withdrawing the member organization's DPM participation entitlement provided for under Rule 8.87, withdrawing the right of the member organization to act in the capacity of a DPM in a particular security or securities which have been allocated to the member organization, and/or requiring the relocation of the member organization's DPM operation on the Exchange's trading floor.

(d) If a member organization's approval to act as a DPM is terminated, conditioned, or otherwise limited by the MTS Committee pursuant to this Rule, the member organization may seek review of that decision under Chapter XIX of the Rules.

Limitations on Dealings of DPMs and Affiliated Persons of DPMs

RULE 8.91. (a) No person or entity affiliated with a DPM shall purchase or sell on the Exchange, for any account in which such person or entity has a direct or indirect interest, any security which is allocated to the DPM. Any such person or entity may, however, reduce or liquidate an existing position in a security which is allocated to an affiliated DPM provided that any order to consummate such a transaction is (i) identified as being for an account in which such person or entity has a direct or indirect interest, (ii) approved for execution by a Floor Official, and (iii) executed by the DPM in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (a) shall be given priority over, or parity with, any order represented in the market at the same price. This paragraph (a) shall not apply to a DPM Designee of a DPM acting on behalf of the DPM in its capacity as a DPM.

(b) Neither a DPM for an equity option, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security that underlies the equity option or with any officer, director, or 10% shareholder of the issuer of the security. Neither a DPM for a security traded pursuant to Chapter XXX, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security or with any officer, director, or 10% shareholder of the issuer of the security. For the purposes of this paragraph (b), a material business transaction shall be deemed to be a transaction which is material in value either to the issuer or the DPM, would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the DPM. Notwithstanding the foregoing, the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available shall not be deemed a material business transaction for the purposes of this paragraph (b).

(c) Neither a DPM for an equity option, nor any member affiliated with the DPM, shall accept any orders directly from the issuer of the security that underlies the equity option or directly from any officer, director, or 10% shareholder of the issuer of the security. Neither a DPM for a security traded pursuant to Chapter XXX, nor any member affiliated with the DPM, shall accept any orders directly from the issuer of the security or directly from any officer, director, or 10% shareholder of the issuer of the security.

(d) No member affiliated with a DPM may act as a Floor Broker in any trading crowd in which the DPM acts as a DPM. This paragraph (d) shall not apply to a DPM Designee of a DPM acting on behalf of the DPM in its capacity as a DPM.

(e) Paragraphs (a), (b), and (c) of this Rule shall not apply to any member affiliated with a DPM that has established and obtained Exchange approval of procedures restricting the flow of material non-public corporate and market information (i.e., a "Chinese Wall") between such member on the one hand and the DPM and persons affiliated with the DPM on the other hand. Any such procedures shall comply with the following Guidelines:

Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs

These Guidelines set forth the steps that a member affiliated with a DPM must undertake, at a minimum, to seek to obtain an exemption under Rule 8.91(e) from the requirements of paragraphs (a) through (c) of Rule 8.91. These Guidelines may be supplemented or modified by the Exchange in individual cases when the Exchange deems it appropriate to do so.

(a) Generally, an affiliated member seeking a Rule 8.91(e) exemption should establish its operational structure along the lines discussed below.

(i) The affiliated member and the DPM must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records, and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated member and the DPM to be under common management, in no instance may persons on the affiliated member's side of the "Wall" exercise influence over or control the DPM's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the DPM's market-making responsibilities pursuant to the Rules.

(ii) The affiliated member and the DPM must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated member to influence the DPM's conduct and to avoid the misuse of DPM market information to influence the affiliated member's conduct. Specifically, the affiliated member and the DPM must ensure that material non-public corporate information relating to trading positions taken by the affiliated member in a DPM security are not made available to the DPM or to any shareholder, director, officer, partner, manager, member, principal, DPM Designee, or employee associated therewith; that no trading is done by the DPM while in possession of non-public corporate information derived by the affiliated member from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the affiliated member's recommendations; and that all information pertaining to positions taken or to be taken by the DPM and to the DPM's "book" in a DPM security is kept confidential and is not made available to the affiliated member except to the extent that such information is made available to the affiliated member in accordance with subparagraph (b)(iii) of these Guidelines.

(b) An affiliated member seeking a Rule 8.91(e) exemption shall submit to the Exchange a written statement which shall set forth:

(i) The manner in which the affiliated member intends to satisfy each of the

conditions stated in subparagraphs (a)(i) and (a)(ii) of these Guidelines, and the compliance and audit procedures the affiliated member proposes to implement to ensure that the functional separation is maintained between the affiliated member and the DPM;

(ii) The designation and identification of the individuals associated with the affiliated member responsible for maintenance and surveillance of such procedures;

(iii) That the DPM shall make available to the affiliated member only the sort of market information that the DPM would make available in the normal course of its DPM activity to any other member; that the DPM shall only make such information available to the affiliated member in the same manner that it is made available to any other member; and that the DPM shall only make such information available to the affiliated member pursuant to a request by the affiliated member for such information;

(iv) That where the affiliated member "popularizes" a security in which the DPM acts as DPM the affiliated member shall disclose that an associated DPM makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Exchange in the security; and that the affiliated member shall forward to the Exchange, immediately after its issuance, a copy of any research report or written recommendation which "popularizes" a security in which the DPM acts as DPM;

(v) That the affiliated member shall file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a security in which the DPM acts as DPM;

(vi) That the affiliated member shall take appropriate remedial action against any person violating these Guidelines and/or the affiliated member's internal compliance and audit procedures adopted pursuant to subparagraph (b)(i) of these Guidelines, and that the affiliated member and the DPM each recognizes that the Exchange may take appropriate remedial action, including (without limitation) removal of securities from the DPM and/or revocation of the Rule 8.91(e) exemption, in the event of such a violation;

(vii) Whether the affiliated member intends to clear proprietary trades of the DPM and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the affiliated member's "Chinese Wall" (the procedures followed shall, at a minimum, be the same as those used by the affiliated member to clear for unaffiliated third parties); and

(viii) That no individual associated with the affiliated member shall trade on the Exchange as a Market-Maker in any security in which the DPM acts as DPM. (Any written statements submitted pursuant to this paragraph (b) shall be collectively referred to herein as the "Exemption Request".)

(c) In the event that, notwithstanding the procedures established pursuant to these Guidelines, any DPM Designee of a DPM becomes aware of the fact that the Designee has received from the affiliated member any material non-public corporate or market information relating to any of the DPM securities, the DPM Designee shall promptly communicate that fact and disclose the information so received to the person associated with the affiliated member responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether the DPM Designee should, as a consequence of the Designee's receipt of such information, give up the DPM Designee's appointment as a DPM Designee in the security involved. If the compliance officer determines that the DPM Designee should give up the Designee's appointment as a DPM Designee, the DPM Designee shall, at a minimum, give the appointment up to another DPM Designee who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the DPM Designee to recover the Designee's appointment as a DPM Designee and recommence acting as DPM Designee in the security involved. Procedures shall be established by the affiliated member to assure that in any instance when the compliance officer determines that a DPM Designee should give up the Designee's appointment as a DPM Designee, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the remaining DPM Designees.

The compliance officer shall keep a written record of each request received from a DPM Designee for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security, the date, a description of the information received by the DPM Designee, the determination made by the compliance officer, and the basis therefor. If the appointment is given up, the record shall also set forth the time at which the DPM Designee reacquired the appointment and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a DPM Designee should give up the DPM Designee's appointment and also of the determination that the DPM Designee should be permitted to reacquire the appointment. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from DPM Designees for a determination as referred to above shall be furnished to the Exchange for its review. Members are cautioned that any trading by any person while in possession of material non-public information received as a result of any breach of the internal controls required by these Guidelines may violate Exchange Act Rule 10b–5, Exchange Act Rule 14e–3, just and equitable principles of trade, or one or more other provisions of the Exchange Act, regulations thereunder, or Rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware to determine whether any such violation has occurred.

(d) Subparagraph (b)(vii) of these Guidelines permits an affiliated member to clear the DPM transactions of the DPM provided that the affiliated member establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the affiliated member's "Chinese Wall." Such procedures should provide that any information pertaining to security positions and trading activities of the DPM, and information derived from any clearing and margin financing arrangements between the affiliated member and the DPM, may be made available only to those (other than employees actually performing clearing and margin financing functions) associated with the affiliated member that are in senior management positions and are involved in exercising general managerial oversight over the DPM. Generally, such information may be made available only to the affiliated member's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the DPM, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day

trading decisions for the affiliated member, or in making recommendations to the customers or potential customers of the affiliated member. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of the DPM to meet market-making or other obligations under Exchange Rules.

(e) The Exemption Request shall detail the internal controls which both the affiliated member and the DPM intend to adopt to satisfy each of the conditions stated in paragraphs (b)(i) through (b)(viii) of these Guidelines, and the compliance and the audit procedures they propose to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the affiliated member and the DPM are acceptable under these Guidelines, the Exchange shall so inform the affiliated member and the DPM, in writing, at which point a Rule 8.91(e) exemption shall be granted with or without conditions. Absent such prior written Exchange approval, an exemption shall not be available. The Exemption Request should identify the individuals associated with the affiliated member that are in senior management positions (and their titles/levels of responsibility) to whom information concerning the DPM trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which the information is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any shareholder, director, officer, partner, manager, member, principal, or employee of the affiliated member intends to serve in any such capacity with the DPM, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a shareholder, director, officer, partner, manager, member, principal, or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel, or similar types of functions) from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified in the Exemption Request, and all requirements in paragraph (a) of these Guidelines as to maintaining the confidentiality of information are satisfied.

(f) In the event that the Exchange grants a Rule 8.91(e) exemption to an affiliated member: (i) the affiliated member and DPM shall abide by any representations and undertakings set forth in the Exemption Request and shall comply with any conditions placed by the Exchange upon the grant of such exemption; (ii) the affiliated member shall promptly notify the Exchange in writing in the event that any of the information set forth in the Exemption Request changes or becomes inaccurate; and (iii) the Exchange may amend or revoke its grant of exemptive relief pursuant to Rule 8.91(e) in the event that there is a change in the policies, procedures, or organizational structure of the affiliated member or DPM or in any of the information set forth in the Exemption Request.

[Modified Trading System]

[RULE 8.80. (a) Deleted April 16, 1998. (See Rule 8.95.)]

[(b) The MTS Designated Primary Market-Makers ("DPM") shall be selected and removed as follows:]

[(1) The selection and removal of DPMs will be conducted by the MTS Appointments Committee ("MTS Committee" or "Committee"). The Committee will consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine other members, to be nominated by the Nominating Committee and appointed by the Board, whose business functions are as follows: Six market-makers, one floor broker not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. The nine appointed committee members shall have two year terms four or five of which will expire each year.]

[(2) Any regular member or member organization is eligible for appointment as a DPM. The MTS Committee will select that candidate who appears best able to perform the functions of DPM in the designated options class or classes. Factors to be considered for selection include the following: adequacy of capital, experience with trading the option class or a similar option class, willingness to promote the Exchange as a marketplace, operational capacity, support personnel, history of adherence to Exchange rules and to all criteria specified in this Rule as DPM responsibilities, and trading crowd evaluations under Rule 8.60.]

[(3) Applications for DPM appointment by member organizations shall include the name of specified nominees. The MTS Committee shall specify whether a DPM appointment is as an individual, or as a member organization. The Committee may also specify any one or more conditions on the appointment, in respect of any representations made in the application process, including but not limited to capital, operations, or personnel. The DPM is obligated promptly to inform the Committee of any material change in financial or operational condition, or in personnel. The appointment may not be transferred without approval of the MTS Committee. The DPM shall serve until he is relieved of his obligations by the Committee.]

[(4) The MTS Committee may, in its discretion, open an option class or classes to a new DPM selection process under any of the following circumstances:

(i) If upon review, the Committee determines that a DPM has not performed satisfactorily any condition of his appointment under Subpart (b)(3) or his functions as described in subpart (c) hereof. The Committee may conduct reviews of appointments at any time, and shall do so at least quarterly.

(ii) If a DPM incurs a material financial, operational, or personnel change. Provided, however, that the Committee shall open an option class or classes to a new DPM selection process upon request, if a DPM member organization changes its specified nominee and the former nominee so requests.

(iii) If for any reason the DPM should no longer be eligible for appointment, should resign appointment, or fail to perform his duties. The incumbent DPM may apply for the appointment in the new selection process.]

[(5) The MTS Committee has discretion to relieve a DPM of his appointment due to a material financial, operational, or personnel change warranting immediate action.]

[(6) If a DPM has been relieved of his appointment or the appointment otherwise becomes vacant, the MTS Committee has discretion to appoint an interim DPM pending the conclusion of a new DPM selection process. The appointment as interim DPM is not a

prejudgment of the new DPM selection process.]

[(7) Deleted April 16, 1998. (See Rule 8.95.)]

[(8) If the MTS Committee decides to terminate a DPM's appointment under subpart (b)(7) of this Rule, the terminated DPM will receive a proportionate share of the net book revenues, not to exceed one-half, for any period specified by the Committee up to a maximum of five years. This award will take into account the length of time of DPM service, capital commitment and efforts expended during the DPM appointment.]

[(9) The hearing process before the MTS Committee will be as follows:

(i) Appointment Decisions: Each applicant for appointment as DPM will be given an opportunity to present any matter which he wishes the Committee to consider in conjunction with the appointment decision. The Committee may require that presentation to be solely or partially in writing, and may require the submission of additional information from an applicant, member, or any person associated with a member. Formal rules of evidence do not apply to these proceedings.

(ii) Decisions to Terminate Appointments: The DPM who is the subject of Committee review in conjunction with the termination of a DPM appointment will be so advised and given an opportunity to present any matter which he wishes the Committee to consider in conjunction with the termination decision. The procedure shall be as described in paragraph 9(i) above.

(iii) Review: A DPM relieved of an appointment under subpart (b)(5), (6) or (7) of this Rule, and, in the case of a member organization DPM, the relieved nominee, may seek review of that decision under Chapter XIX of the Rules. A DPM relieved of an appointment under subpart (b)(4) of this Rule may also seek review of that decision under Chapter XIX of the Rules, but only if he applies for reappointment and is denied.]

[(10) The MTS Committee may perform all functions of the Market Performance Committee under the Rules in respect of review and evaluation of the conduct of DPMs in the classes of his DPM appointment, including but not limited to Rules 6.71, 8.1, 8.2, 8.3, 8.7, and 8.60. The process for review of any action taken by the MTS Committee under this subpart shall be the same as if the action had been taken by the Market Performance Committee.]

[(c) The DPM is a member who functions in approved classes as a market-maker, floor broker, and in the place of the Order Book Official ("OBO") exempt from Rule 8.8. In acting as a market-maker, the DPM shall fulfill all obligations of a market-maker in his appointed option class or classes. In acting as a floor broker, and in place of the OBO in appointed options classes, the DPM shall fulfill his obligation of due diligence (and all other obligations associated with these functions). In addition, the DPM shall:]

[(1) assure that disseminated market quotations are accurate.]

[(2) assure that each disseminated market quotation in appointed options classes shall be honored up to five contracts, or such other minimum number as set from time to time by the MTS Committee.]

[(3) determine any formula for generating the automatically updated market quotations, disclosing the elements of the formula to the members of the trading crowd.]

[(4) in addition to fulfilling general market-maker obligations under Rule 8.7, be present at the trading post throughout every business day, and, with respect to his trading as market-maker, effect trades which have a high degree of correlation with the overall pattern of trading for each series in the options classes involved.]

[(5) participate at all times in any automated execution system which may be open in appointed option classes.]

[(6) resolve trading disputes, subject to Floor Official review upon the request of any party to the dispute.]

[(7) In executing transactions for his own account as market-maker, the DPM shall (i) accord priority to orders he represents as floor broker over his activity as market-maker; (ii) have a right to participate pro rata with the trading crowd in trades that take place at the DPM's principal bid or offer; and (iii) not initiate a transaction for his own account that would result in putting into effect any stop or stop limit order which may be in the book or which he represents as floor broker except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction.]

[(8) In appointed options classes and in other securities traded subject to the rules in Chapter XXX for which a DPM has been appointed, the DPM shall perform all functions of the Order Book Official, pursuant to Rules 7.3 through 7.10, and may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed on the public order book, and to represent such orders as a Floor Broker. The DPM may not represent discretionary orders as a Floor Broker or otherwise. All orders in the DPM's possession which are eligible to be booked shall be booked.]

[(9) The DPM is designated to disclose book information under Rule 7.8.]

[(d) The Exchange shall continue to be responsible for the maintenance, handling, and billing of the book in option classes in which a DPM has been appointed, and shall retain and compensate the DPM for performing the OBO function. The Exchange will make personnel available to assist the DPM, as the DPM shall require in the DPM's OBO function, for which personnel the Exchange may charge the DPM a reasonable fee.]

* * * [Interpretations and Policies:]

[.01 Willingness to promote the Exchange as a marketplace includes assisting in meeting and educating market participants (and taking the time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, responding to competition in offering competitive markets and competitively priced services, and other like activities.]

[.02 Every registered DPM shall maintain a cash or liquid asset position in the amount of $100,000 or in an amount sufficient to assume a position of twenty trading units of each security in which the DPM holds an appointment, whichever amount is greater. In the event that two or more DPMs are associated with each other and deal for the same DPM account, this requirement shall apply to such DPMs as one unit, rather than to each DPM individually.]

[.03 In addition to his responsibilities as a Market-Maker, a person appointed to serve as DPM in one or more securities traded subject to the rules in Chapter XXX shall continuously maintain on the floor of the Exchange a two-sided market in the securities for which he has been appointed, consisting of a current bid and a current offer for his account, at prices reasonably calculated, under existing circumstances, to contribute to the maintenance of a supply of and demand for such securities sufficient to afford liquidity to other buyers and sellers of such securities whose orders are represented on the Exchange floor.]

[Limitations on Dealings of Designated Primary Market-Makers]

[Rule 8.81. (a) No member (other than a Designated Primary Market Maker ("DPM") acting pursuant to Rule 8.80 above), limited partner, officer, employee, approved person or party

approved, who is affiliated with a DPM or member organization, shall, during the period of such affiliation, purchase or sell any option in which such DPM is registered for any account in which such person or party has a direct or indirect interest. Any such person or party may, however, reduce or liquidate an existing position in an option in which such DPM is registered provided that such orders are (i) identified as being for an account in which such person or party has a direct or indirect interest; (ii) approved for execution by a Floor official; and (iii) executed by the DPM in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (a) shall be given priority over, or parity with, any order represented in the market at the same price.]

[(b) Notwithstanding the provisions of Rule 8.80, an approved person or member organization which is affiliated with a DPM shall not be subject to Rule 8.81(a), provided that it has established and obtained Exchange approval of procedures restricting the flow of material non-public corporate or market information between itself and the DPM and any member, officer, or employee associated therewith.]

[(c) For such member organization which controls or is controlled by or is under common control with, another organization, the exemption provided in paragraph (b) of this Rule shall be available to it only where the Exchange has determined that the relationship between the DPM, each person associated therewith, and such other organization satisfies all the conditions specified in the guidelines.]

[(d) The procedures referred to in paragraph (b) of this rule shall comply with such guidelines as are promulgated by the Exchange.]

[Guidelines for Exemptive Relief Under Rule 8.81 for Members or Member Organizations Affiliated with a Designated Primary Market-Maker]

[(a) The following restrictions apply to a member or member organization which is affiliated with a designated primary market-maker ("DPM"):

It may not purchase or sell for any account in which it has a direct or indirect interest any security in which its affiliate is a DPM.

It may not engage in any business transaction with the issuer of a security or its insiders in which its affiliate is a DPM.

The member firm may not accept orders directly from the issuer, its insiders or certain designated parties in securities in which its affiliate is a DPM.]

[This Rule provides a means by which an affiliated firm doing business with the public as defined in Rule 9.1 (hereafter "member organization") may obtain an exemption from the restrictions discussed above. This exemption is only available to a member firm which obtains prior Exchange approval for procedures restricting the flow of material, non-public information between it and its affiliated DPM, i.e., a "Chinese Wall." This Rule sets forth the steps a member firm must undertake, at a minimum, to seek to qualify for exemptive relief. Any firm that does not obtain Exchange approval for its procedures in accordance with these Guidelines shall remain subject to the restrictions set forth above.]

[(b) These Guidelines require that an affiliated member firm establish procedures which are sufficient to restrict the flow of information between itself and the DPM. Generally, an affiliated member firm seeking an exemption from the Rules discussed in paragraph (a) above should establish its operational structure along the lines discussed below.

(i) The affiliated member firm and the DPM must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated member firm and the DPM to be under common management, in no instance may persons on the member firm's side of the "Wall" exercise influence over or control the DPM's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the DPM's market making responsibilities pursuant to the Rules of the Exchange.

(ii) The affiliated member firm and the DPM must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated member firm to influence the DPM's conduct and avoid the misuse of DPM market information to influence the affiliated member firm's conduct. Specifically, the affiliated member firm and the DPM organization must ensure that material non-public corporate information relating to trading positions taken by the affiliated member firm in a DPM security are not made available to the DPM; or to any member, partner, director or employee thereof; by a DPM while in possession of non-public corporate information derived by the affiliated member firm from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the member firm's recommendations; and that all information pertaining to positions taken or to be taken by the DPM and to the DPM's "book" in a DPM security is kept confidential and is not made available to the affiliated member firm.]

[(c) An affiliated member firm seeking exemption shall submit to the Exchange a written statement which shall set forth:

(i) The manner in which it intends to satisfy each of the conditions stated in subparagraphs (b)(i) and (b)(ii) of these Guidelines, and the compliance and audit procedures it proposes to implement to ensure that the functional separation is maintained;

(ii) The designation and identification of the individual(s) within the affiliated member firm responsible for maintenance and surveillance of such procedures;

(iii) That the DPM may make available to a broker affiliated with it only the sort of market information that it would make available in the normal course of its DPM activity to any other broker and in the same manner that it would make information available to any other broker; and that the DPM may only make such information available to a broker affiliated with the member firm pursuant to a request by such broker for such information and may not, on its own initiative, provide such broker with such information;

(iv) That where it "popularizes" a security in which it acts as DPM it must disclose that an associated DPM makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Floor of the Exchange in the security, and the firm will notify the Exchange immediately after the issuance of a research report or written recommendation;

(v) That it will file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a specialty security;

(vi) That it will take appropriate remedial action against any person violating these Guidelines and/or its internal compliance and audit procedures adopted pursuant to subsection (c)(i) of these Guidelines, and that it and its associated DPM each recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of

securities in which it serves as DPM and/or revocation of the exemption, in the event of such a violation;

(vii) Whether the firm intends to clear proprietary trades of the DPM and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall (the procedures followed shall, at a minimum, be the same as those used by the firm to clear for unaffiliated third parties); and

(viii) That no individual associated with it may trade as a market-maker in any security in which the associated DPM has an appointment.]

[(d) Paragraph (b) of these Guidelines requires the establishment of procedures designed to prohibit the flow of certain market sensitive information from a member firm to its affiliated DPM or to any member, partner, director or employee thereof. In the event that, notwithstanding these procedures, any DPM becomes aware of the fact that he has received any such information relating to any of his DPM securities from his organization's affiliated member firm, the DPM shall promptly communicate that fact and disclose the information so received to the person in the affiliated member firm responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether he should, as a consequence of his receipt of such information, give up the appointment in the option class involved. If the compliance officer determines that the DPM should give up the DPM appointment, the DPM shall, at a minimum, give it up to another member who is registered as DPM in the security and who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the DPM to recover the DPM security and recommence acting as DPM in the DPM security involved. Procedures shall be established by the affiliated member firm to assure that in any instance when the compliance officer determines that a DPM should give up the appointment, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the temporary DPM.]

[The compliance officer shall keep a written record of each request received from a DPM for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security, the date, a description of the information received by the DPM, the determination made by the compliance officer and the basis therefor. If the appointment is given up, the record shall also set forth the time at which the DPM reacquired the appointment and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a DPM should give up the appointment and also of the determination that such DPM should be permitted to reacquire the appointment. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from the affiliated DPM for a determination as referred to above shall be furnished to the Exchange for its review. Members and member organizations are cautioned that any trading by any person while in possession of material, non-public information received as a result of any breach of the internal controls required by the Guidelines may have violated Rule 10b–5, Rule 14e–3, just and equitable principles of trade or one or more other provisions of the Exchange Act, or regulations thereunder or rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware to determine whether any such violation has occurred.]

[(e) Subparagraph (c)(vii) of these Guidelines permits a member firm to clear the DPM transactions of its affiliated DPM provided it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall. Such procedures should provide that any information pertaining to security positions and trading activities of the DPM, and information derived from any clearing and margin financing arrangements between the affiliated member firm and the DPM, may be made available only to those (other than employees actually performing clearing and margin financing functions) in senior management positions in the affiliated member firm who are involved in exercising general managerial oversight over the DPM. Generally, such information may be made available only to the affiliated member firm's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the DPM, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day trading decisions for the affiliated member firm, or in making recommendations to the customers or potential customers of the affiliated member firm. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any DPM to meet market-making or other obligations under Exchange Rules.]

[(f) The written statement required by Paragraph (c) of these Guidelines shall detail the internal controls which both the affiliated member firm and the DPM intend to adopt to satisfy each of the conditions stated in subparagraphs (c)(i) through (c)(viii) of these Guidelines, and the compliance and the audit procedures they propose to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the member firm and its affiliated DPM are acceptable under the Guidelines, the Exchange shall so inform the member firm and its affiliated DPM, in writing, at which point an exemption shall be granted. Absent such prior written approval, an exemption shall not be available. The written statement should identify the individuals in senior management positions (and their titles/levels of responsibility) of the affiliated member firm to whom information concerning the DPM trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which it is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any partner, director, officer or employee of the affiliated member firm intends to serve in any such capacity with the DPM, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner, director, officer or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel and similar types of services) from

performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified, in the written statement described above, and all requirements in Paragraph (b) above as to maintaining the confidentiality of information are met.]

Section D: Allocation of Securities and Location of Trading Crowds and DPMs

RULE 8.95—Allocation of Securities and Location of Trading Crowds and DPMs.

* * * * *

* * * Interpretations and Policies.

.01 Subject to Rule *8.83(f)*[8.80(b)(6)], it shall be the responsibility of the Allocation Committee and the Special Product Assignment Committee pursuant to paragraph (a) of this Rule to reallocate a security in the event that the security is removed pursuant to another Exchange Rule from the trading crowd or DPM to which the security has been allocated or in the event that for some other reason the trading crowd or DPM to which the security has been allocated no longer retains such allocation.

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Chapter XXIII—Interest Rate Option Contracts

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RULE 23.7.—RAES.

The Retail Automated Execution System (RAES) for interest rate options uses the provisions established for equity options except as otherwise provided in this Rule.

(i) The *appropriate Floor Procedure Committee* [Modified Trading System Committee] ("Committee") shall determine what series will be eligible for RAES and the size of eligible orders.

(ii) Eligible orders must be market or marketable limit orders for one hundred or fewer contracts, as determined by the Committee, in series placed on the system.

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Chapter XXX—Stocks, Warrants and Other Securities

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RULE 30.40.—Market-Makers.

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(b) Classes of Contracts Other Than Those to Which Appointed. With respect to securities in which he does not hold an appointment, a Market-Maker should not engage in transactions for an account in which he has an interest which are disproportionate in relation to, or in derogation of, the performance of his obligations, as specified in paragraph (a) of this Rule, with respect to those securities to which he does hold appointments. Whenever a Market-Maker enters the trading crowd for securities in which he does not hold an appointment in other than a floor brokerage capacity, he shall fulfill the obligations established by paragraph (a) of this Rule. On a day on which a transaction in a non-appointed security is effected for the account of a Market-Maker, such Market-Maker may be required to undertake the obligations specified in paragraph (a) of this Rule upon request by a Floor Broker, or by the Order Book Official or DPM in accordance with Rules 7.5 and *8.85(b)* [8.80(c)], as applicable. Furthermore, Market-Makers should not:

(i) Congregate in a particular security; or

(ii) Individually or as a group, intentionally or unintentionally, dominate the market in a particular security; or

(iii) Effect purchases or sales on the floor of the Exchange except in a reasonable and orderly manner.

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RULE 30.73—Application of Exchange Rules.

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* * * Interpretations and Policies.

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.02 Any acceptance of a commitment or obligation to trade received on the floor through ITS or any other application of the System shall comply with the rules applicable to the making of bids and offers and transactions on the floor, except where the context otherwise requires. In addition, the following rules shall be applicable in the case where commitments or obligations to trade are issued (transmitted) from the floor of the Exchange Rules 6.3, 6.6, 6.21, 6.22, 6.24, 8.1 through 8.6, 8.8, *8.85, 8.87, 8.91,* [8.80, 8.81], 30.3, 30.4, 30.16, 30.18 and 30.40.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's DPM program began as a pilot program in 1987 with 4 DPMs allocated a total of 11 equity option classes. The DPM program was granted permanent approval by the Commission in 1994.[5] In the more than 11 years since its introduction, the DPM program has experienced significant growth and success. Currently, the program includes 30 DPMs which have been allocated over 725 equity option classes, as well as numerous index option classes and structured products.

Over the course of the program's evolution, the Exchange has developed various procedures for implementing the rule provisions that govern the program. The current rules are set forth in CBOE Rules 8.80 and 8.81 and the Exchange has made relatively few changes to these rules since they were promulgated in 1987. The purpose of the current proposed rule change is to update the DPM rules to incorporate the various procedures that the Exchange implemented pursuant to Rules 8.80 and 8.81 and to incorporate various proposed improvements and enhancements that the Exchange believes will be beneficial to the operation of the DPM program. In addition, the Exchange proposes to reorganize the rules governing the DPM program by segregating them into 12 separate rules that each address 1 of the 12 primary aspects of the DPM program. The Exchange believes that this restructuring will improve the organization of the rules relating to DPMs making it easier for the Exchange's members to reference and understand the provisions.

The proposed rule changes are the product of a comprehensive review and evaluation by the Exchange of the current rules relating to DPMs. This thorough and detailed review and evaluation was conducted by Exchange staff, the Exchange's Modified Trading System Appointments Committee ("MTS Committee"), the Exchange's Floor Directors Committee, and the Exchange's Board of Directors, and involved numerous meetings and discussions by and among these groups over several years.

The Exchange filed substantially similar proposed rule change with the

[5] Securities Exchange Act Release No. 34999 (November 22, 1994), 59 FR 61361 (November 30, 1994) (File No. SR–CBOE–94–36).

Commission in 1998.[6] After the submission of this proposed rule change, the Exchange received a member petition concerning the portion of the proposed rule change that related to the transfer of DPM appointments. Although the petition only addressed the portion of the proposed rule change that related to the transfer of DPM appointments, the Board of Directors decided to withdraw the entire proposal from the Commission because it believed the proposed rule change to be an integrated reorganization of all of the rule provisions relating to the operation of the DPM program. The Exchange then engaged in a period of dialogue with the Exchange's members regarding DPM transferability which included, among other things, Exchange membership meetings at which member roundtable discussions were held regarding this issue. Following this period of dialogue, the Board of Directors re-approved a substantially similar proposed rule change to update and reorganize the Exchange's rules relating to DPMs, subject to the approval of the proposed rule change by a membership vote. The proposed rule change was submitted to the Exchange's membership for a vote and approved on December 14, 1998.

The proposed rule change amends the Exchange's rule provisions relating to DPMs and are proposed to be segregated into proposed Rules 8.80 through 8.91. Set forth below is a summary of each of the proposed rules.

Rule 8.80—DPM Defined. Proposed Rule 8.80 defines a DPM as a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker, Floor Broker, and Order Book Official. The only change to this definition from the current DPM definition is that proposed Rule 8.80 requires a DPM to be a member organization. The purpose of this additional requirement is to ensure that each DPM has a formal organizational structure in place to govern the manner in which it will operate and to define the relationship between the individuals associated with the DPM. Proposed Rule 8.80 also clarifies that DPMs are approved by the MTS Committee and are allocated securities by the Exchange's Allocation Committees.[7]

Rule 8.81—DPM Designees. Proposed Rule 8.81 is divided into five subparagraphs, (a) through (e), and sets forth the requirements applicable to DPM Designees.

Proposed Rule 8.81(a) makes explicit that a DPM may act as a DPM solely through its DPM Designees. A DPM Designee is defined as an individual who is approved by the MTS Committee to represent a DPM in its capacity as a DPM. Proposed Rule 8.81(a) also provides that the MTS Committee may subclassify DPM Designees and require certain DPM Designees to be subject to specified supervision and/or be limited in their authority to represent the DPM. For example, the MTS Committee may wish to require that less experienced DPM Designees only act in this capacity when a more experienced DPM Designee is also present at the trading station to provide supervision.

Proposed Rule 8.81(b) requires each DPM Designee to (i) be an Exchange member, (ii) be a nominee of, or have a membership that has been registered for, the DPM or an affiliate of the DPM, (iii) be registered with the Exchange as a Market-Maker and a Floor Broker, (iv) have in place an authorization and guarantee from the DPM, and (v) be approved by the MTS Committee. Additionally, proposed Rule 8.81(b) provides that the MTS Committee shall have the discretion to permit an individual who is not affiliated with a DPM to act as a DPM Designee for the DPM on an emergency basis as long as the individual satisfies the other requirements of proposed Rule 8.81(b).

Proposed Rule 8.81(c) provides that a DPM Designee approval will expire if the individual does not have trading privileges on the Exchange for a 6 month period. This provision is intended to ensure that any DPM Designee who has not had trading privileges for 6 months (and therefore does not engage in trading activities during that period) and who then desires to act again in the capacity of a DPM Designee will be reviewed by the MTS Committee. This will allow the Committee to evaluate whether the individual remains qualified to act as a DPM Designee.

Proposed Rule 8.81(d) requires each DPM to have at least two DPM Designees who are nominees of the DPM or who have a membership that has been registered for the DPM.

Exchange rules require that each member organization have at least one nominee or person who has registered his or her membership for the organization. The purpose of proposed Rule 8.81(d) is to help ensure that a DPM remains qualified to act as a member organization, and hence a DPM, if a nominee or person who has registered his or her membership for the organization departs from the organization.

Proposed Rule 8.81(e) incorporates two existing rule provisions. First, proposed Rule 8.81(e) provides that a DPM Designee may not trade as a Market-Maker or Floor Broker in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. This provision is currently embodied in CBOE Rule 8.3.01 (which is proposed to be deleted) and in current Rule 8.81 (which is proposed to be restated in proposed Rule 8.91). Second, proposed Rule 8.81(e) provides that a DPM Designee is exempt from the provisions of CBOE Rule 8.8 when acting on behalf of the DPM in its capacity as a DPM. CBOE Rule 8.8 generally prohibits a member from acting as both a Market-Maker and Floor Broker in a trading station on the same day, and the exemption to CBOE Rule 8.8 for DPMs is currently set forth in current Rule 8.80(c).

Rule 8.82—MTS Committee. Proposed Rule 8.82 governs the composition of the MTS Committee. It retains the current 11 member composition of the Committee which consists of the Vice-Chairman of the Exchange, the Chairman of the Exchange's Market Performance Committee, four members whose primary business is as a Market-Maker, two members whose primary business is as a Market-Maker or as a DPM Designee, one member whose primary business is as a Floor Broker who is not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. Currently, the nine members of the MTS Committee, other than the Vice-Chairman and the Chairman of the Market Performance Committee, are nominated by the Nominating Committee and appointed by the Board of Directors to serve two-year terms. Under proposed Rule 8.82, these nine members of the Committee will be elected by the Exchange's membership in the same manner that Exchange Directors are elected by the membership. In addition, proposed Rule 8.82 increases the terms served by these nine members of the Committee to three-year terms[8] and provides that no

[6] Securities Exchange Act Release No. 40041 (May 28, 1998), 63 FR 30525 (June 4, 1998) (File No. SR–CBOE–98–15).

[7] The Exchange's process for allocating securities to DPMs and Market-Maker trading crowds is set forth in CBOE Rule 8.95.

[8] Upon effectiveness of this proposed rule change, the MTS Committee members at the time will remain as members of the Committee until their then current terms expire. Because MTS Committee members currently serve two-year terms (with 4 or 5 of those terms expiring each year) and because proposed Rule 8.82 provides that the MTS Committee members will serve three-year terms

Continued

more than two of the nine elected MTS Committee members may be associated with a DPM. Because of the important responsibilities of the MTS Committee, the Exchange believes that the MTS Committee should be composed of individuals who have been elected by the membership. The Vice-Chairman is already elected by the membership and the Chairman of the Market Performance Committee is typically one of the Exchange's elected Directors. Moreover, the Exchange believes that increasing the terms of the MTS Committee members by one year will provide the Committee with more continuity and expertise in addressing issues that comes before it.

Rule 8.83—Approval to Act as a DPM. Proposed Rule 8.83 addresses the DPM approval process. It is substantially similar to the current provisions that govern the DPM approval process set forth in current Rule 8.80. For example, proposed Rule 8.83 describes the criteria that may be considered by the MTS Committee in deciding whether to approve an applicant as a DPM (including such factors as adequacy of capital, operational capacity, trading experience, regulatory history, and market performance), and provides that each applicant will be given an opportunity to present any matter that it wishes the MTS Committee to consider in conjunction with the approval decision. In addition, as with any decision of the MTS Committee (other than an approval or disapproval a proposed transfer of a DPM appointment which is subject to direct review by the Board of Directors as discussed below), any applicant not approved by the MTS Committee to act as a DPM may appeal that decision to the Exchange's Appeals Committee under Chapter XIX of the Exchange's Rules. The appeal procedures provide the right to a formal Appeals Committee hearing concerning any approval decision, and the decision of the Appeals Committee may be appealed to the Board of Directors pursuant to CBOE Rule 19.5.

Rule 8.84—Conditions on the Allocation of Securities to DPMs. Proposed Rule 8.84 grants the MTS Committee new authority to establish (i) restrictions applicable to all DPMs regarding the concentration of securities allocable to a single DPM and to affiliated DPMs, and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to, standards relating to adequacy of capital and number of personnel. One of the reasons for granting the MTS Committee the authority to limit the concentration of securities allocable to a single DPM and to affiliated DPMs is to promote competition on the Exchange's trading floor. Moreover, the Exchange believes this authority should help ensure that no DPM or group of affiliated DPMs is allocated such a large number of securities as to make it difficult for the Exchange to quickly reallocate those securities to other DPMs and/or Market-Maker trading crowds in the event that a DPM or group of affiliated DPMs is no longer able to perform in its DPM capacity. The reasons for granting the MTS Committee the authority to establish minimum eligibility standards for DPMs to receive allocations of securities is to help ensure that a DPM has the financial and operational ability to handle additional allocations of securities. Similarly, the MTS Committee may utilize this Rule to establish specific minimum market performance standards that must be satisfied by DPMs in order to receive allocations of securities so that a DPM that is not performing adequately with respect to the securities that have already been allocated to the DPM is not allocated additional securities.

Rule 8.85—DPM Obligations. Proposed Rule 8.85 describes the obligations of a DPM. The proposed rule change states the general obligation of a DPM, with respect to each of its allocated securities, is to fulfill all of the obligations under Exchange Rules of a Market-Maker, a Floor Broker (to the extent that the DPM acts as a Floor Broker), and an Order Book Official.

Most of the obligations and other provisions contained in proposed Rule 8.85 are contained in current Rule 8.80. In some instances, these provisions are proposed to be slightly modified to clarify their scope. For example, proposed Rule 8.85(a)(vi) requires a DPM to segregate in a manner prescribed by the MTS Committee (i) all transactions consummated by the DPM in securities allocated to the DPM and (ii) any other transactions consummated by or on behalf of the DPM that are related to the DPM's DPM business. This will permit the Exchange to monitor each DPM's trading positions in order to ensure that each DPM is in compliance with DPM financial and other requirements.

In addition, the Exchange proposes to charge a $250 processing fee for each DPM Designee that will be executing transactions on behalf of a DPM in that DPM's segregated account(s). This is the same fee amount that is charged for each participant in a joint account established pursuant to CBOE Rule 8.9. Since DPMs currently utilize joint accounts to segregate their transactions, the proposed $250 fee will essentially replace the $250 joint account fee that DPMs are currently being assessed in this regard.

Currently, Rule 8.80(c)(3) requires each DPM to determine a formula for generating automatically updated market quotations and to disclose the components of the formula to the other members trading at the DPM's trading station. Proposed Rule 8.85(a)(ix) restates this requirement and clarifies the requirement by specifying that the components of the formula that are required to be disclosed include the option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying. Proposed Rule 8.85(a) also provides that the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems. Most DPMs utilize the Exchange's Auto Quote System to generate automatically updated market quotations and therefore would not be eligible for an exemption of this kind. However, proposed Rule 8.85(a) will permit the MTS Committee to exempt those DPMs that utilize proprietary automated quotation updating systems from disclosing confidential information concerning those systems.

Proposed Rule 8.85(b)(i) restates the current requirement that a DPM is obligated to place in the public order book any order in the DPM's possession which is eligible for entry, subject to two limited exceptions. First, proposed Rule 8.85(b)(i)(A) clarifies that a DPM is not obligated to book a book-eligible order if the DPM immediately executes the order upon its receipt. This permits a DPM to immediately execute a marketable customer order without having to delay the execution by first placing the order in the public order book. Second, proposed Rule 8.85(b)(i)(B) provides that a DPM may refrain from booking a book-eligible order if the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were displayed in the public order book. Proposed Rule 8.85(b)(i)(B) is intended

(with three of those terms expiring each year), the Exchange's Nominating Committee will shorten the length of some of the terms of the MTS Committee members elected in the first two years following the effectiveness of the proposed rule change to ensure that three positions will come up for election each year once the three-year terms are fully phased in.

to accommodate the wishes of customers who desire an opportunity for price improvement before the execution of a limit order at its limit price, while at the same time requiring the information concerning the order that would have been displayed in the public order book to be disclosed to the other members of the trading crowd, so that the other members of the trading crowd are not at an informational disadvantage.

Proposed Rule 8.85(b)(ii) elaborates upon the requirement set forth in proposed Rule 8.85(b)(i) by requiring that a DPM not remove any order from the public order book except in two circumstances. First, proposed Rule 8.85(b)(ii) clarifies that a DPM may remove an order from the book if the order is canceled, expires, or is executed. Second, proposed Rule 8.85(b)(ii) clarifies that a DPM may return an order to the member that placed the order upon the member's request. For example, a Floor Broker may desire to leave an order with a DPM temporarily while the Floor Broker attends to business elsewhere on the trading floor, or until such time as the prevailing market moves closer to the order's limit price. Proposed Rule 8.85(b)(ii) is intended to clarify that a DPM may return an order to a Floor Broker in such situations.

Proposed Rule 8.85(b)(iii) restates the current requirement that a DPM is obligated to accord priority to any order which the DPM represents as agent over the DPM's principal transactions, and sets forth one narrow exception to this requirement—when the customer who placed the order consents to not being accorded this priority. This exception is intended to address situations such as the following. Under both the current and proposed DPM rules, a DPM may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed in the public order book, such as orders from a competing specialist or other broker-dealer. Competing specialists have on occasion inquired as to whether a DPM would be willing to represent an order on behalf of the competing specialist if the competing specialist were to agree to waive the priority requirement and/or allow the DPM to participate (or match) with the competing specialist's order. Under the current rules, regardless of the DPM's and customer's desire to have such an arrangement, they are unable to do so because the current rules do not allow a DPM to give priority to the orders it represents. Proposed Rule 8.85(b)(iii) would permit a DPM to accommodate a customer who desires to have a DPM represent an order and to waive this priority requirement with respect to the order.

Proposed Rule 8.85(b)(iv) restates the current requirement that a DPM may not charge any brokerage commission with respect to the execution of any order for which the DPM has acted as both agent and principal. There is, however, an exception to the requirement set forth in proposed Rule 8.85(b)(iv) if the customer consents. The reasons for this exception are the same as the reasons for the exception to the priority requirement in proposed Rule 8.85(b)(iii). It should also be noted that although proposed Rule 8.85(b)(iv) would not permit a DPM to charge a brokerage commission with respect to the execution of an order for which the DPM acts as both agent and principal (subject to the limited exception described above), the DPM would be permitted under proposed Rule 8.85(b)(iv) to bill back to the customer any Exchange fees charged to the DPM with respect to the execution of the order.

As noted above, a DPM may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed in the public order book. Proposed Rule 8.85(b)(v), however, also provides that a DPM is required to act as a Floor Broker to the extent required by the MTS Committee. The purpose of proposed Rule 8.85(b)(v) is to permit the MTS Committee to require a DPM to act as a Floor Broker if there is a need for the DPM to act in this capacity. For example, the MTS Committee may require a DPM to act as a Floor Broker if regular Floor Brokers are not available to represent orders in the securities allocated to the DPM.

Proposed Rule 8.85(b)(vi) restates the current requirement that a DPM may not represent discretionary orders as a Floor Broker or otherwise. Proposed Rule 8.85 also provides that the MTS Committee may authorize a DPM, on a temporary basis, to accept and represent types of orders in one or more of the securities allocated to the DPM which vest the DPM with limited discretion, if the MTS Committee determines that unusual circumstances are present and that the acceptance and representation of such orders by the DPM is necessary in order to assure that there will be adequate representation in such securities of those types of orders. As with proposed Rule 8.85(b)(v), the purpose of this provision is to grant the MTS Committee the ability to invoke this provision if there is a need for a DPM to act in this capacity, such as if regular Floor Brokers are not available to do so.

Proposed Rule 8.85(c)(vi) sets forth a new requirement that each DPM is required to segregate, in a manner prescribed by the MTS Committee, the DPM's business and activities as a DPM from the DPM's other businesses and activities. This provision will permit the MTS Committee to establish segregation requirements that will help to reduce the risk that a DPM's financial integrity will be adversely impacted by financial losses that may be incurred by the DPM in connection with its other businesses and activities.

Rule 8.86—DPM Financial Requirements. Proposed Rule 8.86 restates the current requirement that each DPM is required to maintain net liquidating equity in its DPM account of not less than $100,000. It also includes two requirements which, although currently applicable to DPMs, are not referenced in the current DPM rules. Specifically, proposed Rule 8.86 requires that each DPM maintain sufficient net capital to comply with the requirements of Rule 15c3–1 under the Act and that each DPM which is an Exchange Clearing Member also maintain sufficient net capital to comply with the requirements of The Options Clearing Corporation. Although there are other rules which already subject DPMs to these requirements, the Exchange believes that it is worthwhile to also include these requirements in proposed Rule 8.86 so that the Rule is more informative and complete.

Moreover, proposed Rule 8.86 requires DPMs to maintain net liquidating equity in their DPM accounts to conform with such guidelines as the MTS Committee may establish from time to time. The Exchange currently uses DPM financial guidelines in connection with the process of allocating securities to DPMs. Proposed Rule 8.86 would permit the Exchange to implement and enforce such guidelines and other future equity guidelines. The MTS Committee has established the financial guidelines it intends to use under proposed Rule 8.86, which are set forth in a draft regulatory circular that is available for inspection at the places specified in Section IV. The guidelines require that a DPM applying for the allocation of securities must have in its DPM account $350,000 plus $25,000 in equity for each security that has been allocated to the DPM in excess of the initial eight securities allocated to the DPM. Because these guidelines are more stringent than the current requirement, which states that a DPM must maintain an equity amount sufficient to assume a position of 20 trading units of each security which has been allocated to the DPM, the current requirement has been eliminated.

Rule 8.87—Participation Entitlement of DPMs. A DPM's right to participate as principal in a transaction is generally governed by the principles of time and price priority as set forth in CBOE Rule 6.45. Under these principles, if a DPM announces a bid (offer) for the DPM's own account ahead of other members in response to a request for a market from a member not acting on behalf of the DPM, the DPM is entitled to participate up to 100% in any resulting transaction. In addition to the rights granted by Rule 6.45, current Rule 8.80(c)(7)(ii) grants each DPM a right to participate "pro rata" with the Market-Makers present in the trading crowd, in any transaction in a security that has been allocated to the DPM if the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd, even if the DPM's bid (offer) is not entitled to priority under CBOE Rule 6.45. Because the term "pro rata" is not precisely defined by current Rule 8.80(c)(7)(ii), the scope of that term, and hence the participation right, has historically been interpreted by the MTS Committee.

Since 1993, the MTS Committee has interpreted a DPM's participation right in transactions that occur in an allocated security (when the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd) to consist of the following: an initial 40% participation right, a 30% participation right when average daily volume in the security over the previous calendar quarter reaches 2501 contracts, and no guaranteed participation right when average daily volume in the security over the previous calendar quarter reaches 5,000 contracts. Additionally, the MTS Committee has determined to maintain all multiply traded securities at the 40% participation level until further notice.

Proposed Rule 8.87 formalizes the authority of the MTS Committee to determine the appropriate participation right for DPMs by providing that the MTS Committee, subject to review by the Board of Directors, may establish from time to time a participation entitlement formula that is applicable to all DPMs. Additionally, proposed Rule 8.87 further provides that, in accordance with the established formula, each DPM shall have a right to participate for its own account with the Market-Makers present in the trading crowd in transactions in the DPM's allocated securities that occur at the DPM's previously established principal bid or offer.

Rule 8.88—Review of DPM Operations and Performance. Proposed Rule 8.88(a) restates the current rule provision that the MTS Committee may conduct a review of a DPM's operations or performance any time, and clarifies that the reviews may be conducted by a subcommittee of the MTS Committee. Proposed Rule 8.88(a) also clarifies that a DPM and its associated persons are obligated to submit information requested by the MTS Committee in connection with a review. The current rule provision which contemplates that these reviews will be conducted at least quarterly has been revised to provide that, at a minimum, a review of each DPM's operations and performance shall be conducted on an annual basis. The reason for this change is that the Exchange does not believe it is necessary to conduct a formal and detailed operational and performance review of each DPM more than once a year. In the interim, the MTS Committee will review information regarding each DPM's operations and performance on an ongoing basis and will conduct a review of, and/or speak with, any DPM that has any operational or performance issues that need to be addressed prior to that DPM's next annual review. The Exchange believes that this approach is more effective than quarterly reviews, since it will permit the MTS Committee to timely address any operational or performance issues that require immediate attention, while allowing more time to be spent on each formal and detailed DPM review.

Proposed Rule 8.88(b) provides that the MTS Committee shall perform the market performance evaluation and remedial action functions set forth in CBOE Rule 8.60 with respect to DPMs and that the MTS Committee may combine a review conducted pursuant to proposed Rule 8.88(a) with an evaluation conducted pursuant to Rule 8.60. This is consistent with current Rule 8.80(b)(10) which also provides that the MTS Committee may review and evaluate the conduct of DPMs pursuant to Rule 8.60.

In addition, current Rule 8.80(b)(10) grants the MTS Committee market performance authority with respect to other issues relating to DPMs that the Exchange now believes should be handled by other Exchange committees. The Exchange believes that this authority should be transferred from the MTS Committee to these other committees because these other committees already have responsibility concerning these issues for non-DPMs and because consolidating responsibility for these issues will result in greater efficiency. Thus, for example, the authority to determine the series eligible for the Exchange's Retail Automatic Execution System (RAES) and the eligible size of RAES orders for securities allocated to DPMs, which is currently exercised by the MTS Committee pursuant to CBOE Rule 6.8, has been consolidated in the Exchange's Floor Procedure Committees since they have responsibility for these issues for securities that are allocated to non-DPM trading crowds. Similarly, the authority under the Rules with respect to DPM RAES participation and eligibility, which is currently exercised by the MTS Committee pursuant to CBOE Rule 8.16, has been consolidated in the Exchange's Market Performance Committee since it has responsibility for these issues for non-DPMs.

One market performance related authority that the Exchange has determined the MTS Committee should retain is Floor Official authority. Thus, proposed Rule 8.88(c) provides that members of the MTS Committee may perform the functions of a Floor Official at DPM trading stations. MTS Committee members currently possess this authority by virtue of current Rule 8.80(b)(10), which provides that the MTS Committee may perform all of the functions of the Market Performance Committee under the Rules, and CBOE Rule 6.20.09, which provides that members of the Market Performance Committee may perform the functions of a Floor Official for the purpose of enforcing trading conduct policies. The Exchange believes that MTS Committee members should retain Floor Official authority with respect to DPM trading stations because MTS Committee members have expertise with respect to the trading conduct rules that are applicable to DPMs. In addition, acting as Floor Officials at DPM trading stations allows MTS Committee members to stay abreast of issues that may arise at these stations and provides the MTS Committee with a valuable source of information which the Committee utilizes in connection with its oversight of the performance and operations of DPMs.

Proposed Rule 8.88 expands the market performance responsibilities of the MTS Committee by providing that the MTS Committee shall perform the market performance evaluation and remedial action functions set forth in Rule 8.60 with respect to the Market-Makers and Floor Brokers that regularly trade at DPM trading stations, in addition to performing these functions with respect to DPMs. The primary reason for this change is that the performance of a DPM trading crowd is influenced by both the DPM and the Market-Makers and Floor Brokers that trade in the crowd. Accordingly, the

Exchange believes that it will be more efficient if one committee exercises the market performance and remedial action responsibilities with respect to both the DPM and the Market-Makers and Floor Brokers that trade in a DPM trading crowd, instead of the current bifurcated structure in which the MTS Committee has market performance authority with respect to the DPM and the Market Performance Committee has market performance authority with respect to the Market-Makers and Floor Brokers.

Rule 8.89—Transfer of DPM Appointments. Current Rule 8.80(b)(3) provides that a DPM appointment may not be transferred without the approval of the MTS Committee. Proposed Rule 8.89 expands upon this provision by setting forth both a detailed procedure for the consideration of any proposal to sell, transfer, or assign an interest in a DPM, and the standards that apply to such consideration. This procedure is set forth in proposed Rules 8.89(a) through 8.89(f).

Proposed Rule 8.89(a) provides that a DPM proposing any sale, transfer, or assignment of any ownership interest or any change in its capital structure, voting authority, or distribution of profits or losses shall give at least 30 days prior written notice of the proposed change to the MTS Committee. Proposed Rule 8.89(a) further provides that if the transaction is deemed to involve the transfer of a DPM appointment, the transaction is required to be approved by the MTS Committee before it may be consummated.

Proposed Rule 8.89(b) defines the transfer of a DPM appointment to include, among other things, any sale, transfer, or assignment of any significant share of the ownership of a DPM. A significant share of the ownership of a DPM is defined to include any sale, transfer, or assignment of a 5% or more interest in the equity or profits or losses of the DPM (or a series of smaller changes that in the aggregate amount to a change of 5% or more). Additionally, proposed Rule 8.89(b) provides that a sale, transfer, or assignment of less than 5% may also be found by the MTS Committee to represent a significant share of the ownership of a DPM depending on the surrounding facts and circumstances.

Proposed Rule 8.89(c) provides that any DPM desiring to obtain approval of a transaction deemed to involve the transfer of a DPM appointment is required to submit a written application to the MTS Committee at least 30 days prior to the proposed effective date of the transaction. Proposed Rule 8.89(c) also requires that the application contain a full and complete description of the proposed transaction, including among other things, the transferee's ownership and capital structure, the identity of those persons who will perform the duties of the DPM following the transaction, the terms of the transaction, and any other material information pertaining to the transaction that the MTS Committee may request.

Proposed Rule 8.89(d) provides that promptly after the receipt of a completed application for the approval of a proposed transfer of a DPM appointment, the MTS Committee will post notice of the proposed transfer on the Exchange Bulletin Board and in the Exchange Bulletin and that the MTS Committee will not ordinarily consider the proposed transfer until it has been posted on the Bulletin Board for at least 10 business days. Proposed Rule 8.89(d) also provides that during this posting period the MTS Committee will accept written comments on the proposed transfer from any member and will accept written proposals from other members and from Market-Maker trading crowds who wish to be considered for appointment in some or all of the classes that are the subject of the proposed transfer.

Proposed Rule 8.89(e) sets forth the factors that may be considered by the MTS Committee in determining whether to approve a proposed transfer of a DPM appointment. These factors include (i) the financial and operational capacity of the transferee, (ii) the continuity of control, management, and persons responsible for the operation of the DPM, (iii) avoiding undue concentration of DPM appointments on the Exchange, (iv) available alternatives for reallocating the DPM's appointment taking into account comments made and alternatives proposed by other members during the posting period, and (v) the best interests of the Exchange. In addition, proposed Rule 8.89(e) provides that no application relating to a proposed transfer of a DPM appointment will be approved by the MTS Committee until it is accompanied by complete and final documents pertaining to the transfer, except as the MTS Committee may agree to defer the delivery of specific documents for good cause shown.

Proposed Rule 8.89(f) provides that the approval or disapproval of a proposed DPM appointment transfer is subject to direct review by the Board of Directors. The Secretary of the Exchange must receive within 10 days of the announcement of the MTS Committee's decision either: (i) a written request for review made by the applicant (in the case of a failure to approve an application as submitted) or (ii) a request for review made by at least five Directors of the Exchange (in any case). In the event of a request for review, the Board will appoint a panel of Directors to review the matter. Following this review, the panel, with the assistance of Board counsel, will prepare a proposed written decision of the Board concerning the matter and will submit the proposed decision to the full Board for discussion and consideration. The Board will then decide whether to adopt or modify the proposed decision and will issue its final decision to the applicant and to the MTS Committee.

In conjunction with proposed Rule 8.89, the Board of Directors has also issued a memo to the MTS Committee which conveys the Board's views with respect to the various factors that may bear upon whether a request to transfer an interest in a DPM appointment should be approved. The memo is available for inspection at the places specified in Section IV. The purpose of the memo is to provide guidance to the MTS Committee concerning the types of considerations that the Board believes should be taken into account in evaluating such requests. For example, the memo states Board's view that a DPM's franchise in its allocated securities is not a transferable property interest owned by the DPM. Thus, the Board does not believe that the outright sale of all or a part of a DPM's business should ordinarily be approved. Nevertheless, the Board also states that it recognizes that there are circumstances where it may be in the best interests of both the DPM and the Exchange to permit the transfer of some or all of the DPM's interest in its DPM appointment, even though this may result in the DPM being paid for the value of the goodwill in its DPM business. For example, the Board states that such circumstances might include situations where a transfer is for the purpose of attracting new capital to an existing successful DPM to enable it to expand its market-making activities, or to enable the DPM to bring in a new partner or other principal, or in response to an emergency need for capital where there is reason to permit the existing DPM to remain involved in the operation and therefore not to reallocate its appointment, assuming in each case that the expansion or increase in capital is found to be necessary or desirable in the best interests of the Exchange.

The Exchange believes that proposed Rule 8.89 and the accompanying memo from the Board of Directors will improve the current rule provision regarding transfer of DPM appointments

both by setting forth a detailed procedure for considering such requests, which will help to ensure that the MTS Committee has sufficient information on which to base decisions regarding such requests, including member input, and by setting forth the appropriate criteria to be utilized in evaluating such requests.

Rule 8.90—Termination, Conditioning, or Limiting Approval to Act as a DPM. Proposed Rule 8.90 governs the termination, conditioning, and limiting of approval to act as a DPM. For the most part, it restates, with certain clarifications, provisions that are contained in current Rule 8.80. For example, proposed Rule 8.90(a) clarifies that the MTS Committee may condition or limit a DPM's appointment (in addition to being permitted to terminate the appointment) if the DPM (i) incurs a material financial, operational, or personnel change, (ii) fails to comply with the DPM rules or any conditions placed on its DPM appointment, or (iii) is no longer eligible to act as DPM. In addition, proposed Rule 8.90(c) clarifies that limiting a DPM's appointment may include, among other things, limiting or withdrawing a DPM's participation entitlement, withdrawing a DPM's right to act as DPM in one or more of its allocated securities, and requiring a relocation of the DPM on the trading floor.

As is the case under current Rule 8.80, proposed Rule 8.90(a) generally provides that before the MTS Committee may take any action to terminate, condition, or otherwise limit a member organization's approval to act as a DPM, the member organization will be given notice of a possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take action. The only exception to this provision is that, as under current Rule 8.80, the MTS Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as a DPM if the DPM incurs a material financial, operational, or personnel change warranting action or if the DPM fails to comply with any of the financial requirements applicable to DPMs.

As is also the case under the current DPM rules, if a member organization's approval to act as a DPM is terminated, conditioned, or otherwise limited by the MTS Committee pursuant to proposed Rule 8.90, proposed Rule 8.90(d) provides that the member organization may appeal that decision to the Appeals Committee under Chapter XIX. In addition, as described above, these appeal procedures provide the right to a formal Appeals Committee hearing concerning a MTS Committee's decision. The decision of the Appeals Committee may be appealed to the Board of Directors.

Rule 8.91—Limitations on Dealings of DPMs and Affiliated Persons of DPMs Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs. Proposed Rule 8.91 and the accompanying proposed guidelines for exemptive relief under proposed Rule 8.91(e) restate the rule provisions that are currently contained in current Rule 8.81 and the current guidelines for exemptive relief that accompany that Rule. Proposed Rule 8.91 and its accompanying guidelines are intended to more clearly reflect those provisions and how they have historically been interpreted by the Exchange. For example, the Exchange believes that the organization of these provisions has been improved by including in proposed Rule 8.91 all of the restrictions on DPM affiliates that are set forth in the current provisions, instead of including only one of these restrictions in the Rule and including other restrictions in the accompanying guidelines, as is currently the case. In addition, the restrictions on DPM dealings with an issuer are restated to include in the case of options, which are nominally issued by The Options Clearing Corporation, that these restrictions are intended to apply to dealings with the issuer of the underlying security, whereas in the case of securities other than options, they apply to dealings with the issuer of the security itself. Moreover, other clarifying revisions of a similar nature have been made to the current provisions without changing the substance of those provisions as they have been interpreted by the Exchange.

In addition, consistent with the Exchange's long-standing interpretation of current Rule 8.80, proposed Rule 8.91(d) explicitly prohibits any member affiliated with a DPM from acting as a Floor Broker in any trading crowd in which the DPM acts as a DPM, unless the member is a DPM Designee of the DPM acting on behalf of the DPM in its capacity as a DPM. The Exchange has interpreted current Rule 8.80 to provide for such a prohibition since permitting a Floor Broker affiliated with a DPM to represent orders in the DPM's trading crowd could potentially allow the DPM to direct orders to the Floor Broker and thus circumvent certain of the DPM's obligations such as the obligation to place eligible orders in the public order book , the obligation to accord priority to any order which the DPM represents as agent over the DPM's principal transactions, the obligation not to charge any brokerage commission with respect to the execution of any order for which the DPM acts as both agent and principal, and the obligation not to represent discretionary orders.

Deletions from Current DPM Rules. Current Rule 8.80(b)(4)(ii) provides that the MTS Committee shall open a DPM's allocated option classes to a new DPM selection process if the DPM changes its specified nominee and the former nominee so requests. The Exchange no longer believes that this provision is appropriate because DPM organizations are generally much larger than they used to be. Today, DPMs often have many nominees, and nominees are added to and depart from DPM organizations more frequently than in the early years of the DPM program. For this reason, most DPM nominees no longer have the same stake in their DPM organizations that many DPM nominees may have had in the past. Thus, it is often no longer equitable to allow a DPM nominee to request a new DPM selection process for that DPM's allocated securities following the nominee's departure from the DPM organization.

Two provisions relating to maintenance of the public order book have also been deleted. First, current Rule 8.80(b)(8), which provides that under certain circumstances a terminated DPM will receive a proportionate share of the net book revenues for a period specified by the MTS Committee (up to a maximum of 5 years), has not been retained in the proposed DPM rules. The original purpose of this provision was to provide incentive to members to apply to be appointed as a DPM. Because the interest in becoming a DPM has grown throughout the years, the Exchange believes this incentive is no longer necessary to attract DPM candidates.

Second, the Exchange is eliminating the provision of current Rule 8.80(d) which provides that the Exchange shall be responsible for the maintenance, handling, and billing of the public order book and shall retain and compensate the DPM for performing the Order Book Official function. The reason for this deletion is that over time DPMs have taken on the responsibility for the maintenance, handling, and billing of the public order book, and the Exchange no longer retains this responsibility nor compensates DPMs for performing these functions. The current provision of Rule 8.80(d), however, which contemplates that the Exchange may make personnel available to assist a DPM in the DPM's performance as an Order Book Official, for which the Exchange may charge the DPM a reasonable fee, has been retained

in proposed Rule 8.85.01 with one minor modification. Specifically, proposed Rule 8.85.01 merely permits, and does not require, the Exchange to provide this assistance when it is requested. This change has been made because, although the Exchange is often able to provide such assistance to DPMs, the Exchange may not always be able to do so.

Finally, current Rule 8.80(c)(7)(iii) is being deleted because the Exchange believes the procedure called for under the Rule is cumbersome and because the concern that the Rule addresses is adequately addressed by another Exchange Rule. Current Rule 8.80(c)(7)(iii) provides that a DPM may not initiate a transaction for its own account that would result in putting into effect any stop or stop limit order which may be in the public order book or which the DPM represents as Floor Broker, except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction. The Exchange believes that this procedure is cumbersome because it necessitates that a Floor Official be summoned to the trading station each of the many times this situation arises. Moreover, the required approval mechanism leads to delay in the execution of customer orders. The Exchange believes that the concern addressed by current Rule 8.80(c)(7)(iii) is adequately addressed by CBOE Rule 6.73(a), which requires a Floor Broker handling an order, including a DPM, to use due diligence to execute the order at the best price or prices available to the Floor Broker, in accordance with the Rules. Thus, if a DPM were to initiate a transaction for its own account in order to disadvantage a customer by putting into effect a stop or stop limit order, the Exchange would have the ability to discipline the DPM for such activity under Rule 6.73 for failure to exercise due diligence with respect to the representation of the order.

Conforming Rule Changes. The Exchange also proposes to make conforming changes to other CBOE rules to make them consistent with the proposed rule changes described above.

2. Basis

The Exchange believes the proposed rule change will improve the operation of the DPM trading system which, in accordance with Section 11A(a)(1)(C)(i) of the Act,[9] assures the economic and efficient execution of securities transactions. Accordingly, the Exchange beleives that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and further the objectives of Section 6(b)(5)[11] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

As set forth above, the Exchange filed a substantially similar proposed rule change with the Commission in 1998 as part of CBOE Rule File No. SR–CBOE–98–15 and received a member petition concerning the proposed rule change prior to the Exchange's withdrawal of the filing from the Commission. The petition objected to proposed Rule 8.89 and requested a membership vote regarding whether proposed Rule 8.89 should be approved or should be revised to absolutely prohibit any sale, transfer, or assignment of a DPM appointment or a DPM's allocated securities.

Current Rule 8.80(b)(3) provides the MTS Committee with the discretion to determine whether to approve the transfer of a DPM appointment by setting forth that a DPM appointment may not be transferred without the approval of the MTS Committee. As is more fully described in the section entitled *Rule 8.89—Transfer of DPM Appointments,* the Exchange believes that proposed Rule 8.89 and the accompanying memo from the Board of Directors improve the current rule provision by setting forth a detailed procedure for considering proposals to sell, transfer, or assign an interest in a DPM, which will help to ensure that the MTS Committee has sufficient information on which to base decisions regarding such proposals, including member input, and by setting forth the appropriate criteria to be utilized in evaluating such proposals. In addition, the Exchange does not believe that it is in the best interest of the Exchange, customers, or the market to prohibit the Exchange from approving any sale, transfer, or assignment of a DPM appointment. To the contrary, the Exchange believes that there are circumstances where it may be in the best interests of the Exchange, customers, and the market to permit the transfer of some or all of the DPM's interest in its DPM appointment. Therefore, the Exchange believes that it is important for the Exchange to have the flexibility to approve such transfers in appropriate circumstances. For example, a transfer for the purpose of attracting new capital to an existing successful DPM can benefit the Exchange, customers, and the market by allowing the DPM to increase its personnel, to service its customers better, and to make tighter and deeper markets. Accordingly, the Exchange believes that proposed Rule 8.89 is in the best interest of the Exchange, customers, and the market as well as in furtherance of the objectives of the Act.

The Exchange also notes that since the time the member petition concerning proposed Rule 8.89 was submitted to the Exchange, the Exchange has engaged in a period of dialogue with the Exchange's membership regarding the issue of DPM transferability and that the proposed rule changes to update and reorganize the Exchange's rules relating to DPMs, including proposed Rule 8.89, have been approved by the Exchange's membership in a membership vote.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[9] 15 U.S.C. 78k–1(a)(1)(C)(i).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–54 and should be submitted by May 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 99–10985 Filed 4–30–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41324; File No. SR–NYSE–99–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Relating to Amendments to the Listed Company Manual Regarding Original and Continued Listing Criteria and Procedures

April 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 21, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Listed Company Manual ("Manual")[3] with regards to the original and continued listing criteria and procedures of the Exchange. The text of the proposed rule change follows. New text is italicized. Deleted text is bracketed.

NYSE Listed Company Manual

* * * * *

Section 1

The Listing Process

101.00 Introduction

* * * * *

The Exchange has broad discretion regarding the listing of a company. The Exchange is committed to list only those companies that are suited for auction market trading and that have attained the status of being eligible for trading on the Exchange. Thus, the Exchange may deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. Such determination can be made even if the company meets the standards set forth below.

102.01 Minimum Numerical Standards

—Domestic Standards [Companies]
—Equity Listings

102.01A. A company must meet one of the following size/volume criteria:

* * * * *

102.01B. A company must demonstrate an [A]aggregate market value of publicly-held shares [(C) , subject to adjustment depending on market conditions, as described below].....[$40,000,000] *of $60,000,000 for companies that list either at the time of their initial public offerings ("IPOs") (C) or as a result of spin-offs, and $100,000,000 for other companies (D).* [(While greater emphasis is placed on market value, an additional measure of size is $40,000,000 in net tangible assets.)]

* * * * *

(C) For companies that list at the time of their IPOs, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with this listing standard. Similarly, for spin-offs, the Exchange will rely on a representation from the parent company's investment banker (or other financial advisor) in order to estimate the market value based upon the as disclosed distribution ratio. For purpose of this paragraph, an IPO is an offering by an issuer which, immediately prior to its original listing, does not have a class of common stock registered under the Securities Exchange Act of 1934. An IPO includes a carve-out, which is defined for purposes of this paragraph as the initial offering of an equity security to the public by a publicly traded company for an underlying interest in its existing business (which may be a subsidiary, division, or business unit).

[C] *(D)* Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. *If a company either has a significant concentration of stock, or changing market forces have adversely impacted the public market value of a company which otherwise would qualify for listing on the Exchange, such that its public market value is no more than 10 percent below $60,000,000 or $100,000,000, as applicable, the Exchange will generally consider $60,000,000 or $100,000,000, as applicable, in stockholders' equity as an alternate measure of size and therefore as an alternate basis on which to list the company.*

* * * * *

[Calculation of Aggregate market Value Adjustment—On January 15 and July 15 of each year the NYSE Composite Index, at the close of business for that date, or on the next succeeding business day if the Exchange is closed, is divided by the base value of 55.06 (the NYSE Composite Index for July 15, 1971). The $40,000,000 standard multiplied by the adjustment factor as so calculated (after rounding up to the nearest thousandth). The resulting product is rounded to the nearest $100,000.

The adjustment is made only when the NYSE Composite Index is lower than that of the base value, and is limited to a maximum reduction of 50 *percent* of the standard which will be in effect for the succeeding six months following the calculation.

Since the NYSE Composite Index has remained above 55.06 in recent years, no adjustment has been necessary]

* * * * *

[Demonstrated earning power—income before federal income taxes and under competitive conditions:

Latest fiscal year	$2,500,000
Each of the preceding two fiscal years	$2,000,000

[12] 17 CFR 200.30–30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that it has a pending filing to make certain amendments to its listing standards (SR–NYSE–98–21). The instant filing is marked against the Manual in its current form, not the Manual as proposed to be amended in the already pending filing.

OR

Demonstrated earning power—income before federal income taxes and under competitive conditions:

Aggregate for last 3 fiscal years $6,500,000
together with
A minimum in most recent fiscal year $4,500,000
(All three years must be profitable.)

OR

For companies with not less than $500,000,000 market capitalization and $200,000,000 revenues in the most recent fiscal year:
Demonstrated earning power—adjusted net income*:
Aggregate for last 3 fiscal years—$25,000,000
(Each year must report a positive amount.)]

102.01C. A company must meet one of the following financial standards:

(I) (1) Pre tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted (E) for items specified in (2)(a) through (i) below (F) must total at least:

$2,500,000 in the latest fiscal year together with $2,000,000 in each of the preceding two years; or

$6,500,000 in the aggregate for the last three fiscal years together with a minimum of $4,500,000 in the most recent fiscal year, and positive amounts for each of the preceding two years.

(2) Adjustments that must be included in the calculation of the amounts required in paragraph (1) are as follows:

(a) Application of Use of Proceeds.

If a company is in registration with the SEC and is in the process of an equity offering, adjustments should be made to reflect the net proceeds of that offering, and the specified intended application(s) of such proceeds to:

(i) Pay off existing debt. The adjustment will include elimination of the actual historical interest on debt being retired with offering proceeds for all relevant periods. If the event giving rise to the adjustment occurred during a time-period such that pro forma amounts are not set forth in the SEC registration statement (typically, the pro forma effect of repayment of debt will be provided in the current registration statement only with respect to the last fiscal year plus any interim period in accordance with SEC rules), the company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(ii) Fund an acquisition.

(1) The adjustments will include those applicable with respect to acquisition(s) to be funded with the proceeds. Adjustments will be made that are disclosed as such in accordance with Rule 3–05 "Financial Statements of Businesses Acquired or to be Acquired and Article 11 of Regulation S–X. Adjustments will be made for all the relevant periods for those acquisitions for which historical financial information of the acquiree is required to be disclosed in the SEC registration statement; and

(2) Adjustments applicable to any period for which pro forma numbers are not set forth in the registration statement shall be accompanied by the relevant adjusted financial data to combine the historical results of the acquiree (or relevant portion thereof) and acquiror, as disclosed in the company's SEC filing. Under SEC rules, the number of periods disclosed depends upon the significance level of the acquiree to the acquiror. The adjustments will include those necessary to reflect (a) the allocation of the purchase price, including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation), and (b) the effects of additional financing to complete the acquisition. The company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(b) Acquisitions and Dispositions

In instances other than acquisitions (and related dispositions of part of the acquiree) funded with the use of proceeds, adjustments will be made for those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 "Financial Statements of Businesses Acquired or to be Acquired" and Article 11 of Regulation S–X. If the disclosure does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, then such data must be prepared by the company's outside audit firm for the Exchange's consideration. In this regard, the audit firm would have to issue an independent accountant's report on applying agreed-upon procedures in accordance with the standards established by the American Institute of Certified Public Accountants.

(c) Exclusion of Merger or Acquisition Related Costs Recorded under Pooling of Interests

(d) Exclusion of Charges or Income Specifically Disclosed in the Applicant's SEC Filing for the Following:

(i) In connection with exiting an activity for the following:

(1) Costs of severance and termination benefits

(2) Costs and associated revenues and expenses associated with the elimination and reduction of product lines

(3) Costs to consolidate or re-locate plant and office facilities

(4) Loss or gain on disposal of long-lived assets

(ii) Environmental clean-up costs

(iii) Litigation settlements

(e) Exclusion of Impairment Charges on Long-lived Assets (goodwill, property, plant, and equipment, and other long-lived assets)

(f) Exclusion of Gains or Losses Associated with Sales of a Subsidiary's or Investee's Stock

(g) Exclusion of In-Process Purchased Research and Development Charges

(h) Regulation S–X Article 11 Adjustments

Adjustments will include those contained in a company's pro forma financial statements provided in a current filing with the SEC pursuant to SEC rules and regulations governing Article 11 "Pro forma information of Regulation S–X Part 210—Form and Content of and Requirements for Financial Statements."

(i) Exclusion of the Cumulative Effect of Adoption of New Accounting Standard (APB Opinion No.20)

OR

(II) A Company with not less than $500,000,000 market capitalization and $200,000,000 in revenues during the most recent 12 month period must demonstrate from the operating activity section of its cash flow statement that its cash flow, which represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities, is at least

$25,000,000 in the aggregate for the last three fiscal years, and each year is reported as a positive amount as adjusted (E)(F) pursuant to Para. 102.01C (I)(2)(a) and (b) as applicable. With respect to reconciling amounts pursuant to this Paragraph, all such amounts are limited to the amount included in the company's income statement.

(E) Only adjustments arising from events specifically so indicated in the company's SEC filing(s) as to both categorization and amount can and must be made. Any such adjustment applies only in the year in which the event occurred except with regard to the use of proceeds or acquisitions and dispositions. Any company for which the Exchange relies on adjustments in granting clearance must include all relevant adjusted financial data in its listing application as specified in Para. 702.04, and disclose the use of adjustments by including a statement in a press release (i) that additional information is available upon which the NYSE relied to list the company and is included in the listing application and (ii) that such information is available to the public upon request.

(F) The above-referenced adjustments are measured and recognized in accordance with any relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB"), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC. Any literature is intended to guide issuers and investors regarding the affected adjustment listed. If successor interpretations (or guidelines) are published with respect to any particular adjustment, the most recent relevant interpretations (or guidelines) should be consulted.

102.01D. Policy on restated financial statements due to a change from an unacceptable to acceptable accounting principle or a correction of errors

If at any time following the Exchange's initial determination that a company meets the Exchange's original listing criteria, the company restates its financial statements due to a change from an unacceptable to an acceptable accounting principle or a correction of errors, and the restatement encompasses financial statements included in its SEC filings at the time of application for listing on the Exchange, the Exchange will re-evaluate the company's listing status. In this regard, the Exchange will determine whether, at the time of the original clearance, the company would have qualified under the Exchange's original listing standards utilizing the restated financial data. If not, unless the company meets original listing standards at the time of the restatement, the company will be notified that it does not meet the original listing standards and, if its securities have been listed, such securities will be suspended from trading and the company will immediately be subject to the delisting procedures in Para. 804.

[*Net income, adjusted to remove the effects of all items whose cash effects are investing or financing cash flows (determined pursuant to paragraph 28(b) of Statement of Financial Accounting Standards No. 95, Statement of Cash Flows, subject to the following limitations: the adjustment to net income with respect to the cash effects of discontinued operations, the cumulative effect of an accounting change, an extraordinary item or the gain or loss on extinguishment of debt will be limited to reversing the amount charged or credited in determining net income for the period.)

The adjusted net income standard is designed to provide the opportunity for substantial companies that are valued more on the basis of "cash flow" than reported income to list on the Exchange. The NYSE will consider each company on a case by case basis and will look not only at the specifics of the company's business but will also look to its industry, peer group and other relevant factors in performing its due diligence with respect to the application of this standard.]

102.05 Minimum Numerical Standards—Real Estate Investment Trusts

For Real Estate Investment Trusts (REITs) that do not have a three-year operating history, the following listing standards apply:

- *For such companies with at least $60,000,000 in stockholders' equity, the Exchange will generally authorize the listing of the REIT. For those REITs listing in conjunction with an offering, this requirement must be evidenced by a written commitment from the underwriter (or, in the case of a spin-off or carve-out, from the parent company's investment banker or other financial advisor) on behalf of the REIT;*
- *For such companies with stockholders' equity below $60,000,000, the Exchange will not consider the REIT eligible for listing.*

* * * * *

103.00 Non-U.S. Companies

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103.01 Minimum Numerical Standards—Non U.S Companies—Equity Listings

103.01A. A company must meet the following distribution and size requirements:
[Distribution]

Number of shareholder, holders of 100 or more shares.	5,000 Worldwide
Number of shares publicly held.	2.5 million Worldwide
Market value of publicly-held shares *(A)*.	$100 million Worldwide *(B)*

(A) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. If a company either has a significant concentration of stock, or if changing market forces have adversely impacted the public market value of a company which otherwise would qualify for listing on the Exchange such that its public market value is no more than 10 percent below $100,000,000, the Exchange will generally consider $100,000,000 in stockholders' equity as an alternate measure of size and therefore, as an alternative basis to list the company.

(B) For companies that list at the time of their initial public offerings ("IPOs"), if necessary, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with this listing standard. Similarly, for spin-offs, the Exchange will rely on a representation from the parent company's investment banker (or other financial advisor) or transfer agent in order to estimate the market value based upon the as disclosed distribution ratio. For purpose of this paragraph, an IPO is an offering by an issuer which, immediately prior to its original listing, does not have a class of common stock registered under the Securities Exchange Act of 1934. An IPO includes a carve-out, which is defined for purposes of this paragraph as the initial offering of an equity security to the public by a publicly traded company for an underlying interest in its existing business (may be a subsidiary, division, or business unit).

[Size and Earnings

Net tangible assets.	$100 million Worldwide
Pre-tax income ..	$100 million cumulative for latest 3 years with $25 million minimum for any one of the 3 years]

103.01B. A company must meet one of the following financial standards:

(I) (1) Pre tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted (C)(D) for items specified in para. 102.01C(I)(2)(a) through (i) above, and 103.01B(I)(2) below, must total at least:

$100,000,000 in the aggregate for the last three fiscal years together with a minimum of $25,000,000 in each of the three years.

(2) Additional Adjustment Available for Foreign Currency Devaluation. Non-operating adjustments when associated with translation adjustments representing a significant devaluation of a country's currency (e.g., the currency of a company's country of domicile devalues by more than 10 percent against the U.S. dollar within a six-month period). Adjustments may not include those associated with normal currency gains or losses.

OR

(II) Companies with not less than $500,000,000 market capitalization and $200,000,000 revenues in the most recent 12 month period must demonstrate from the operating activity section of its cash flow statement that its operating cash flow excluding changes in operating assets and liabilities is at least $25,000,000 in the aggregate for the last three fiscal years, where each year is reported as a positive amount as adjusted (C)(D) for Para. 102.01C(I)(2)(a) and (b).

(C) Only adjustments arising from events specifically so indicated in the company's SEC filing(s) as to both categorization and amount can and must be made. Any such adjustment applies only in the year in which the event occurred except with regard to the use of proceeds or acquisitions and dispositions. Any company for which the Exchange relies on adjustments in granting clearance must include all relevant adjusted financial data in its listing application as specified in Para. 702.04, and disclose the use of adjustments by including a statement in a press release (i) that additional information is available upon which the NYSE relied to list the company and is included in the listing application and (ii) that such information is available to the public upon request.

(D) Interested parties should apply the list of adjustments in accordance with any relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB"), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC. Any literature is intended to guide issuers and investors regarding the affected adjustment listed. If successor interpretations (or guidelines) are published with respect to any particular adjustment, the most recent relevant interpretations (or guidelines) should be consulted.

103.01C. Policy on restated financial statements due to a change from an unacceptable to acceptable accounting principal or a correction of errors

If at any time following the Exchange's initial determination that a company meets the Exchange's original listing criteria, the company restates its financial statements due to a change from an unacceptable to an acceptable accounting principle or a correction of errors, and the restatement encompasses financial statements included in its SEC filings at the time of application for listing on the Exchange, the Exchange will re-evaluate the company's listing status. In this regard, the Exchange will determine whether, at the time of the original clearance, the company would have qualified under the Exchange's original listing standards utilizing the restated financial data. If not, unless the company meets original listing standards at the time of the restatement, the company will be notified that it does not meet the original listing standards and, if its securities have been listed, such securities will be suspended from trading and the company will immediately be subject to the delisting procedures in Para. 804.

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Section 7

Listing Applications

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702.04 Supporting Documents

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Financial Statements—

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Adjustments to historical financial data—

If the Exchange requires any adjustments to historical financial data submitted by the company during the financial eligibility review process and such data is necessary to demonstrate that the company meets the Exchange's listing standards, the company must include such data in its listing application. Exchange Staff will advise the company as to which, if any, adjustments to historical financial data submitted to it by the company must be included in the listing application. Such information must include the agreed upon procedures report, if any, submitted to the Exchange.

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Section 8

Suspension and Delisting

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801.00 Policy

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In connection with this rule, the Exchange has adopted certain quantitative and qualitative continued listing criteria. When a company falls below any criterion, the Exchange will review the appropriateness of continued listing. The Exchange may give consideration to any definitive action that a company would propose to take that would bring it [in line with original listing standards] *above continued listing standards. The specific procedures and timelines regarding such proposals are delineated in Para. 802.02 and 802.03.* [However, changes that a company might consider or make that would bring it above continued listing standards but not in line with original listing standards would normally not be adequate reason to warrant continued listing.]

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802.00 Continued Listing [Criteria]

802.[00] *01 Continued Listing Criteria*

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Earnings—

• Aggregate market value of shares outstanding (excluding treasury stock) is less than	$12,000,000
and average net income (*A*) after taxes for past 3 years is less than	$600,000
• Net tangible assets available to common stock are less than	$12,000,000
and average net income (*A*) after taxes for past 3 years is less than	$600,000

(A) For a company that included in its original listing application adjustments to historical financial data, during the first three years following the date of its original listing, the Exchange will calculate the company's average net income after taxes for any year considered in assessing its qualification for listing taking into consideration those specific adjustments made to the company's historical financial data for that year in the original listing application.

802.02 Continued Listing

Evaluation and Follow-Up Procedures for Domestic Companies

The following procedures shall be applied by the Exchange to domestic companies which are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 10 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific quarterly milestones against which the Exchange will evaluate the company's progress.

The company has 45 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to (1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 45 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

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802.03 Continued Listing

Evaluation and Follow-up Procedures for Non-U.S. Companies

The following procedures shall be applied by the Exchange to non-U.S. companies who are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 30 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific semi-annual milestones against which the Exchange will evaluate the company's progress.

The company has 90 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to (1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 90 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 90 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a semi-annual basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange will promptly initiate suspension and delisting procedures.

NYSE Rules

Delisting of Securities

Suspension from Dealings or Removal from List by Action of the Exchange

The aim of the New York Stock Exchange is to provide the foremost auction market for securities of well-established companies in which there is a broad public interest and ownership.

Rule 499.

.20 NUMERICAL AND OTHER CRITERIA.—WHEN A COMPANY FALLS BELOW ANY OF THESE CRITERIA, THE EXCHANGE MAY GIVE CONSIDERATION TO ANY DEFINITIVE ACTION THAT A COMPANY WOULD PROPOSE TO TAKE THAT WOULD BRING IT *ABOVE CONTINUED LISTING STANDARDS.* [IN LINE WITH ORIGINAL LISTING STANDARDS. ON THE OTHER HAND, CHANGES THAT A COMPANY MIGHT CONSIDER OR MAKE THAT WOULD BRING IT ABOVE THE DELISTING CRITERIA BUT NOT IN LINE WITH ORIGINAL LISTING STANDARDS WOULD NORMALLY NOT BE ADEQUATE REASON TO WARRANT CONTINUED LISTING.]

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.50 [Procedure for Delisting.—] *Continued Listing Evaluation and Follow-up Procedures for Domestic Companies*

The following procedures shall be applied by the Exchange to domestic companies which are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 10 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific quarterly milestones against which the Exchange will evaluate the company's progress.

The company has 45 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to (1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 45 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

.60 [Procedure for Delisting.—] *Continued Listing Evaluation and Follow-up Procedures for Non-US Companies*

The following procedures shall be applied by the Exchange to non-U.S. companies who are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 30 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific semi-annual milestones against which the Exchange will evaluate the company's progress.

The company has 90 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to (1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 90 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the

company fails to issue this press release during the allotted 90 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a semi-annual basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures.

Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange will promptly initiate suspension and delisting procedures.

.70 Procedure for Delisting.—

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to clarify and codify how the Exchange evaluates a company's listing eligibility, codify the Exchange's application and interpretation of certain original listing standards, change the benchmark used as an alternate measure of size, codify its original listing standard for real estate investment trusts, and codify both existing and enhanced procedures applicable to companies identified as being below the Exchange's continued listing criteria. Where applicable, conforming changes are proposed regarding non-U.S. listings. In proposing these rule codifications and changes, the Exchange seeks to ensure that its original and continued listing standards are fully transparent, applied consistently and easily auditable.

Original Listing Criteria and Procedures. The Exchange's numerical listing criteria include requirements regarding size, earnings and share distribution of a company. With regard to the size component of the financial eligibility criteria, and general eligibility, the Exchange proposes to make four amendments:

- The proposed amendment clarifies and codifies the Exchange staff's authority to delve further into the suitability of the applicant company for auction market trading on the Exchange even if the applicant meets the Exchange's quantitative criteria. The Exchange notes that such authority is specifically codified in the suspension and delisting section of the Manual and believes that it is equally appropriate to codify its authority in the original listing section.
- The current original listing criteria include a requirement that a company have an aggregate market value of publicly-held shares of $40 million. The Exchange proposes to raise this requirement to $100 million for all listings other than spin-offs and initial public offerings ("IPOs") (including carve-outs [4]), as to which the Exchange proposes raising the standard to $60 million. The Exchange proposes to raise the current $40 million standard somewhat less for IPOs, carve-outs and spin-offs because these are companies that have not had the opportunity to establish themselves as public companies.[5]
- The current additional measure of a company's size is a net tangible assets ("NTAs") test. The Exchange proposes two changes:

a. First, the word "additional in this context has been read by some to imply that NTAs are a stand-alone measure of size that must be met in addition to the market value standard. This reading was never intended. The Exchange clarifies that the test, as modified below, is an alternate measure of size to be relied upon in those instances where circumstances warrant an alternate measure and where the public market capitalization is no more than 10 percent below the public market value listing standard. Such circumstances would include occurrences such as large private holdings that drive down the public market capitalization or changing market forces that drive down the price of the stock.

b. Second, the Exchange proposes to replace the NTA test with a stockholders' equity test ($60 million for IPOs or spin-offs and $100 million for all other domestic listings [6] The Exchange views stockholders' equity as a better reflection of a company's value in the current economy, where a company's value often is not based solely on hard assets, but also on intangibles. The Exchange would, in reviewing a company, look to the composition of the stockholders' equity in order to determine the origination of such equity. Furthermore, stockholders' equity is a more straight-forward calculation than NTAs.

- The Exchange proposes to codify its practice of accepting a written commitment from the underwriter for IPOs (for spin-offs, from the parent company's investment banker or other financial advisor) to demonstrate that the company will satisfy the public market value requirement of $60 million ($100 million worldwide for non-U.S. issuers).

Original Financial Listing Criteria and Procedures. i. Overview and Discussion of Current Practice Regarding Financial Listing Standards.

In addition to specific criteria regarding the size of a listing applicant, the Manual also contains criteria regarding a company's earnings. The Exchange is proposing a series of amendments relating to this section of the Manual.

Under the current provisions of the Manual, a company that seeks to qualify for listing on the Exchange under its domestic standards must meet one of three financial tests. Two of the tests call for an analysis of the company's "demonstrated earning power under competitive conditions." The third test, which only applies to companies with at least $500,000,000 in market capitalization and $200,000,000 in revenues during the most recent fiscal year, analyzes the company's "demonstrated earning power—adjusted net income," as such latter term is defined in the current accompanying

[4] The Exchange proposes to define a carve-out as the initial offering of an equity security to the public by a publicly-traded company for an underlying interest in its existing business (which may be a subsidary, division, or business unit). In the case of a "target stock," the security is treated in the same way as any other second class of stock of the issuer.

[5] The Exchange proposes to define an IPO as a company that, prior to its original listing did not have a class of common stock registered under the Act. The Exochange notes that this definition differs from the definition of an IPO in Section 12(f)(1)(G)(i) of the Act, which turns on whether a company has a reporting obligation under the Act prior to a stock offering. Because the Exchange is applying its definition of IPO in the context of the original listing of common stock, the Exchange believes it is more appropriate to focus on the existense of U.S. publicly-traded stock rather than on prior reporting requirement. For example, while a company could have a reporting requirement under the Act if it conducted a public sale of debt securities, that would not be relevant in considering the appropriateness of listing a company's first public class of common stock.

[6] For non-U.S. companies, the $100 million requirement applies to all issuers and will be measured under this proposal in stockholders' equity instead of the current NTA valuation.

footnotes. The Exchange proposes both to codify its current policies and practices with respect to the interpretation of these criteria and to amend certain of its policies. In doing so, the Exchange seeks to ensure that the financial criteria applied to companies seeking to list on the Exchange are fully transparent, applied consistently and easily auditable.

The Exchange seeks to ascertain the financial strength of the company as it will exist on the day of listing. For more than 60 years, it has been the policy and practice of the Exchange to give consideration to certain adjustments to assure that at the time of listing the company has the earnings capacity—the "demonstrated earning power" requisite to auction-agency trading of its securities on the Exchange.

In conducting its review of the financial condition of an applicant company, the Exchange historically relied upon financial statements presented to it by the company, both historical and pro forma; in many cases, such financial information included that obtained from SEC filings (*e.g.*, for an acquisition, pro forma financial statements may have been provided by the listing applicant acquiror and presented to Exchange staff from the relevant past SEC filings for the acquiree if it was a reporting company). Finally, if the Exchange relied on the adjustments in granting financial clearance to the company, the company would be required to include them in its original listing application as a condition to eligibility clearance. Thus, any adjustments were available to the public because the listing application is a matter of public record.

The Exchange has not accepted all pro forma adjustments presented by the listing applicant. Moreover, the Exchange has required pro forma adjustments from companies in instances where the outcome was not favorable to the company if the adjustments were considered necessary to accurately evaluate the company's financial eligibility.

While the Exchange believes that the current process has served investors and the listed company community well, the Exchange recognizes the need to provide more transparency as to the application of the financial criteria and the financial analysis used in the listing process. Thus, the proposed rule change sets forth more explicit standards and enumerates specifically the applicable adjustments. In addition, the proposed rule change makes conforming, clarifying changes to the non-U.S. financial listing standards in Section 103.01 of the Manual.

ii. Proposed Changes to Financial Eligibility Standards. *The proposed rule change codifies the Exchange's financial listing standards and current practices, as well as clarifies and modifies the relevant interpretations. The modifications have been made to ensure transparency, auditability, replicability and certainty in the application of the standards. In detailing its standards, the Exchange has sought to preserve its goal of analyzing the financial strength of a listing applicant as the entity will exist at the time of listing. Specifically, the Exchange seeks to continue to be able to determine whether the company in its current form is financially suited for trading on the Exchange, taking into account (1) changes in capitalization, (2) acquisitions completed or committed to, and (3) excluding certain items which, based upon the Exchange's experience, should not be considered in assessing earnings strength on a going forward basis, because, by their nature, they are not necessarily recurring.*

a. Standard #1—"Pre-Tax Adjusted Earnings. The Exchange proposes to replace its current requirement that applicants "demonstrate earning power under competitive conditions" with a standard providing more specificity. The proposed standard is "pre-tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted". In turn, the "as adjusted" phrase refers the reader to various items that are a part of the test. Each element of the restated test is discussed separately below.

First, "pre-tax earnings" captures the current standard of "income before federal income taxes." Thus, the Exchange proposes to continue to begin its analysis with a company's income before the application of all income taxes (state income taxes, although removed for NYSE analysis purposes in the past, have not materially altered any listing eligibility decision and, therefore, are now excluded as such) in order to create a picture of the company's gross income potential.

Second, "from continuing operations" focuses our analysis on ongoing operations and excludes any discontinued operations included in the company's historical financial statements. Discontinued operations by definition do not go forward and thus are not considered to be relevant to the entity being considered for listing. The Exchange notes that accounting rules specify that, upon management's commitment to discontinue an operation, financial statements for all relevant periods presented must be restated. Therefore, if the commitment is made after the period under Exchange review and the historical financial statements have not yet been restated, the Exchange will rely on the company to prepare this presentation of the adjusted data and accompany such presentation with an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter will state the procedures performed with respect to calculating the pre-tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted giving effect to the discontinuance for each period under review.

Third, "after minority interest" removes results of an affiliate of the applicant company accrued to owners other than the applicant company due to its less than 100 percent ownership. The Exchange does not consider those results to be reflective of the equity interest in the security that would be trading on the Exchange. For example, in the case of a subsidiary that has a 20 percent privately held interest (*i.e.*, a 20 percent minority interest), only 80 percent of the interest in the subsidiary is reflected in the public stock. In this scenario, although 100 percent of the subsidiary is consolidated into the applicant parent's operations, only 80 percent of the subsidiary's earnings will accrue to common stock holders of the applicant parent company, as the 20 percent minority interest will be reflected as a liability on the company's books and removed from its consolidated operations. The Exchange would make the appropriate adjustment in its analysis to essentially include 80 percent of the earnings in the subsidiary by adjusting the pre-tax income for the reported minority interest provided such minority interest is not included as part of the company's pre-tax income on the face of the financial statement.[7]

Fourth, "after equity in the earnings or losses of investees" arises when an applicant company has an ownership interest in another corporation, the results of which are not consolidated into the applicant company's financial statements due to the application of the governing accounting principles. The Exchange considers these results to be part of the financial picture of the applicant company because they

[7] The Exchange notes that in the case of equity in the earnings or losses of investees, the reporting of the amount may not necessarily be included in "pre-tax earnings" but might be reported by the company below this presentation in its income statement. Accordingly, the Exchange would make the requisite adjustment for these amounts if necessary.

represent income or losses that will affect its income stream on an ongoing basis. Thus, any results of investments that accrue to the company will be accounted for in the Exchange's analysis to determine whether or not the company is eligible for listing in order to reflect all of the earnings accruing to the common shareholders. This will be effected by including these results from the company's income statement provided such results are not included as part of the company's pre-tax income on the face of the financial statement.

Fifth, the Exchange proposes to enumerate the adjustments to be made to the amount computed pursuant to the preceding four paragraphs. These adjustments would be part of the proposed standard and, as such, apply to every listing applicant. Applicant companies may only apply those adjustments arising from events specifically identified in the company's SEC filing(s) as to both categorization and amount. Thus, in order for an adjustment to be appropriately applied, it must be specifically identified and the amount applied must be specifically disclosed in the SEC filing, or subject to an agreed upon procedures letter in certain cases as discussed below. The following discussion itemizes and clarifies the Exchange's interpretation of the adjustments to be made to pre-tax income from continuing operations after minority interest and equity in the earnings and losses of investees.

The above-referenced adjustments are measured and recognized in accordance with the relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB"), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC.

Use of Proceeds. When the financial status of a company is evaluated in anticipation of an equity offering, whether an IPO or a secondary offering, the application of its intended use of proceeds to the company's historical financial statements can affect its ongoing earnings strength. Because it is this post-offering and recapitalized entity that is applying to list on the Exchange, its financial eligibility can best be analyzed by taking into account the application and intended use of the offering proceeds.

The Exchange has a long-standing policy of using the proceeds for all periods in determining the financial eligibility of a company seeking to list its securities on the Exchange. The company's registration documents (*e.g.*, Form S–1) often include pro-forma capitalization information that takes into effect the net proceeds and the ultimate intended use. The Exchange's practice is conceptually consistent with the Commission's rules governing pro forma statements, which permit the application and use of proceeds in the capitalization table with regard to deleveraging, and in the pro forma financial statement section of a registration statement with regard to both deleveraging and acquisitions and dispositions.

With respect to the scope of the application, however, the Exchange has a three-year eligibility review period and evaluates companies accordingly. In reviewing a company's historical results, the Exchange will continue to consider the effect of the offering on that three-year review period where the proceeds are used to pay existing indebtedness or to fund an acquisition. Thus, for a company that is in registration with the SEC and is in the process of an equity offering, the Exchange proposes to give effect to the pro forma presentation in the registration statement and to continue to give effect to the net proceeds of that offering, and its specified intended application, in two circumstances—deleveraging and acquisitions and dispositions.

With regard to use of proceeds for deleveraging, the Exchange's practice is to analyze the financial data that reflect the recapitalized entity seeking to qualify for listing on the Exchange. In doing so, because a recapitalization can fundamentally change the financial viability of a company, the Exchange will conduct its review as if the recapitalization occurred on the first day of the first year of its three-year analysis. In applying the standard, the actual historic interest paid each year on the debt to be retired by the application of the proceeds will be removed, and the principal amount of the debt will be retired. The pro forma effects of the deleveraging for the latest fiscal year and the interim period will be reflected in the company's SEC filing. If that specific debt was incurred prior to that period, the company would need to prepare adjusted financial statement data to account for the relevant preceding periods. Adjustments will not be made on any interest or principal payment(s) made on indebtedness other than that specifically being retired. To ensure reliability and accuracy of the adjusted data, the Exchange proposes to require that this adjustment be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter will state the procedures performed with respect to: (1) The existence of the debt and (2) the accuracy of the adjustments applied to the company's historical pre-tax earnings reflecting the retirement of the principal amount of the debt and the actual historic interest payments made.

Similarly, with regard to use of proceeds for acquisitions, the Exchange conducts its review as if the acquisition occurred on the first day of the first year of its analysis, provided the historical financial statements of the acquiree for such period are included in the company's SEC filings. The starting point for this analysis is the company's SEC filing, which will include a pro forma presentation for the latest fiscal year and the subsequent interim period. This pro forma presentation will give effect to those acquisitions that meet the significance test of SEC Rule 3–05 of Regulation S–X ("Rule 3–05"). Generally, the historical financial statements of the acquiree included in the filing also will be limited to the requisite periods disclosed pursuant the Rule 3–05 significance test.[8]

The second step of the analysis is to review the historical financials of the company included in the registration statement and record the acquisition as if it was consummated on the first day of the earliest fiscal year included in the acquiree's financial statements presented in the filing. The requisite document preparation entails combining the historical results of the company with the historical results of the acquiree and reflects the purchase accounting of the acquisition for the periods presented. Specifically, the adjustments would be limited to the combination, as well as (1) the allocation of the purchase price including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation) and (2) the effects of any additional financing to complete the acquisition.

The Exchange notes that the heading "acquisitions" encompasses the purchase of complete companies, divisions, subsidiaries, and underlying equity interests. For instance, if company A intends to use proceeds from an offering to acquire company B, and company B has a division that will not be part of the transaction, then company B's financial statements excluding that division would be relevant financials of the acquiree. In

[8] The Exchange notes that, depending upon the industry group of the listed company, other SEC rules and regulations may govern this concept. For example, real estate operations would be guided by SEC Rule 3–14 of Regulation S–X.

sum, if an acquisition includes only a portion of a company or if, as part of a transaction, the acquiror simultaneously discontinues a portion of the acquiree, the net purchase effect would be deemed to be the acquisition component applicable to the Exchange's financial review during the full applicable review period (*i.e.*, for all periods presented in the SEC filing).

As in the deleveraging analysis described above, to ensure reliability and accuracy of the adjusted data provided, the Exchange proposes to require that these adjustments, if not set forth in the SEC filing, be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter would state the procedures performed with respect to showing the effect of the relevant acquisition on the applicant company.

In conclusion, the proposed process of giving effect to the use of proceeds of an offering to fund an acquisition or pay down existing debt differs from current practice in four respects: (1) all historic annual financial statements used in the analysis will be included in the SEC filing, (2) the Manual will contain a concise, transparent guideline as to both when and for how many periods adjustments will be made, (3) the financial data and related adjustments used in the eligibility analysis will be limited to the four corners of the SEC filing, and (4) an agreed upon procedures letter will be required with respect to use of proceeds and acquisitions.

Acquisitions and Dispositions. In instances other than those associated with the use of proceeds, the Exchange proposes to limit its analysis to those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 and Article 11–01(b)(2) of Regulation S–X. Unlike the use of proceeds to fund an acquisition, in this instance, the adjustment for the acquisition or disposition will be limited to those periods for which pro forma financial data are presented in the SEC filing. The analysis again begins with the pro forma presentation prepared in accordance with Article 11 of Regulation S–X and included in the company's SEC filing. Depending upon the significance test of Rule 3–05, the company's SEC filing will have a number of periods of historical financial statements of the acquiree. The filing also will have certain pro forma presentations that vary in their specificity depending upon the significance test of Rule 3–05.

For purposes of conducting the financial eligibility review, if there is a pro forma presentation included in the company's SEC filing that does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, the company must prepare the relevant data. As with the use of proceeds in the context of an acquisition, the presentation of the adjusted data will need to be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter will state the procedures performed with respect to showing the effect of the expansion of the pro forma presentation from the SEC filing into a more comprehensive income statement that contains the itemizations necessary for the Exchange to conduct its analysis (*i.e.*, pre-tax earnings from continuing operations after minority interest and equity in the earnings or losses of investees). If no detailed disclosure is provided for a particular acquisition or disposition, and the acquisition or disposition is only a factual, non-material, un-quantified reference, then the acquisition or disposition will not be given effect because it cannot be substantiated within the four corners of the company's SEC filing.

In the event that the applicant company has less than three years of operating history and is acquiring (either completed or committed) an entity with the requisite operating history, the Exchange will consider the combined operating history of the acquiror and acquiree for the preceding period(s) in conducting its financial eligibility review. If it is necessary to combine historical financial statements of the acquiree and aquiror in order to enable the Exchange to conduct its analysis (*e.g.*, overlapping fiscal years), then the combined data would need to be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter will state the procedures performed with respect to any necessary combination of historical data.

The Exchange notes that, in conducting a financial eligibility review for a company with an acquisition or disposition (either completed or committed), the agreed upon procedures letter will not be required if the SEC filing under review makes it self-evident that the company would qualify for listing on the Exchange irrespective of the acquisition or disposition. Thus, if the filing on its face shows that the company would qualify both before and after using proceeds to consummate the acquisition (*e.g.*, a de minimus acquisition or an acquisition where both entities independently qualify for listing), an agreed upon procedures letter would not be required. Similarly, for other acquisitions or dispositions, if the filing on its face shows that the company would qualify on both a stand-alone and combined basis, an agreed upon procedures letter would not be required. For instance, if the combined entity resulting from two major companies, each of which have several hundred million dollars in market capitalization and no losses over the past three years, was to be subject to an original listing eligibility review, the Exchange would be unnecessarily imposing a cost and burden upon the applicant entity by requiring the company to provide an agreed upon procedures letter to the Exchange, provided there was no other information that would lead the Exchange to another conclusion.

Merger or Acquisition Related Costs Recorded under Pooling of Interests. The Exchange proposes to exclude legal and accounting fees and other costs incurred by a company in effecting a merger or acquiring another entity accounted for as a pooling of interests (whether or not the transaction is consummated). When the transaction is accounted for under the pooling of interests method, merger and acquisition costs are recorded on the company's income statement. To remove the effect of this transaction from the company's financial statements, the company will make the requisite adjustment. For business combinations requiring purchase accounting, there is no need to separately address this issue as the cost does not affect the company's current income (the cost is considered part of the purchase price and any goodwill is amortized prospectively over the appropriate amoritization period).

Certain Charges or Income Specifically Disclosed in the Filing. Consistent with past practice, the Exchange proposes to exclude several items in assessing the applicant company's earnings strength or its cash flow. These items have been excluded either because they are associated with a company's adopted exit plan as defined in the accounting literature or, based on the Exchange's experience in assessing ongoing earnings strength, they are not necessarily recurring. Thus, the Exchange has found that making adjustments for these items presents a more accurate picture of the applicant company's earnings strength on a going forward basis. The items subject to adjustment are somewhat more limited

than those previously considered by the Exchange. In the interest of enhancing the transparency of the listing standards, the list of adjustments has been limited to those that can be objectively defined.

—Charges or Income Related to an Adopted Exit Plan

When a company adopts a specified exit plan, the charges or income of four items, if disclosed in the company's SEC filing, recorded in the company's financial statements in accordance with GAAP, and associated with the implementation of that plan, would be excluded by the Exchange in its proposed financial analysis: first, the costs of severance and termination benefits that are incurred as part of an exit plan (*e.g.*, involuntary termination of employees associated with a corporate down-sizing); second, costs and associated revenues and expenses associated with the elimination or reduction of product lines for which an exit plan has been adopted; third, costs incurred to consolidate, close, or re-locate plant or office facilities associated with an exit plan; and fourth, loss or gain on disposal of long-lived assets, which, by its definition, relates to assets that will no longer be held by the company.

—Environmental Clean-Up Costs

Environmental clean-up costs incurred in the remediation of environmental problems would be removed from the company's historical financial results. However, companies may not make adjustments for annual maintenance or on-going costs of compliance with environmental laws.

—Litigation Settlements

Litigation settlement costs, including any settlement amounts, interest payments and penalties so disclosed in a company's filings would be removed from the company's historic financial results. Companies may not make an adjustment for on-going, customary legal fees.

Impairment Charges on Long-lived Assets. Asset write downs that reflect the net realizable value of a long-lived asset (*e.g.*, property, plant and equipment, and goodwill) would be excluded from historic financial results. For instance, company A previously acquires company B and, at that time, establishes goodwill of $100 million. Two years later, company B's business significantly deteriorates. The recoverability of the previously recorded $100 million in goodwill can no longer be fully realized and the company determines that the net realizable amount is $60 million. The $40 million difference would represent the impairment charge (less any amortization to date). Because current assets are more likely to be operating assets, and thus akin to the day-to-day working capital of the company, no adjustment is made for any loss in their value. For instance, a company may not take write-downs on inventory or loans.

Gains or Losses Associated with Sales of a Subsidiary's or Investee's Stock. If a company has an ownership interest in another entity, or has a wholly-owned subsidiary, any gain or loss associated with the sale of all or part of the company's interest would be excluded from the company's historic results. For instance, if an applicant company owns 30 percent of another entity, for which it paid $1 million, the company has a cost basis of $1 million representing the purchase price of the acquisition. Were the company to sell that interest for $2 million, it would not be permitted to include that $1 million gain in the adjusted earnings submitted to the Exchange for evaluation of the company's financial eligibility status. These types of gains or losses would be reported separately by the company as non-operating items.

In Process Purchased Research and Development Charges. Purchased in-process research and development represents the value assigned in a purchase business combination to research and development projects of the acquired business that were commenced, but not yet completed, at the date of acquisition, and which, if unsuccessful, have no alternative future use in research and development activities or otherwise. Amounts assigned to purchased in-process research and development meeting this description must be charged to expense at the date of consummation of the business purchase combination. The Exchange will exclude this charge from a company's historical financial results.

Regulation S–X Article 11 Adjustments. Pro forma adjustments contained in a company's pro forma financial presentation provided in a current filing with the SEC are required to be made in accordance with SEC rules and regulations governing Article 11 "Pro forma information of Regulation S–X Part 210—Form and Content of and Requirements for Financial Statements." The Exchange will review the company's financial statements in the context of any such adjustments, which are subject to SEC review. These adjustments would be limited to the current registration statement as to types of adjustments, amounts and years disclosed (except for use of proceeds as discussed above).

Adoption of New Accounting Standard. When an accounting rule is changed, a company may adopt it prospectively or record the cumulative effect of the adjustment. Typically, when the new rule is announced, it is either specifically indicated that the implementation must be cumulative or companies are given the option regarding implementation. When the adoption of a new standard results in a cumulative effect of the accounting standard, the company will take a charge in the current year to make up for all past years as if the change had been previously in place. The effect of change in accounting principle disclosed in accordance with APB 20 is excluded from the company's financial statement for purposes of the Exchange's review.

b. Standard #2—"Adjusted Cash Flow". In addition to the Pre-Tax Adjusted Earnings standard discussed above, a second standard is available to companies with at least $500 million of market capitalization and $200 million of revenues in the most recent 12 month period. Companies that meet the size criteria may, in the current Manual, use an "adjusted net income" test, as that term is defined in the current accompanying footnote, of an aggregate for the last three years of at least $25 million with all years being positive.

The Exchange proposes to restate the standard applicable to the companies meeting the above-stated $500 million/$200 million threshold to make the standard more transparent by incorporating the fundamental aspects of the footnote in the current Manual into the standard itself. In addition, the standard will explicitly indicate that the test includes adjustments for two purposes: the use of proceeds and acquisitions. Both of these categories of adjustments are discussed in detail in the discussion of the "Pre-Tax Adjusted Earnings" standard discussed above. The Exchange is proposing to limit the adjustments incorporated into this standard because the remaining adjustments may or may not have cash-flow implications for a particular company. Those that do have a cash flow effect will already have been accounted for in the operating activity section of the company's cash flow statement.

Policy Clarifications. The Exchange is also proposing to adopt several policies clarifying the use of the adjustments enumerated above, requiring the issuance of a press release by companies whose adjusted financial data were relied upon by the Exchange in granting

eligibility clearance, and delineating the consequences of restated financial statements.

First, all adjustments must be disclosed as such in the SEC filing of the applicant company—the amount must be within the four corners of the SEC filing or subject to an agreed upon procedures letter as discussed above. For example, if a company reports a consolidated line item for all losses or gains on disposal of assets without something in the filing providing specificity as to what portion of that number accounts for long-lived assets, the Exchange will not venture outside of the SEC filing to attempt to ascertain the appropriate amount for purposes of applying the test. This is because the cumulative number could include items such as inventory write-downs, which are not subject to adjustment.

Second, as noted above, as a general rule, the Exchange will only accept the application of an adjustment in the year in which the event giving rise to the adjustment occurred. Thus, no event can give rise to an adjustment in the financial statements for any prior year. The two exceptions are (1) the use of proceeds for deleveraging and acquisitions and dispositions (for companies currently in registration for an equity offering) and (2) acquisitions and dispositions. The reason for a proposed longer scope of application for the two exceptions is detailed in the discussion above.

Third, any company for which the Exchange relies on adjustments to historical financial figures in granting financial eligibility clearance must take steps to ensure full public disclosure of how it qualified. The Exchange recognizes that, although listing applications are a matter of public record, many investors may not be aware that they are available and may believe that only the most recent publicly available SEC document is relied upon in evaluating a company. Thus, the Exchange proposes to impose two requirements on issuers. First, the Exchange proposes to codify its requirement that any adjusted financial data relied upon by the Exchange in granting financial clearance to the company must be included in the company's listing application. Second, the Exchange proposes to require these issuers to issue a press release stating that (1) pro forma financial adjustments were used to qualify the company and (2) all relevant additional information is available to the public upon request.

With respect to companies that restate financial statements due to a change from unacceptable to acceptable accounting principles and/or correction of errors, the Exchange proposes to codify its policy of reviewing the company's status at the time of the restatement. Once a company issues a restatement that affects one of the years used by the Exchange to qualify the company for listing, the Exchange will determine whether or not the company would have qualified at the time of its original financial clearance with the restated numbers. If not, the company will be subject to suspension and delisting procedures unless the company meets the original listing standards at the time of the restatement using the most recent three fiscal years of financial statements as restated. The Exchange is adopting this policy because it would be unnecessarily disruptive to delist a company for its failure to meet the standards of the Exchange at some point in the past, when the company could immediately reapply for listing and qualify for listing the very next day.

Non-U.S. Standards. The Exchange is proposing several changes to Section 103 of the Manual pertaining to non-U.S. companies (1) to carry forward relevant items from the revisions pertaining to domestic companies, and (2) to clarify the drafting of this section. Four aspects of these changes deserve mention:

- The non-U.S. public market value requirement is already $100 million worldwide; thus, no change is required.
- Replacement of NTAs with stockholders' equity as an alternate measure of size is the same except that the threshold for non-U.S. companies will remain at $100 million.
- The definition of IPOs is the same as for domestic issuers, but the representation of market value to be received in connection with a spin-off may also come from the parent company's transfer agent.
- Adjustments for foreign currency are appropriate for non-U.S. companies because their operations are inherently tied to the underlying fundamentals of their respective national economies. Thus, the Exchange does not consider their effect to be a part of the company's on-going operations if it is due to a significant economic devaluation. For purposes of this adjustment, the Exchange deems a currency devaluation of more than ten percent as against the U.S. dollar to be significant.

A domestic issuer with foreign operations would not be able to make this adjustment because the Exchange deems currency losses to be a cost of doing business in a foreign country.

Real Estate Investment Trusts. The Exchange is also proposing to codify a policy it has applied regarding the original listing criteria for real estate investment trusts (REITs). The Exchange generally lists REITs either in connection with an IPO or shortly thereafter, when the REIT does not have a three-year operating history. Specifically, the standard proposed for such newly-formed REITs, similar conceptually to that recently adopted for Funds,[9] is:

- If the REIT has at least $60 million in stockholders' equity, the Exchange will generally authorize the listing of the REIT.
- For those REITs listing in conjunction with an offering, this requirement would need to be evidenced by a written commitment from the underwriter (or, in the case of a spin-off or carve-out, from the parent company's investment banker or other financial advisor). In this regard, the Exchange notes that this is the minimum stockholders' equity requirement for listing.
- The Exchange retains the discretion to deny listing to a REIT if it determines that, based upon a comprehensive financial analysis, it is unlikely to be able to maintain its financial status.
- Any newly-formed REIT with less than $60 million in stockholders' equity will not be considered for listing.

Continued Listing Procedures. The Exchange is proposing two amendments regarding the continued listing of a company. The first is a codification of existing practice with respect to companies that qualify for listing based, at least in part, upon adjusted historical data.

Specifically, the Exchange's continued listing criteria subjects a company to delisting if it had NTAs or an aggregate market value of its common stock of less than $12 million and average net income of less than $600,000 for the past three years. In calculating average net income for a company during the initial three years following its listing, the Exchange takes into consideration those specific adjustments made to the company's historical financial data for the relevant year in the original listing application. This consideration is limited both as to the specific adjustment made during the initial clearance as well as to the year in which the adjustment was made. Otherwise, companies often would be subject to suspension and delisting immediately upon listing—an inconsistent outcome.

The second amendment proposed by the Exchange is a revision and codification of the procedures to be

[9] Securities Exchange Act Release No. 40979 (January 26, 1999), 64 FR 5332 (February 3, 1999).

instituted when a company is identified by Exchange staff as being below the continued listing criteria. The Exchange is proposing to impose specific time frames with respect to the notification, monitoring, and suspension and delisting, where appropriate, of these companies' securities. In addition, the Exchange proposes to change its current practice of requiring companies to return to original listing standards within 36 months of falling below continued listing standards. Instead, the Exchange proposes to require these companies to return to good standing by emerging from the below continued listing standards status within six quarters of being notified of this status, as described in more detail below. Specifically, the changes are as follows:

- Once the Exchange identifies a company as being below the continued listing criteria, the Exchange will notify the company by letter within 10 business days;
- The notification letter will provide the company with an opportunity to provide the Exchange with a plan to return to compliance within 18 months of receipt of the letter (the "Plan), identify quarterly (semi-annual for non-U.S. issuers) milestones against which the company's progress would be measured by Exchange staff, and allow 45 days (90 days for non-U.S. issuers) for the submission of such a Plan;
- The company will be required to contact the Exchange within 10 business days (30 business days for non-U.S. issuers) of receipt of the letter, or be subject to suspension and delisting, to confirm receipt of the notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it intends to submit a Plan;
- The Exchange's procedures for evaluating the qualification of non-U.S. companies for continued listing are substantively identical to those for domestic issuers, but makes allowances for somewhat longer time zone and communication differences and the absence of a quarterly filing requirement;
- Failure to submit a Plan within the allotted 45 days (90 days for non-U.S. issuers) will subject the company to suspension and delisting procedures;
- Upon receipt of a Plan, Exchange staff will evaluate the Plan and make a determination within 45 days of receipt of the Plan as to whether or not to accept the Plan;
- If the Exchange does not accept the Plan, the company will be subject to suspension and delisting procedures;
- If the Exchange does accept the Plan, the company will be subject to quarterly (semi-annual for non-U.S. issuers) monitoring against the Plan's milestones. If the company fails to meet the material aspects of the Plan, any of the quarterly (semi-annual for non-U.S. issuers) milestones, or the 18-month deadline, the Exchange will review the circumstances and variance, and take appropriate action that may include the initiation of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time (in any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures); and
- Within the aforementioned 45-day (90-day for non-U.S. issuers) period, the company must issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange; if it fails to do so, then the Exchange will issue the requisite press release.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) [10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–13 and should be submitted by May 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10984 Filed 4–30–99; 8:45 am]

BILLING CODE 8010–01–U

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41333; File No. SR–PCX–99–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange Inc. Relating to Broker Hand Held Terminal Fees and Independent Broker Fees

April 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] ("Act"), and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. PCX has designated this proposal as one establishing or changing a due, fee or other charge imposed by PCX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing by the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change its Schedule of Fees and Charges for Exchange Services by modifying charges for the use of exchange sponsored hand held terminals for options floor brokers and eliminating independent broker charges. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. The Commission recently approved a proposal by the Exchange relating to fees for use of exchange sponsored hand held terminals for options floor brokers.[4] In the filing the Exchange proposed a monthly equipment fee of $200 for each exchange sponsored hand held terminal and a $0.03 per contract charge for orders of 10 contracts or less which are not directed to the Pacific Options Exchange Trading System ("POETS")[5] through a Member Firm Interface ("MFI").

With the use of hand held terminals, PCX Member Firms have the advantage of sending their orders electronically to either (1) a Floor Broker's exchange sponsored terminal located in the trading crowd;[6] (2) a Member Firm booth located on the trading floor; or (3) to POETS, where they will be automatically executed by Auto-Ex or maintained in Auto-Book.

Proposal. The Exchange now proposes to change its monthly equipment fee of $200 for each exchange sponsored hand held terminal to $300 to be billed to the Floor Broker registered to use it. The Exchange believes the change in the monthly fee more accurately reflects the costs of device and support hardware for the system over the useful life to the system. In addition, the Exchange proposes to permanently eliminate the charge of $0.03 per contract for orders of 10 contracts of less which are not directed to POETS through an MFI. Given the need to dedicate technology resources to other projects, the Exchange does not have the resources to make the necessary changes to implement the $0.03 per contract charge at this time.

In addition, the Exchange charges Independent Floor Brokers a transaction charge of $0.02 per contract. In an effort to provide relief to the independent brokers on the Exchange floor, the Exchange proposes to permanently eliminate this charge.[7] The Exchange proposes to eliminate this charge to help offset the high costs that Independent Floor Brokers incur while conducting business on the Options Floor. The Exchange notes that Indepdendent Brokers perform an important function on the Options Floor, particularly when a large influx of orders needs to be executed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(4),[9] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–99–08, and should be submitted by May 24, 1999.

[4] Securities Exchange Act Release No. 40644 (November 5, 1998), 63 FR 63766 (November 16, 1998) (File No. SR–PCX–98–44).

[5] POETS is the Exchange's automated options trading system. *See* generally Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (Order approving File No. SR–PSE–89–26).

[6] Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 2662 (May 13, 1998).

[7] On February 13, 1998, PCX filed to waive the $0.02 per option contract charge to Independent Floor Brokers until further notice. The current filing eliminates the fee permanently. *See*, Exchange Act Release No. 39695 (February 24, 1998), 63 FR 10420 (March 3, 1998).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f).

[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10986 Filed 4–30–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "SBIC Licensing Application Part 1, Part 2 and Guidelines for Applications".

Form No: 415.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 60.

Annual Burden: 160.

Title: "SBIC Licensing Application Management Assessment Form".

Form No: 415A.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 60.

Annual Burden: 160.

Comments: Send all comments regarding this information collection to Saunders Miller, Senior Policy Advisor, Office of Investment Division, Small Business Administration, 409 3rd Street S.W., Suite 6300, Washington, D.C. 20416. Phone No: 202–205–3646.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–10941 Filed 4–30–99; 8:45 am]

BILLING CODE 8025–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, July 18, 1999, from 9:00 am to 5:00 pm at the University of Alaska Conference Center, Anchorage, Alaska to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Ellen Thrasher, U.S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416, telephone number (202) 205–6817.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–10942 Filed 4–30–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

New England States Regional Fairness Board Public Hearing

The U.S. Small Business Administration Region I Advisory Council located in the geographical area of Hartford, CT, will hold a public meeting at 9:30 a.m. on June 24, 1999, at the Legislative Office Building Broadway Street and Capitol Avenue Hartford, CT 06106. The space is being provided by the State Government. To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information, please write or call Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–11000 Filed 4–30–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Northwestern States Regional Fairness Board Public Hearing

The U.S. Small Business Administration Region X Advisory Council located in the geographical area of Portland, OR, will hold a public meeting at 9:00 a.m. on July 7, 1999, at the Portland Building Auditorium 120 SW 5th Portland, OR. To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information, please write or call Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–11001 Filed 4–30–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice #2998]

Advisory Committee to the U.S. Section of the Inter-American Tropical Tuna Commission (Committee Renewal)

The Department of State has renewed the Charter of the Advisory Committee to the U.S. Section of the Inter-American Tropical Tuna Commission (IATTC) for another two years.

The IATTC was established pursuant to section 4 of the Tuna Conventions Act of 1950 (U.S.C. 953, as amended). The goal of the Advisory Committee is to serve the U.S. Section of the IATTC, the Department of State, and other agencies of the U.S. Government, as advisors on matters relating to the conservation and management of international stocks of tuna and dolphins in the eastern tropical Pacific Ocean, in particular, on the development of U.S. policy and positions associated with such matters.

The Committee is composed of representatives of the major U.S. tuna harvesting, processing, and marketing sectors. Additionally, Committee membership includes representatives of recreational fishing interests and environmental interests.

The Advisory Committee will continue to follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will continue to be open to the public unless a determination is made in accordance with Section 10 of the FACA, 5 U.S.C. 552b(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting continues to be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information on the renewal of the Advisory Committee, please contact Brian S. Hallman, Deputy

Director, in the Office of Marine Conservation in the Department of State, (202) 647–2335.

Dated: March 22, 1999.

Brian S. Hallman,

Deputy Director, Office of Marine Conservation.

[FR Doc. 99–11006 Filed 4–30–99; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5042]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Reports (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on February 5, 1999 (64 FR 5851). The Coast Guard received no comments on that notice.

DATES: Comments must be submitted on or before June 2, 1999.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention USCG Desk Officer.

Copies of the complete Information Collection Requests are available in the public docket USCG–1999–5042 on the Internet at http:dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106, (Attn: Barbara Davis), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. Documents as indicated in this notice are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–001, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also electronically access the public docket for this notice on the Internet at *http://dms.gov.gov.* For questions on viewing material in the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard requests comments on the purposed collection of information to determine whether it is necessary for the proper performance of the functions of the Department, including: (1) its practical utility; (2) the accuracy of the Department's estimated burden of the proposed information collection; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Information Collection Requests

Title: Tank Vessel Examination Letter (CG–840S–1 & 2) Certificate of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 2115–0504.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners and operators.

Form(s): CG–840S–1 and CG–840S–2.

Abstract: The requirements for reporting Boiler/Pressure/Valve Repairs, maintaining Cargo Gear Records, and Shipping Papers, issuing Certificate of Compliance and Tank Vessel Examination Letters provide the marine inspector with available information on the condition of a vessel and its equipment. It also contains information on the vessel owner and lists the type and amount of cargo that has been or is being transported. These requirements all relate to the promotion of safety of life at sea and protection of the marine environment.

Annual Estimated Burden Hours: 21,531.

Title: Self-propelled Liquefied Gas Vessels.

OMB Control Number: 2115–0113.

Type of request: Extension of currently approved collection.

Affected Public: Vessel owners and operators.

Form(s): N/A.

Abstract: The reporting and recordkeeping requirements are needed to ensure compliance with U.S. regulations for the design and operation of liquefied gas carriers. The regulations also address cargo operations, handling and safety.

Annual Estimated Burden Hours: 4,070.

Title: Instructional Material for Lifesaving, Fire Protection and Emergency Equipment.

OMB Control Number: 2115–0576.

Type of Request: Extension of currently approved collection.

Affected Public: Equipment manufacturers.

Form(s): N/A.

Abstract: Manufacturers are required to produce instructional materials for vessel operators on lifesaving, fire protection, and emergency equipment. The material is used during training sessions and emergencies.

Annual Estimated Burden Hours: 8,512.

Title: Alternate Compliance Program—Record of Inspections.

OMB Control Number: 2115–0626.

Type of Request: Extension of currently approved collection.

Affected Public: Classification societies.

Form(s): N/A.

Abstract: Information for this report is only collected when an owner or operator of an inspected vessel voluntarily decides to participate in the U.S. Coast Guard's Alternate Compliance Program. The information collected will be used to assess compliance prior to issuance of a Certificate of Inspection.

Annual Estimated Burden Hours: 190.

Title: Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 2115–0539.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners and operators.

Form(s): N/A.

Abstract: The information for this report allows crew members of U.S. vessels to provide proper and timely response to an emergency, to minimize personnel injuries or deaths and prevent environmental damage from an oil or hazardous material spill. The information is used during training sessions and during emergencies.

Annual Estimated Burden Hours: 315.

Issued in Washington, DC on April 19, 1999.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 99–10994 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5451]

Waiver Application; Tank Vessel; Reduction of Gross Tonnage

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard is requesting comments on the Reinauer Transportation Companies' waiver application to reduce the gross tonnage of the tank barge R.T.C. 90, Official Number 625082. Approval of this waiver application will change the vessel's double hull compliance date prescribed by 46 U.S.C. 3703a. The company has met all the requirements for issuance of a waiver and this document provides the required public notice and sixty-day comment period concerning the application. The Coast Guard will consider all comments received during the comment period before taking final action on the Reinauer Transportation Companies application.

DATES: Comments and related material must reach the Docket Management Facility on or before July 2, 1999.

ADDRESSES: You may submit your comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1999–5451), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and materials referred to in this notice will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G–MSO–2), Coast Guard, telephone 202–267–1053. For questions on viewing, or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments concerning the waiver application. Please include your name and address, identify the docket number (USCG–1999–5451), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please do not submit the same comment or material by more than one means. Submitted materials should be in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

We do not now plan to hold a public meeting. But, you may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would be helpful, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The Oil Pollution Act of 1990 (OPA 90) requires most single hull tank vessels carrying oil in bulk as cargo or cargo residue to either convert to double hull configuration or to stop operating in U.S. waters by the dates specified in the statute. These dates, in 46 U.S.C. 3703a, are based on the vessel's age, gross tonnage, and hull configuration. In general, the latest operational date for single hull tank vessels is January 1, 2010, and for tank vessels with double sides or double bottoms is January 1, 2015.

Before July 1, 1997, a tank vessel owner could extend a single hull tank vessel's operational life by converting cargo tanks into voids or segregated ballast tanks and reducing its gross tonnage. If the reduction in gross tonnage placed the vessel under a different subsection of 3703a, the vessel then had a later date for double hull compliance.

In 1997, Pub. L. 105–85 added a new subsection (e) to 46 U.S.C. 3703a mandating that after July 1, 1997, a tank vessel's gross tonnage could not be altered for the purpose of determining its double hull compliance date without a waiver from the Secretary of Transportation. The new provision required that all waiver applications be received by January 1, 1998. We received requests from six U.S. and one foreign tank vessel owners for conversions of fourteen tankships, two integrated tug-barge units (ITBs), and fifteen barges. On January 6, 1998, the Secretary of Transportation delegated his authority to the Commandant to act on these waiver requests.

In February 1998, we contracted a study entitled *An Investigation Into the Re-Admeasurement of Single Hull Tankships and Barges By Means of Protectively Located Segregated Ballast Tanks.* The study determined which conversions of cargo tanks into protectively-located segregated ballast tanks (PL/SBT) would result in a significant reduction in oil outflow when specific parameters are met. The study, looking at three sizes of tankships and tank barges, evaluated the risk of oil discharge and used the probabilistic oil outflow applications we had previously established under the OPA 90 requirements of § 3703a to evaluate new tank vessel hull designs. The study found that in order for tank vessels to significantly reduce the risk of oil discharge, enough cargo tanks must be converted to PL/SBT to meet an equivalent oil spill (EOS) number of at least 15% less than the vessel's existing outflow signature.

We provided a copy of the study and the conversion parameters to each waiver applicant so they could submit their plans for modifications and complete the supporting materials for their waiver applications. A copy of the Coast Guard study is available for review in the public docket at the address under **ADDRESSES**.

Requirements for issuance of a waiver

As required by § 3703a, a completed waiver application package consists of—

- An application received by January 1, 1998;
- Reliable evidence that the tank vessel had not undergone, nor contracted to undergo, alterations that reduce the gross tonnage of the vessel before July 1, 1997; and
- Supplementary materials that demonstrate the proposed alterations to the tank vessel will result in a

significant reduction in the risk of a discharge of oil.

We must then determine if both—

• The owner of the tank vessel has entered into a binding agreement to alter the tank vessel in a shipyard in the United States to reduce the gross tonnage of the tank vessel by converting a portion of the cargo tanks of the vessel into PL/SBT; and

• The conversion will result in a significant reduction in the risk of a discharge of oil.

Section 3703a requires that we must then provide public notice and a sixty-day comment period on each application before we can issue a waiver.

Alterations under this waiver must be completed by the later of either July 1, 1999, or the date of the vessel's next special hull survey after November 18, 1997.

Application for the R.T.C. 90

Our records show that the Reinauer Transportation Companies (RTC) tank vessel R.T.C. 90, Official Number 625082, is a U.S. certificated single hull oil tank barge which was built in 1980. The barge was originally admeasured with a gross tonnage of 5,455. According to 46 U.S.C. 3703a(c)(3), the barge's double hull compliance date is January 1, 2005.

With an approved waiver, RTC will reduce its vessel's gross tonnage to less than 5,000 gross tons (GT). Its new double hull compliance date under § 3703a(e) would be January 1, 2008.

The application from RTC meets the requirements for a waiver under § 3703a(e) by having provided the following:

• Waiver application for the tank vessel R.T.C. 90, received on December 19, 1997;

• "Statement of Attestation" that the R.T.C. 90's gross tonnage was not reduced by a contract or shipyard alteration on or before July 1, 1997;

• Copy of its repair contract with Caddell Drydock and Repair Company Inc, of Staten Island, New York, to complete the modifications to the R.T.C. 90 by installing a new bulkhead at frame 6 and converting the spaces forward of this bulkhead to PL/SBT for the vessel's reduction of tonnage; and

• Appropriate supplementary materials.

Based on the supplementary materials provided by RTC for the tank vessel R.T.C. 90, we have determined the following:

• RTC can complete the tank barge modifications before September 2000, the date of the vessel's next classification society special survey.

• RTC's probabilistic oil outflow signature of the proposed vessel modifications will reduce the EOS by 21%.

RTC's complete waiver application has been placed in the docket for public review at the address under **ADDRESSES**. We will consider all comments received during the comment period before taking final action on the RTC waiver application for the modification and reduction of tonnage to the tank vessel R.T.C. 90.

Dated: April 25, 1999.

R.G. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–10952 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Impact Statement on the Potomac Consolidated Terminal Radar Approach Control (TRACON) Facility

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a Final Environmental Impact Statement for the Potomac Consolidated TRACON.

SUMMARY: The Federal Aviation Administration (FAA) has released a Final Environmental Impact Statement (FEIS) for construction of a new Terminal Radar Approach Control (TRACON) facility in the Baltimore-Washington area. The proposed action is to consolidate four stand-alone TRACONs located at Baltimore-Washington International Airport, Ronald Reagan Washington National Airport, and Washington Dulles International Airport; and the FAA operated TRACON located at Andrews Air Force Base, Maryland. The new Potomac Consolidated TRACON (PCT) would be located at a site in Northern Virginia. The preferred site is at the former Vint Hill Farms Station near Warrenton, VA.

DATES: Written comments on the FEIS will be accepted until June 1, 1999. Written comments may be sent to: FAA Potomac TRACON Project, c/o Mr. Fred Bankert, PRC Inc., 12005 Sunrise Valley Drive, Reston, VA 20191–3423.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Champley, Project Support Specialist, Federal Aviation Administration, (800) 762–9531, Email:joe.champley@faa.gov.

SUPPLEMENTARY INFORMATION: A TRACON facility provides radar air traffic control services to aircraft operating on Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) procedures generally beyond 5 miles and within 50 miles of the host airport at altitudes from the surface to approximately 17,000 feet. These distances and altitudes may vary depending on local conditions and infrastructural constraints such as adequate radar and radio frequency coverage. The primary function of the TRACON is to provide a variety of air traffic control services to arrival, departure, and transient aircraft within its assigned airspace. These services include aircraft separation, in flight traffic advisories and navigational assistance. The four existing TRACON facilities provide terminal radar air traffic control services to the four major airports and a number of small reliever airports located within the Baltimore-Washington area.

In accordance with regulations implementing the National Environmental Policy Act, a range of alternatives is considered in the FEIS including replacement or refurbishment of three of the four existing TRACONs, partial consolidation, No Action and full consolidation. The full consolidation alternative would not cause significant environmental impact in any of the 23 impact categories assessed.

Since there was minimal comment on the Draft Environmental Impact Statement during the 45-day comment period, the entire document has not been republished. Copies of the comments and responses are available for review at major libraries in the study area. A summary of the FEIS can be viewed on the Internet at http://www.faa.gov/ats/potomac.

Dated: April 19, 1999 in Washington, DC.

John Mayrhofer,

Director, TRACON Development Program.

[FR Doc. 99–10995 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 12, 1999, [64 FR 7233].

DATES: Comments must be submitted on or before June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2643 or fax 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies, and Approved Nonprofit Maritime Training Institutions.

OMB Control Number: 2133–0504.

Type of Request: Extension of a currently approved information collection.

Affected Public: Maritime training institutions interested in acquiring the excess or surplus property from MARAD.

Form Number(s): None.

Abstract: In accordance with 46 U.S.C. 12959, MARAD requires approved maritime training institutions seeking excess or surplus property to provide a statement of need/justification prior to acquiring the excess or surplus property. The information provided is used by MARAD officials to determine compliance with applicable statutory requirements.

Annual Estimated Burden Hours: 120 Hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20502, Attention MARAD Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: April 27, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–10963 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Announcement of Open Membership Application Period for the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: In 1991 the Internal Revenue Service (IRS) established the Information Reporting Program Advisory Committee (IRPAC) at the request of the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures, and when necessary, suggests ways to improve the operation of the Information Reporting Program. IRPAC is currently comprised of 20 representatives from various segments of the private-sector payer community. About half of these appointments to IRPAC will expire at the end of 1999. Additional members will be selected for two-year terms beginning in January 2000. The IRS is interested in representation from different areas of the payer community.

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for ensuring and facilitating compliance by payers with information reporting requirements. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend two public meetings each year. IRPAC members are expected to attend and pay their own way to four working sessions each year, which are generally held in Washington, DC. Occasionally, a meeting will be held in New York, NY; Martinsburg, WV; Austin, TX; or elsewhere.

Anyone wishing to be considered for membership on IRPAC should so advise the IRS. Please complete the following application questionnaire (or a facsimile thereof prepared on a word processor), and forward it to Ms. Kate LaBuda of the Office Payer Compliance, at the address below.

ADDRESSES: Internal Revenue Service, OP:EX:ST:PC, 1111 Constitution Avenue, NW., Room 2013, Washington, DC 20224.

DATES: Completed questionnaires (or facsimiles) should be received by IRS no later than Friday, June 3, 1999. Questionnaires received after this date will not be considered. An acknowledgment letter will be sent upon receipt.

FOR FURTHER INFORMATION CONTACT: To have a copy of the application questionnaire mailed or faxed to you, please call Ms. Gloria Wilson at 202–622–4393 (not a toll-free number). For general information about the application process or IRPAC in general, call Kate LaBuda at 202–622–3404 (not a toll-free number).

Approved: April 22, 1999.

Kate LaBuda,

Acting Director, Office of Payer Compliance.

Information Reporting Program Advisory Committee Membership Application Questionnaire

The following questions must be answered by anyone interested in becoming a member of the Information Reporting Program Advisory Committee (IRPAC). Applications (or facsimiles produced on a word processor) must be received at the address listed below by June 3, 1999. Those received after this date will not be considered. All applications received will be acknowledged. Questions may be directed to Kate LaBuda at 202–622–3404.

Ms. Kate LaBuda, OP:EX:ST:PC, Internal Revenue Service, Room 2013, 1111 Constitution Avenue. NW, Washington, DC 20224

1. Name: _____
2. Title: _____
3. Employer Name: _____
4. Business Address: _____
5. Business Phone: _____
6. Fax Number: _____

7. E-Mail Address: _____

8. If you are applying on behalf of an organization or association other than your employer, please state the name, and address of that organization. Also, provide a letter of reference from that organization stating that you are nominated on their behalf to represent them. This letter should contain the name of a contact and this contact's phone number.

9. Home Address: _____

10. Home Phone: _____

11. Have you ever served on IRPAC or any other IRS advisory committee such as the Commissioner's Advisory Group (CAG), the Internal Revenue Service Advisory Council (IRSAC), the Electronic Tax Administration Advisory Committee (ETAAC), or any other one? If so, please explain. Do you currently have an application pending for membership on any other IRS advisory committee?

12. Check the one segment of the Information Reporting Program (IRP) payer community to which the organization that you represent, and your experience, most closely relate:

____Real Estate
____Transmitter/Forms Developer
____Software Developer
____Insurance: Property & Casualty
____Insurance: Life
____Insurance: Health
____Securities
____Mutual Funds
____Payroll
____State & Local Government
____Corporate Compliance
____Small Business Compliance
____Public Accounting
____Employee Plans
____Trust Company
____Corporate Transfer Agent/Utilities
____Large Banks/Financial Institution
____Small Banks/Financial Institution
____Restaurant Industry
____Other (Please specify. _____).

13. List the number of years of IRP-related experience you have, and specific sources of this IRP experience. (Please account for all years of IRP experience claimed.)

14. List professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, etc.)

15. Identify organizations to which you belong and any relevant leadership positions you have held.

16. List any previous IRS employment (please state position(s), title(s), and time in each position):

17. Please propose two topic ideas that you feel would be appropriate for discussion by IRPAC. Include a short description (three sentences) of each topic.

The Following Three Items are Required for an FBI Name Check

18. Date of Birth: _____

19. Place of Birth: _____

20. Other names ever used: _____

The Following Items are Required for an IRS Tax Check. (Please Note That a Tax Check is Not a Tax Audit.)

The Internal Revenue Service will perform the standard Federal Advisory Committee member tax check, (pursuant to 26 U.S.C. 6103; 5 U.S.C. 1303; Executive Orders 9397, 11222, 10450; CFR 5.2; 31 CFR Part O, Treasury Department Order Nos. 82 (Revised) and 150–87) and provide the information obtained to the Assistant Secretary (Administration) of the Treasury Department. The purpose of this tax check is to promote public confidence in the integrity of the Treasury Department and its administration of the Federal tax system. Your Social Security Number is required to identify your tax records accurately. This tax check must be completed prior to any appointment to this Federal Advisory Committee and you are now being asked to voluntarily provide the following information and, at a later time, you will be asked to sign a formal tax check waiver:

21. Social Security Number (SSN): _____

22. Spouse's name and SSN (if married and filing jointly): _____

The Following Item is Required Because of the Foreign Agents Registration Act (FARA), as Amended

23. I presently ____am / ____am not required to register as an agent of a foreign principal under FARA, as amended.

Note: Pursuant to 18 U.S.C. sec. 219, an individual who is required to register as an agent of a foreign principal under FARA is prohibited from serving on IRPAC. By executing this questionnaire, you agree that (1) if you are required to register as an agent of a foreign principal under the FARA before your term commences on IRPAC, you will terminate any and all such agencies prior to beginning your tenure and will provide appropriate verification therefor; and (2) you will immediately resign from IRPAC if you become such an agent at any time during your term.

Certification

24. I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith. I also agree to the background checks set forth herein.

_____
Signature

_____
Date

[FR Doc. 99–10935 Filed 4–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 1999

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 1999 as required by section 45(d)(2)(A) (26 U.S.C. 45(d)(2)(A)).

SUMMARY: The 1999 inflation adjustment factor and reference prices are used in determining the availability of the renewable electricity production credit under section 45(a).

DATES: The 1999 inflation adjustment factor and reference prices apply to calendar year 1999 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

Inflation Adjustment Factor

The inflation adjustment factor for calendar year 1999 is 1.1269.

Reference Prices

The reference prices for calendar year 1999 are 4.836¢ per kilowatt hour for facilities producing electricity from wind and 0¢ per kilowatt hour for facilities producing electricity from closed-loop biomass. The reference price for electricity produced from closed-loop biomass, as defined in section 45(c)(2), is based on a determination under section 45(d)(2)(C) that in calendar year 1998 there were no sales of electricity generated from closed-loop biomass energy resources under contracts entered into after December 31, 1989.

Because the 1999 reference prices for electricity produced from wind and closed-loop biomass energy resources do not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to electricity sold during calendar year 1999.

Credit Amount

As required by section 45(b)(2), the 1.5¢ amount in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the

preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1¢. Under the calculation required by section 45(b)(2), the renewable electricity production credit for calendar year 1999 under section 45(a) is 1.7¢ per kilowatt hour on the sale of electricity produced from closed-loop biomass and wind energy resources.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:DOM:P&SI:5, 1111 Constitution Ave., NW, Washington, DC 20224, (202) 622–3040 (not a toll-free call).

Dated: April 21, 1999.

Judith Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 99–10934 Filed 4–30–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Youth Leadership Program for Bosnia and Herzegovina; Request for Concept Papers

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for a Youth Leadership Program for Bosnia and Herzegovnia. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit concept papers to conduct a minimum three-week program for B–H secondary school students in the United States in August/September 1999. The maximum amount of the grant is $33,000.

Program Information

USIA is implementing a new project for youth from Bosnia-Herzegovina on the theme of leadership. As this project is being initiated on a small scale and with short lead time, USIA is seeking concept papers from organizations that can provide a substantive, U.S.-based program on leadership and civic education.

Concept papers should propose a project idea for the Youth Leadership Program. From the concept papers received, a USIA review panel will select the most highly qualified concept papers to be expanded into full proposals for an award that will contribute to the implementation of the proposed project. Please see the guidelines for preparing the concept paper later in this document.

The goals of this project are: (1) To provide a civic education program that helps the students understand civic participation and the rights and responsibilities of citizens in a democracy; (2) to develop leadership skills among B–H secondary school students appropriate to their needs; and (3) to build personal relationships among high school students and teachers from Bosnia-Herzegovina and the United States.

Applicants: USIA invites concept papers from any eligible private or public non-profit organization or institution. The primary objective is to identify an organization that has the capability to provide a high-quality leadership and civic education program and that has experience conducting such programs for international participants. Secondarily, USIA seeks an organization with experience working specifically with the people of Bosnia and Herzegovnia. Applicants need not have a partner in Bosnia and Herzegovina, as the USIA post in Sarajevo will assume that role for this project; i.e., select and orient students and make international travel arrangements.

Guidelines

Participants: The participants will be (1) ten high school students between the ages of 14 and 18 who have demonstrated leadership in their schools and/or communities and who are high academic achievers, and (2) two teachers who have demonstrated leadership and are expected to remain in positions where they can continue to do so. Participants will be proficient in the English language.

Selection and orientation: USIS Sarajevo will select the participants. The CIVITAS network in Bosnia and Herzegovina will help publicize the program and help USIS identify current and potential civic leaders. USIS will also be responsible for providing a pre-departure orientation for the participants and arranging international air travel from Bosnia and Herzegovina to the specific destination in the United States.

Program dates: The grant should begin in July 1999 and conclude after the exchange program. The preferred time period for the program is August/ /September 1999. Alternatively, the participants would be able to travel in January of 2000, provided substantive programming can be arranged. The program should be no less than three weeks in duration.

Program: The program should focus primarily on interactive activities, practical experiences, and other hands-on opportunities to learn about the fundamentals of a civil society and building leadership skills. Suggestions include simulations, a community service project, and leadership training exercises. Secondarily, the program may include some briefings, discussions, and classroom visits (if local schools are in session). Programming should include American participants wherever possible. Cultural and recreational activities may be used to balance the schedule. The program need not be specifically arranged for the B-H participants; that is, arranging for them to participate in pre-established camp or workshop is acceptable. If this is proposed, however, it needs to fulfill all of the stated objectives or do so in conjunction with other activities scheduled just for this delegation.

Applicant organizations may propose a program along the lines described above. Additional suggestions for the student program include youth leadership workshops; exercises or simulations related to rule of law and citizen participation in government and in addressing societal problems (*e.g.,* the environment, development, drug addiction prevention); meetings with government, community, and business leaders to see real-life examples of leadership in action; exposure to student government and peer mediation groups; team-building exercises; computer training for access to Internet resources and for follow-on communication; and cultural and historical tours.

Although some of their activities may overlap with the students, the educators should have some opportunities to work with their American peers and other professionals and volunteers to discuss civic education curricula, extracurricular youth leadership activities, volunteerism, civic participation activities for youth, and the organization and management of youth activities.

The recipient organization should conduct a welcome orientation for the participants upon arrival in the United States and host a closing meeting for them just prior to departure.

Sites of program: The delegation should spend its time in the United States in no more than two locations so that the participants have time to familiarize themselves with a community. Desirable locations are those with schools or community organizations that have a demonstrated interest in Bosnia and Herzegovina or those with universities involved in the USIA undergraduate program for B-H students. We will also consider proximity to state capitals and other sites of interest, access to organizations that can conduct appropriate

workshops, and representation of the geographic and ethnic diversity of the United States.

Housing: Homestays with local families are desirable for some or all of the exchange period. A dormitory or other inexpensive group housing is also an acceptable arrangement.

Overall responsibilities of the assistance award recipient include:

1. Design and planning of activities that provide a substantive program on civic education and leadership through both academic and extracurricular components;
2. Domestic travel and logistical arrangements
   a. Homestay or group housing
   b. Disbursement of per diem
   c. Local travel
   d. Travel between sites
   e. Enrollment of the participants in USIA's accident and sickness insurance program
   f. Confirmation of and changes in return international travel
3. timely reporting of progress to USIA
4. Monitoring, evaluation, and follow-on activities
5. Fiscal management of all accounting and contractual relations
6. Financial and program reporting

The grant recipient will not need to purchase international airline tickets for the participants nor will it need to arrange for visas for entry to the United States. USIA will issue IAP–66 forms so that participants may obtain J–1 visas.

Application process: USIA invites organizations to submit a concept paper, no less than three and no more than five pages, single-sided, single-spaced, that outlines a plan to conduct the above program.

Concept Paper Format: After clearly marking the title and number of this solicitation, please include all of the following information in your concept paper:

1. U.S. organization, department, and project director, with complete contact information including address, telephone, fax, and e-mail
2. Project summary
3. Dates of project
4. Project objectives and desired outcomes, based on the goals stated in this solicitation
5. Outline of proposed activities and sites
6. Details on proposed activities, including workshops, excursions, community service, welcome and closing sessions, opportunities to interact with Americans, etc.
7. Housing, transportation, and logistical arrangements
8. Project evaluation
9. Organization's capacity to implement proposed project

Budget Guidelines

The award may not exceed $33,000. The budget must cover all participant expenses once they have arrived at the U.S. airport closest to the site of the activities. Administrative expenses should not exceed $10,000. Significant cost-sharing will be expected; homestays are not allowed as a cost-share item. A detailed budget will be requested with the full proposal.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number *E/PY–99–52*.

For Further Information, Contact

The Youth Programs Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 619–6299, Fax: (202) 619–5311, E-mail: clantz@usia.gov. Please specify USIA Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before making inquiries or submitting concept papers. Once the deadline has passed, Agency staff may not discuss this competition with applicants until the review process has been completed.

Deadline for Concept Papers

All copies of the concept papers must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on *Friday, May 21, 1999.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the concept papers are received by the above deadline.

The original and 7 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/PY–99–52*, Office of Grants Management, Room 568, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the concept paper on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to the USIS post overseas for their review, with the goal of reducing the time it takes to gets posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process

All eligible concept papers will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas. Eligible concept papers will be forwarded to panels of USIA officers for advisory review. USIA will notify respondents about the status of the concept papers by June 7, 1999.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. *Quality of the program idea:* Concept papers should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Program planning:* An agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Institutional capacity/Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Concept papers should clearly demonstrate how the institution will meet the program's objectives and plan. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Support of Diversity:* Concept papers should demonstrate substantive support of the Bureau's policy on diversity.

5. *Project Evaluation:* Concept papers should describe a plan to evaluate the activity's success, both as the activities unfold and at the end of the program.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through Support for Eastern European Democracies (SEED) legislation.

Notice

The terms and conditions published in this Request for Concept Papers are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFCP does not constitute an award commitment on the part of the Government. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 26, 1999.

Judith S. Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–10981 Filed 4–30–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Monday
May 3, 1999

Part II

Environmental Protection Agency

40 CFR Part 35

Revised Allotment Formulas for State and Interstate Monies Appropriated Under Section 106 of the Clean Water Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 35

[FRL–6332–1]

Revised Allotment Formulas for State and Interstate Monies Appropriated Under Section 106 of the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation revises the formulas for allotting funds appropriated under Section 106 of the Clean Water Act (CWA) to States and to interstate agencies for administering water quality programs. Section 106 of the CWA authorizes the Environmental Protection Agency (EPA) to provide grants to States and interstate agencies, and Indian Tribes qualified under CWA Section 518(e), to assist them in administering programs for the prevention, reduction, and elimination of pollution.

The allotment formula for the tribal portion of the Section 106 Grant Program was revised in 1997 and is not affected by this action.

The CWA directs EPA to allocate Section 106 funds "on the basis of the extent of the pollution problem in the respective States." The Section 106 allotment formulas were previously based on data more than 25 years old, including population data from the 1960s and data on pollution sources from the early 1970s. Reports of current water quality conditions around the country, provided by States under CWA Section 305(b), indicate that the location and nature of the sources of water pollution have changed significantly since the early 1970s. Utilizing the more recent data, EPA revised the CWA Section 106 State and interstate allotment formulas to better comply with the statutory directive to allocate funds to States and interstate agencies based on the "extent of the pollution problem." Notice of revised State and interstate agency allotment formulas for Fiscal Year (FY) 1999 was published in the **Federal Register** (63 FR 59870 (1998)).

Based on public comments received on the FY 1999 formulas, EPA has revised the CWA Section 106 State allotment formula to incorporate a perpetual "hold harmless" provision, which ensures that all States will receive an allotment at least equal to their FY 2000 allotment level for FY 2001 and beyond unless the appropriation for States under the Section 106 Grant Program decreases from its FY 2000 level.

These revised Section 106 State and interstate allotment formulas will be effective for Fiscal Year 2000 and beyond.

DATES: This rule is effective May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Carol Crow, Office of Wastewater Management (4201), 401 M Street, S.W., Washington, D.C. 20460; Telephone: (202) 260–6742; Facsimile: (202) 260–1156; E-mail: crow.carol@epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

States, the District of Columbia, Puerto Rico, the Insular Areas, and interstate agencies eligible to receive grants under Section 106 of the Clean Water Act are regulated by this rule.

Background

Section 106(a) provides general authority for grants to States, interstate agencies, and Indian Tribes qualified under CWA Section 518(e), to assist them in administering programs for the prevention, reduction, and elimination of water pollution. Section 106(b) of the CWA requires the Administrator of the Environmental Protection Agency (EPA) to make allotments from sums appropriated by Congress in each fiscal year "on the basis of the extent of the pollution problem in the respective States."

The Section 106 allotment formulas were previously based on data that is now more than 25 years old, including population data from the 1960s and inventory data for large cattle feedlots, industrial and municipal point sources, and power plants dating from the early 1970s. Reports of current water quality conditions around the country, provided by States to EPA under CWA Section 305(b), indicate that the location and nature of the sources of water pollution have changed significantly since the early 1970s.

For the FY 1999 formula revision process, EPA organized a work group consisting of geographically-balanced representation from the Agency, seven States, and an interstate agency to review the former formula and to consider other approaches. The State representatives were recommended by the Environmental Council of States (ECOS), the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and the Ground Water Protection Council (GWPC). The representatives selected by these organizations were encouraged to share information and gather opinions from other States in their region and in their associations. The work group evaluated a wide range of alternative approaches and ultimately developed and recommended revised State and interstate allocation formulas for use in determining Section 106 State and interstate allotments for FY 1999.

Utilizing the more recent data, EPA revised the allotment formulas for FY 1999 to ensure the allotment of funds to States and interstate agencies based on the "extent of the pollution problem in the respective States." Notice of revised allotment formulas for States and interstate agencies for Fiscal Year (FY) 1999 was published in the November 5, 1998, **Federal Register** (63 FR 59870).

Based on a significant increase in the appropriation for the Section 106 Grant Program in FY 1999, the revised formula specifically provided that no State's FY 1999 allotment would be less than its FY 1998 allotment. For FY 1999, the funding increase also provided additional resources to most States. In subsequent years, under the FY 1999 formula, States would not lose more than 5 percent of their Section 106 allotment in any one year, or more than a total of 20 percent from their FY 1998 Section 106 allotment.

The funding set-aside for interstate agencies was returned to its historical (FY 1976) high level of 2.6 percent of the total State monies appropriated for States under the Section 106 Grant Program.

EPA published the revised FY 1999 formulas in the November 5, 1998, **Federal Register** Notice and requested public comments be submitted no later than January 4, 1999. In response to public comments, EPA reconvened an expanded Section 106 Formula work group comprised of EPA and State representatives to develop final Section 106 allotment formulas for FY 2000 and beyond. To ensure that States from each EPA Region were provided with an opportunity to participate directly in the development of the final revised allotment formulas, the membership of the original Section 106 Formula work group was expanded to include four additional State representatives. Work group representatives were encouraged to share information and gather opinions from other States in their regions and in their associations.

In response to specific concerns raised in the comments, EPA recommended incorporation of a perpetual "hold harmless" provision in the final Section 106 State allotment formula. After extensive discussion, the work group members unanimously agreed to implement a perpetual "hold harmless" provision in the final State

formula. This provision will (1) ensure that all States will be eligible to receive an allotment at least equal to their FY 2000 allotment for FY 2001 and beyond, provided that the appropriation for States under the Section 106 Grant Program does not decline from its FY 2000 level; and (2) all States will be eligible to receive a portion of any increase in the appropriation for States under the Section 106 Grant Program. For FY 2000, each of the 21 entities [1] that did not receive an increase in its allotment from FY 1998 to FY 1999 (i.e., the entity received the same allotment in FY 1999 that it received in FY 1998) will receive at least its FY 1999 allotment plus an allowance for inflation based on the Consumer Price Index (CPI). Each of the 35 entities [2] that received a funding increase from FY 1998 to FY 1999 will receive its FY 1999 allotment minus a pro rata share of the funds necessary to ensure the inflation allowance for the aforementioned 21 entities.

Once the work group members reached agreement on the implementation of the "hold harmless" provision, accordingly they agreed to maintain the components, data sources, and weights used in the FY 1999 formula as published in the November 5, 1998, **Federal Register** in the final Section 106 allotment formulas for FY 2000 and beyond.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by SBREFA, EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under Section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 604(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule imposes no new requirements on small entities, nor does it adversely impact them. It updates existing funding allotment formulas for States and interstate agencies to ensure that the allotments of CWA Section 106 funds to States and interstate agencies are based on the "extent of the pollution problem in the respective States." Based on the incorporation of a perpetual "hold harmless" provision in the State allotment formula, all States will receive an allotment at least equal to their FY 2000 allotment level for FY 2001 and beyond, unless the appropriation for States under the Section 106 Grant Program decreases from its FY 2000 level. The set-aside funding for interstate agencies was restored to its historical high of 2.6 percent of the total funds appropriated for States under the Section 106 Grant Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The UMRA excludes from the definition of "Federal intergovernmental mandate" duties that arise from conditions of federal assistance. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule contains no regulatory provisions that might significantly or uniquely affect small governments, as those are defined at 2 U.S.C. 658(11) (i.e. governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000). The Section 106 allotment formula for the tribal portion of the Section 106 Grant Program is not affected by this rule. Thus, today's rule is not subject to the requirements of Section 203 of UMRA.

National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget (OMB), an explanation of the reasons for not using such standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.* information collection requirements contained in rules must be approved by OMB before they are effective. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a current valid OMB control number. This rule does not contain any collection of information requirements. Since this action imposes no information collection, reporting or record-keeping requirements, this rule is not subject to the PRA.

Executive Order 12866

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

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

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

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

[1] 17 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands

[2] 33 States, American Samoa, and the Northern Mariana Islands

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

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

Executive Order 13045

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant as defined under Executive Order 12866, and it does not establish an environmental standard to mitigate health or safety risks. As a result, this rule is not subject to the requirements of the Executive Order 13045.

Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The rule merely establishes formulas for the allotment of Federal funds to States and interstate agencies. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to this rule.

Executive Order 13084

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

This rule does not affect the communities of Indian tribal governments, because Tribes are covered under 40 CFR Part 35, 35.265, which remains in effect as published. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. Section 804(2). This rule will be effective May 3, 1999.

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Evaluation of performance, Grant programs—environmental protection, Work plan requirements.

Dated: April 20, 1999.

Carol M. Browner,

Administrator.

EPA amends 40 CFR part 35 as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35, subpart A continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a) and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2, 300j–9 and 300j–11); secs. 202(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

2. Subpart A is amended by adding § 35.251 and § 35.252 to read as follows:

§ 35.251 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

(a) The term *allotment* means the sum reserved for each State or interstate agency from funds appropriated by the Congress. The allotment is determined by formula based on the extent of the water pollution problem in the respective States. It represents the maximum amount of money potentially available to the State or interstate agency for its program grant.

(b) The term *program grant* means the amount of federal assistance awarded to a State or interstate agency under Section 106 of the Clean Water Act to assist in administering programs for the prevention, reduction and elimination of water pollution.

(c) The term *State* means a State, the District of Columbia (DC), the Commonwealth of Puerto Rico (PR), the U.S. Virgin Islands (VI), Guam (GU), American Samoa (AS), and the Commonwealth of the Northern Mariana Islands (CNMI).

(d) The term *interstate agency* means an agency that meets the requirements of Section 502(2) of the Clean Water Act (CWA) and which is determined to be eligible for receipt of a grant under CWA Section 106 and these regulations by the Administrator.

(e) The term *component* refers to one of the six factors selected for use in the Section 106 State allotment formula. Each component of the formula was selected based on its potential contribution to the extent of water pollution problems within the respective States and to the workload of State water pollution control programs.

(f) The term *element* refers to one of the constituent factors used to provide greater specificity to a component in the Section 106 State allotment formula. Certain components are composed of two or more "elements." For example, the nonpoint source component of the Section 106 State allotment formula is composed of an agricultural element, a logging element, and an abandoned mine element.

(g) The term *sub-element* refers to one of the constituent factors used to provide greater specificity to an element in the Section 106 State allotment formula. Certain elements are composed of two or more "sub-elements." For example, the abandoned mine element of the nonpoint source component is composed of a soft-rock mining sub-element and a hard-rock mining sub-element.

(h) The term *funding floor* refers to the minimum amount of funding that a State will be allotted in any fiscal year.

(i) The term *maximum level of funding* refers to the ceiling on the amount of funding that a State can be allotted in any fiscal year.

§ 35.252 State and interstate allotments.

(a) *Allotments.* Each fiscal year funds appropriated for States under Section 106 will be allotted to States and interstate agencies on the basis of the extent of the pollution problems in the respective States. A portion of the funds available to States under the Section 106 Grant Program will be set-aside for allotment to eligible interstate agencies. For FY 2000 and subsequent years, the interstate set-aside will be set at the level of 2.6 percent of the total funds appropriated for States under the Section 106 Grant Program.

(b) *State allotment formula.* The Section 106 State allotment formula establishes an allotment ratio for each State based on six components selected to reflect the extent of the water pollution problem in the respective States. A funding floor is established for each State with provisions for periodic adjustments for inflation. The formula also provides for a maximum funding level that a State can receive in any fiscal year (150% of its previous fiscal year allotment).

(1) *Components and component weights.* (i) *Components.* The six components used in the Section 106 State allotment formula are: Surface Water Area; Ground Water Use; Water Quality Impairment; Point Sources; Nonpoint Sources; and Population of Urbanized Area. The components for the formula are presented in Table 1 of this section, with their associated elements, sub-elements, and supporting data sources.

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Table 1: Components of the Section 106 State Allotment Formula

Formula Component	Element	Sub-Element	Data Source
1. Surface Water Area			U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States.*
2. Ground Water Use	a. Non-agricultural withdrawals		U.S. Department of the Interior, U.S. Geological Survey, *Estimates of Water Use in the United States.*
	b. Population served by CWSs that use GW for the majority of their source water		U.S. Environmental Protection Agency, Office of Water, *Safe Drinking Water Information System.*
3. Water Quality Impairment	a. Impaired rivers and streams (miles)		U.S. Environmental Protection Agency, Office of Water, *National Water Quality Inventory* [based on State-submitted §305(b) reports].
	b. Impaired lakes, ponds, and reservoirs (acres)		
	c. Impaired estuaries (square miles)		
	d. Impaired wetlands (acres)		
	e. Impaired ocean waters (shoreline miles)		
	f. Impaired Great Lake waters (shoreline miles)		
4. Point Sources	a. Agriculture (total animal units)		U.S. Department of Commerce, Bureau of the Census, *Census of Agriculture.*
	b. Industrial	i. Manufacturers	U.S. Department of Commerce, Bureau of the Census, *Census of Manufactures.*
		ii. Mining operations	U.S. Department of Commerce, Bureau of the Census, *Census of Mineral Industries.*
		iii. Power plants	U.S. Department of Energy, Office of Coal, Nuclear, Electric, and Alternate Fuels, *Inventory of Power Plants in the U.S.*
	c. Municipal dischargers		U.S. Environmental Protection Agency, Office of Water, *Wastewater Facilities Database.*
5. Nonpoint Sources	a. Agriculture		U.S. Department of Commerce, Bureau of the Census, *Census of Agriculture.*
	b. Logging		U.S. Department of Commerce, Bureau of the Census, Economic Census, *Census of Manufactures.*
	c. Abandoned mines	i. Abandoned soft-rock (coal) mining operations	U.S. Department of the Interior, Office of Surface Mining, *Abandoned Mine Land Inventory System.*
		ii. Abandoned hard-rock mining operations	U.S. Department of the Interior, Bureau of Mines, *Minerals Availability System/ Mineral Industry Location System.*
6. Population of Urbanized Areas			U.S. Department of Commerce, Bureau of the Census, *Census of Population and Housing.*[1]

[1] The population living in urban areas (*Census* designated places with 2,500 or more residents) rather than population living in urbanized areas (one or more *Census* designated places and the associated urban fringe that together have 50,000 or more residents) will be used for PR and the Insular Areas (VI, AS, GU, and CNMI).

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(ii) *Component weights.* To account for the fact that not all of the selected formula components contribute equally to the extent of the pollution problem within the States, each formula component is weighted individually. Final component weights will be phased-in by FY 2004, according to the schedule presented in Table 2 of this section:

TABLE 2.—COMPONENT WEIGHTS IN THE SECTION 106 STATE ALLOTMENT FORMULA

Component	FY 2000 (percent)	FY 2001 (percent)	FY 2004+ (percent)
Surface Water Area	13	13	12
Ground Water Use	11	12	12
Water Quality Impairment	13	25	35
Point Sources	25	17	13
Nonpoint Sources	18	15	13
Population of Urbanized Area	20	18	15
Total	100	100	100

(2) *Funding floor.* A funding floor is established for each State. Each State's funding floor will be at least equal to its FY 2000 allotment in all future years unless the appropriation for States under the Section 106 Grant Program decreases from its FY 2000 level.

(3) *Funding decrease.* If the appropriation for the State Section 106 Grant Program decreases in future years, the funding floor will be disregarded and all States allotments will be reduced by an equal percentage.

(4) *Inflation adjustment.* Funding floors for each State will be adjusted for inflation when the appropriation for the State Section 106 Grant Program increases from the preceding fiscal year. These adjustments will be made on the basis of the cumulative change in the Consumer Price Index (CPI), published by the U.S. Department of Labor, since the most recent year in which State Section 106 funding last increased. Inflation adjustments to State funding floors will be capped at the lesser of the percentage change in appropriated funds or the cumulative percentage change in the inflation rate.

(5) *Cap on annual funding increases.* The maximum allotment to any State will be 150 percent of that State's allotment for the previous fiscal year.

(6) *Cap on component ratio.* A component ratio is equal to each State's share of the national total of a single component. The cap on each of the six State formula components ratios is 10 percent. If a State's calculated component ratio for a particular component exceeds the 10 percent cap, the State will instead be assigned 10 percent for that component. The component ratios for all other States will be adjusted accordingly.

(7) *Update cycle.* The data used in the State formula will be periodically updated. The first update will impact allotments for FY 2001, and will consist of updating the data used to support the Water Quality Impairment component of the State formula. These data will be updated using the most currently available CWA Section 305(b) reports. After this initial update, the data used to support all six components of the Section 106 State allotment formula will be updated in FY 2003 (for use in the determination of FY 2004 allotments). Thereafter, all data will be updated every five years (i.e., in FY 2008 for FY 2009 allotments, in FY 2013 for FY 2014 allotments, etc.) Note there will be an annual adjustment to the funding floor for all States, based on the appropriation for the Section 106 Grant Program and changes in the CPI.

(c) *Interstate allotment formula.* EPA will set-aside 2.6 percent of funds appropriated for States under the Section 106 Grant Program for interstate agencies. The Section 106 interstate allotment formula consists of two parts: a base allotment; and a variable allotment.

(1) *Base allotment.* Each eligible interstate agency is provided with $125,000 as a base allotment to help fund coordination activities amongst its member States. However, no more than 50 percent of the total available interstate set-aside may be allocated as part of the base allotment. If, given the 50 percent limitation placed on the base allotment the amount of interstate set-aside funds is insufficient to provide each interstate agency with $125,000, then each interstate agency will receive a base allotment equal to 50 percent of the total interstate set-aside divided by the total number of eligible interstate agencies.

(2) *Variable allotment.* The variable allotment provides for funds to be distributed to interstate agencies on the basis of "the extent of the pollution problems in the respective States." Funds not allotted under the base allotment will be allotted to eligible interstate agencies based on each interstate agency's share of their member States' Section 106 formula allotment ratios. Updates of the data for the six components of the Section 106 State allocation formula will automatically result in corresponding updates to the variable allotment portion of the interstate allotments. The allotment ratios for those States involved in compacts with more than one interstate agency will be allocated amongst such interstate agencies based on the percentage of each State's territory that is situated within the drainage basin or watershed area covered by each compact.

[FR Doc. 99–10631 Filed 4–30–99; 8:45 am]

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federal register

Monday
May 3, 1999

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1999–2000 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Proposed 1999–2000 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter we) proposes to establish annual hunting regulations for certain migratory game birds for the 1999–2000 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments for proposed early-season frameworks by July 27, 1999; and for proposed late-season frameworks by September 7, 1999. Tribes should submit proposals and related comments by June 2, 1999.

ADDRESSES: Send your comments on the proposals to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent and request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel.

Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1999–2000 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Hunting of all other birds designated as migratory (under § 10.13 of Subpart B of 50 CFR Part 10) is not permitted. For the 1999–2000 hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 1998–99 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1999–2000

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. We will make proposals relating to the harvest of migratory game birds initiated after this publication available for public review in supplemental proposed rulemakings. Also, we will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer.

Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the overall regulations process into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1999–2000 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the accompanying diagram. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots

11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Public Hearings

In past years, we have annually conducted two public hearings pertaining to migratory game bird hunting regulations. The first hearing held in late June reviewed the status of migratory shore and upland game birds and discussed proposed hunting regulations for these species plus regulations for migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; extended falconry seasons; and proposed regulatory alternatives for the duck hunting season. The second hearing held in early August reviewed the status and proposed regulations for waterfowl not previously discussed at the June public hearing. Because of declining attendance and interest the past several years, we are not planning to hold the public hearings this year.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and non-tribal members, with hunting by non-tribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of migratory bird hunting regulations for non-tribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by non-tribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by a tribe or a State, that any issue is/is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where it is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, we have reached annual agreement with tribes for hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. Nevertheless, we believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1999–2000 hunting season should submit a proposal that includes:

(1) The requested hunting season dates and other details regarding regulations;

(2) Harvest anticipated under the requested regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in their proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish tribal proposals details for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 1999–2000 hunting season should submit their proposals as soon as possible, but no later than June 2, 1999. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION.** Tribes that request special hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will attend the following winter meetings of the various Flyway Councils:

March 25 and 29, 1999

National Waterfowl Council, 1:00 p.m.

March 26, 1999

Atlantic Flyway Council, 8:00 a.m.
Central Flyway Council, 8:00 a.m.
Mississippi Flyway Council, 8:00 a.m.
Pacific Flyway Council, 10:30 a.m.

The Council meetings will be held at the Hyatt Regency at San Francisco Airport, 1333 Bay Shore Highway, Burlingame, California.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Prior to issuance of the 1999–2000 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the Office of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1) .

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 09/30/2000). The information from this survey is used to estimate the magnitude, the geographical and

temporal distribution of harvest, and the portion its constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1999–2000 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 19, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 1999–2000 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific framework proposals (including opening and closing dates, seasons lengths, and bag limits). Unless otherwise specified, we are proposing no change from the final 1998–99 frameworks of August 28 and September 29, 1998, (63 FR 46124 and 51998). Specific preliminary proposals that vary from the 1998–99 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

A. Harvest Strategy Considerations

We propose to continue the use of Adaptive Harvest Management (AHM) to guide the establishment of duck hunting regulations. The AHM approach recognizes we cannot predict the consequences of hunting regulations with certainty, and provides a framework for making objective decisions despite this uncertainty. Also inherent in the adaptive approach is an awareness that we can maximize the success of our long-term management programs, in terms of sustainable hunting opportunities, only if we reduce the uncertainty about regulatory effects. Thus, AHM relies on a tightly integrated cycle of monitoring, assessment, and decision-making to better understand the relationships among hunting regulations, harvests, and waterfowl abundance.

Because of the structured approach and formal nature of the AHM process, Federal and State managers must continue to consider those factors that influence the outcome of regulatory strategies and, thus, the potential harvest impacts on waterfowl populations. We have identified three areas critical to the success of AHM which require additional consideration:

(1) Setting objectives—Waterfowl harvest managers must rely on clear, definitive statements about management objectives. This requires formal agreement among stakeholders about how to place a value on harvest benefits and how to share those benefits. AHM cannot operate as intended with vague, unclear management objectives;

(2) System control—Our ability to control harvest levels is dependent on understanding the relationship between hunting regulations, hunter behavior, and harvest. However, we do not have complete control over all these factors. Ultimately, hunting regulations only partially control hunter activity and success, and variable environmental conditions often have a pronounced effect on harvest levels. Thus, our ability to only partially control harvest imposes limits on both short-term hunting opportunity and the learning needed to increase long-term management performance;

(3) Management scale—As waterfowl managers, we continue to try to account for increasingly more spatial, temporal, and organizational variability in waterfowl biology. However, serious questions remain about the cost-effectiveness of this approach because costs can sometimes outweigh benefits. Moreover, the appropriate scale, or resolution, of harvest management is often limited by the availability of resources for monitoring and assessment, rather than by determinations of the highest net benefit.

These institutional issues pose our greatest challenge to the long-term success of AHM. Managing these issues will require innovative ways to maintain productive dialogue, and resolve differences within a process that all stakeholders can support. We intend to work diligently with our management partners to organize these discussions, so that we can collectively explore and appreciate the technical and sociological implications of these issues.

B. Framework Dates

During 1995 and 1996, the first two years of implementation of AHM, three regulatory alternatives characterized as "liberal", "moderate", and "restrictive" were defined based on regulations used during 1979–84, 1985–87, and 1988–93, respectively. In 1997, we attempted to further accommodate State and Flyway

concerns by modifying the regulatory alternatives to include: (1) the addition of a very restrictive alternative; (2) additional days and a higher duck bag limit in the moderate and liberal alternatives; and (3) an increase in the bag limit of hen mallards in the moderate and liberal alternatives.

The subsequent set of four regulatory alternatives was acceptable to the majority of States. However, the issue of framework-date extensions continued to be discussed and because of its contentiousness has drawn increasing political interest. Finally in 1998, Congressional action interceded and allowed certain States in the Mississippi Flyway (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee) to select a framework closing date of January 31, provided it was accompanied by a commensurate reduction in season length.

The issue of duck hunting framework-date extensions and possible modifications to regulatory alternatives remains unresolved for the 1999–2000 hunting season. Although we have not received specific proposals for changes in the regulatory alternatives, we believe that any forthcoming proposals for modification of framework dates should be consistent with existing biological constraints, while not disrupting the intended functioning of AHM. We believe that framework dates should remain a viable tool in regulating harvests and an important component of any set of regulatory alternatives. Further, we believe that application of framework dates should continue to be incorporated at the Flyway level. Additional application of date changes or options with harvest offsets at scales below the Flyway level, such as the State or zone level, would result in unprecedented technical challenges in terms of predicting cumulative impacts and evaluating the effects of various regulatory tools and severely strain our capability to reliably predict and control harvests at levels commensurate with the biological capacity of waterfowl populations.

The ability to predict, at least probabilistically, the harvests achieved under the regulatory alternatives is an essential feature of the AHM process. Therefore, we believe that a limited set of Flyway-based regulatory alternatives that are stable over time is necessary to maintain or improve our understanding of the relationships between regulations and harvest, and between harvest and population response. The ability of AHM to operate as intended is premised on a set of well-defined regulatory alternatives, which are small in number and which lead to recognizable differences in harvest (or harvest rate). To this end, we are interested in cooperatively working with States, Flyway Councils, and the public to explore changes in Flyway-wide regulatory alternatives to resolve the frameworks issue. This approach will assure the integrity of the AHM process, while maintaining a Flyway-based regulatory system.

G. Special Seasons/Species Management

i. Scaup

We remain concerned about the declining trend in the size of the scaup breeding population and believe that substantial reductions in hunting opportunity are needed, particularly in light of recent harvest increases. As we announced last September, we intend to cooperate with the Flyway Councils in an effort to develop a strategy for guiding scaup harvest management beginning this year. A preliminary draft strategy was sent to each Flyway in February for comment. This strategy will build upon information in a recently completed scaup status report (copies available from MBMO).

ii. Canvasbacks

We continue to support the canvasback harvest strategy adopted in 1994. Last year, we reviewed data collected since implementation of the strategy to assess the strategy's performance. Subsequently, we prepared a report for the Flyways detailing our review and distributed the report to the Flyway Technical Sections for comment during their March meetings. Overall, we believe the strategy has performed adequately, and have not found sufficient reason to alter it. We will continue to monitor its performance as annual information from population and habitat surveys are available.

2. Sea Ducks

We continue to be concerned about recent population trends in sea ducks throughout North America. Last year, we provided a report titled "Status of Sea Ducks in Eastern North America and a Review of the Special Sea Duck Season in the Atlantic Flyway" to the Flyways. This report summarized our current state of knowledge regarding several sea duck species and highlighted our management concerns. In light of these concerns, we requested the Atlantic and Pacific Flyways to review the special regulations for sea duck seasons currently in place in each Flyway. In the Atlantic Flyway, we continue to ask the Council to consider changes to sea duck seasons and to develop management goals for sea ducks. In the Pacific Flyway, we encourage the Flyway, and particularly the State of Alaska to give consideration to changes in existing sea duck regulations in light of current population status and trends. In addition, we continue to support and encourage participation by the Atlantic and Pacific Flyways in the development and implementation of the sea duck joint venture to address management and information needs for this unique group of waterfowl in North America.

4. Canada Geese

We support the Atlantic Flyway Council's position that hunting seasons on Atlantic Population (AP) Canada Geese remain closed until the breeding population index exceeds 60,000 pairs and there is evidence of a sustained population recovery. Following the season closure in 1995 and favorable production in 1997 and 1998, we expect this population to begin expansion and begin to show an increase in the breeding pair survey index. In this context, we encourage the Council to give serious consideration to specific criteria for resuming the hunting season. Additionally, if these criteria are triggered in 1999, we believe that appropriate regulatory strategies and harvest controls will be necessary to effectively manage the harvest in order to prevent harvest levels that would deter the AP from making a full recovery to objective levels.

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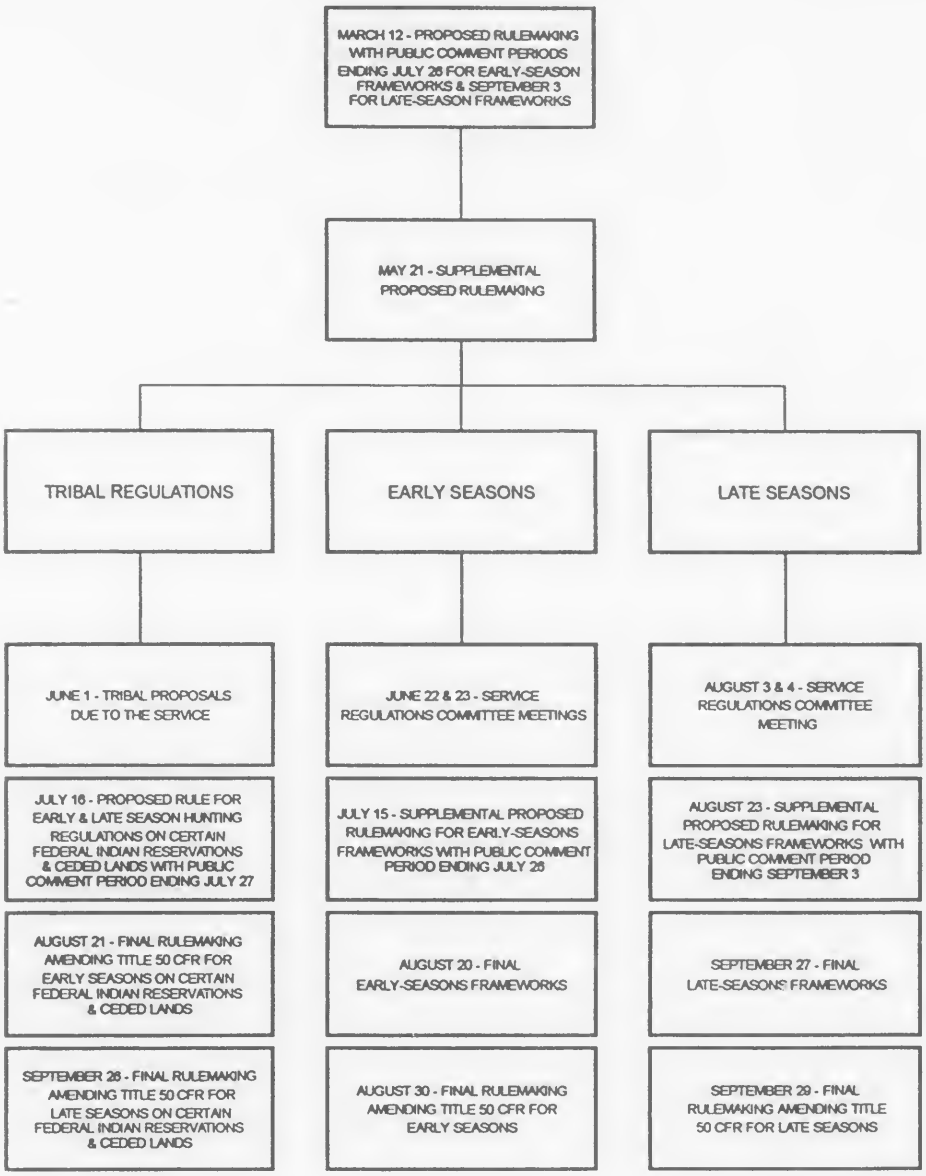

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Pratt & Whitney; comments due by 5-14-99; published 3-15-99
Class C airspace; comments due by 5-13-99; published 3-25-99
Class E airspace; comments due by 5-10-99; published 4-5-99
Jet routes; comments due by 5-10-99; published 3-26-99

TRANSPORTATION DEPARTMENT
Federal Highway Administration

Motor carrier safety standards:
Transportation Equity Act for 21st Century; implementation—
Commercial motor carrier safety assistance program; State responsibility; comments due by 5-10-99; published 3-9-99

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau

Alcholic beverages:
Distilled spirits, wine, and malt beverages; labeling and advertising—
Fill standards; comments due by 5-10-99; published 4-12-99

TREASURY DEPARTMENT
Internal Revenue Service

Excise taxes:
Group health plans; continuation coverage requirements; comments due by 5-14-99; published 2-3-99
Income taxes:
Mark-to-market accounting for dealers in commodities and traders in securiti es or commodities; comments due by 5-13-99; published 1-28-99

UNITED STATES INFORMATION AGENCY

Exchange visitor program:
Au pair programs; oversight and general accountability; comments due by 5-13-99; published 4-13-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 440/P.L. 106–22

Microloan Program Technical Corrections Act of 1999 (Apr. 27, 1999; 113 Stat. 36)

H.R. 911/P.L. 106–23

To designate the Federal building located at 310 New Bern Avenue in Raleigh, North Carolina, as the "Terry Sanford Federal Building". (Apr. 27, 1999; 113 Stat. 38)

S. 388/P.L. 106–24

To authorize the establishment of a disaster mitigation pilot

program in the Small Business Administration. (Apr. 27, 1999; 113 Stat. 39)
Last List April 22, 1999

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
*200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–0002–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
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140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
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*0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
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0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
*1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
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400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
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141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
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400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
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170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
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22 Parts:			
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300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
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200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
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25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441–1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
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§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

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200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0–42	(869–034–00098–3)	36.00	July 1, 1998
43–end	(869–034–00099–1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
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1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
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125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
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0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
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136–149	(869–034–00147–5)	37.00	July 1, 1998
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790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
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500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
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41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
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20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
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80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
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3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
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200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-034-00049-6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

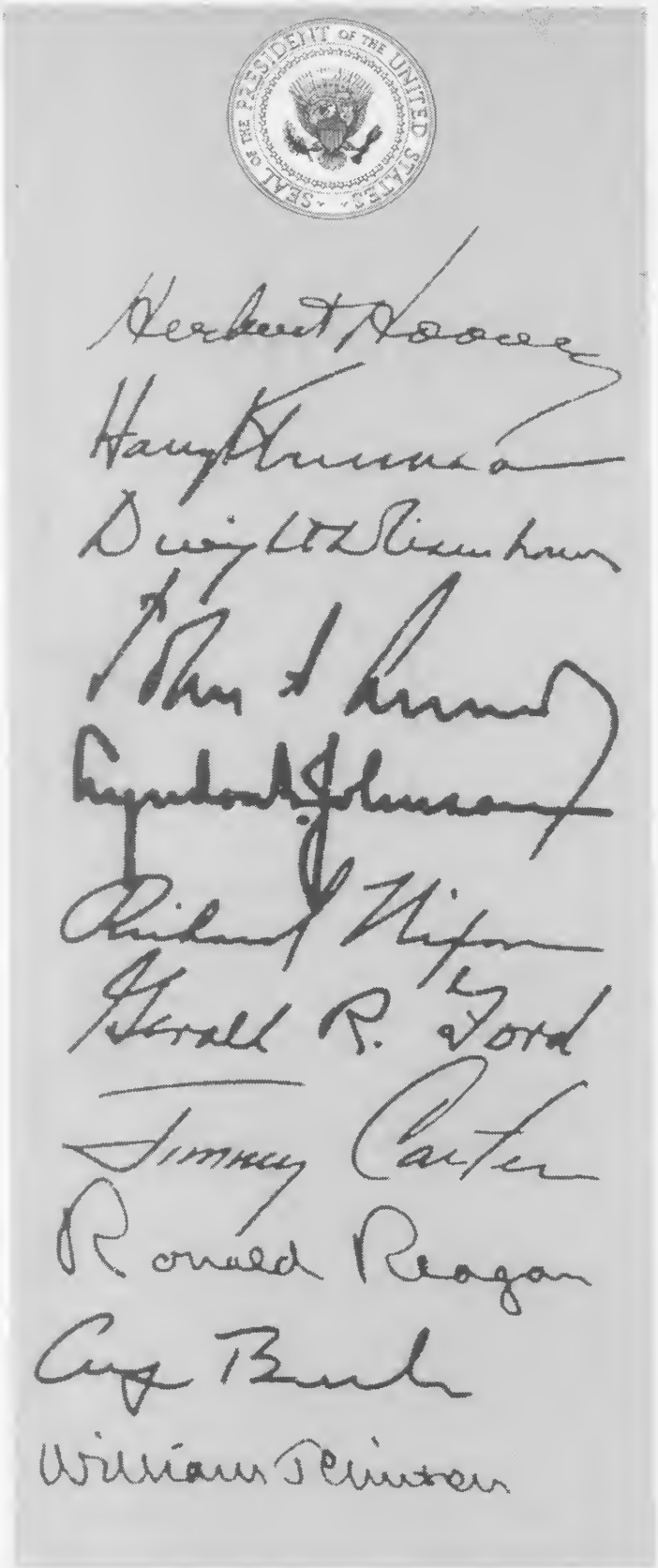
TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1999

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
May 3	May 18	June 2	June 17	July 2	August 2
May 4	May 19	June 3	June 18	July 6	August 2
May 5	May 20	June 4	June 21	July 6	August 3
May 6	May 21	June 7	June 21	July 6	August 4
May 7	May 24	June 7	June 21	July 6	August 5
May 10	May 26	June 9	June 24	July 9	August 9
May 11	May 26	June 10	June 25	July 12	August 9
May 12	May 27	June 11	June 28	July 12	August 10
May 13	May 28	June 14	June 28	July 12	August 11
May 14	June 1	June 14	June 28	July 13	August 12
May 17	June 1	June 16	July 1	July 16	August 16
May 18	June 2	June 17	July 2	July 19	August 16
May 19	June 3	June 18	July 6	July 19	August 17
May 20	June 4	June 21	July 6	July 19	August 18
May 21	June 7	June 21	July 6	July 20	August 19
May 24	June 8	June 23	July 8	July 23	August 23
May 25	June 10	June 24	July 9	July 26	August 23
May 26	June 10	June 25	July 12	July 26	August 24
May 27	June 11	June 28	July 12	July 26	August 25
May 28	June 14	June 28	July 12	July 27	August 26



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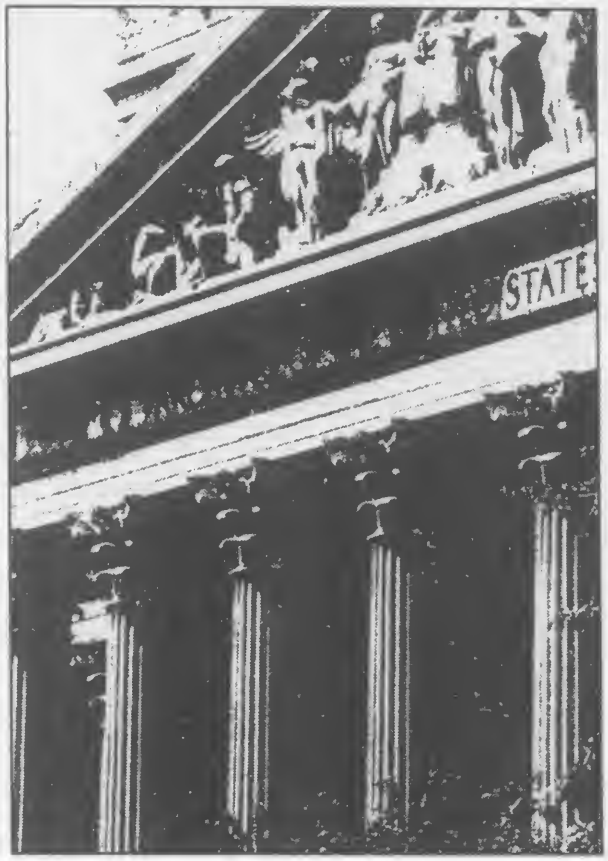

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