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Briefing on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Issuance of Official Certificates

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is adopting without change the provisions of an interim final rule to revise the regulations under the United States Grain Standards Act (USGSA) regarding the required issuance by official inspection personnel of an official certificate for each single-lot inspection of grain in a land carrier, container, or barge. Specifically, FGIS revised the requirement by establishing an exception for such lots of grain inspected according to instructions that permit certification at the option of the applicant for inspection. FGIS has determined that official certificates are not always necessary to the trading of grain. This action allowed for the implementation of instructions that provided for issuing certificates on an optional basis.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC 20090–6454; (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in Section 87g that no state or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because it relieves regulatory requirements and reduces costs associated with official inspections.

Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in the rule being amended have been previously approved by OMB under control number 0580–0013.

Background

Prior to issuance of an interim final rule published in the **Federal Register** on April 3, 1992, (57 FR 11427), the regulations provided: (1) in § 800.84(c) that an official certificate be issued by official inspection personnel for inspection of grain in each truck, trailer, truck/trailer combination, railcar, barge, or similarly sized carrier, unless the grain was part of a combined lot or bulkhead lot and (2) in § 800.160(a) for the issuance of official certificates for all inspection services except for certain local movements of shiplot grain.

In many instances, official certificates are not needed by applicants for inspection services or by other parties to grain transactions. This is evidenced by the fact that many certificates are discarded immediately upon receipt. In addition, these unneeded certificates require a certain amount of time to prepare and distribute. This increases the cost of providing official inspection services.

From September 1, 1991, to January 31, 1992, FGIS conducted a pilot study to determine the feasibility of offering a "flexible" inspection service that would allow the users to tailor the service, including the issuance of certificates, to fit their individual needs. These users could select specific features from other "complete" services or modify the current inspection procedures without sacrificing the quality of the inspection. This study concluded that State and private official agencies were capable of providing a "flexible" service and, more importantly, that the grain industry wants and will use such a service, if it is cost-effective and timely.

Subsequently, FGIS developed a new "flexible" inspection service: The official commercial inspection service. This service was specifically designed to facilitate the marketing of grain at locations where other kinds of official inspection services are too costly or time-consuming. Like other official services, the official commercial inspection service provides an impartial assessment of grain quality (grade, official factors, and other criteria) by FGIS-licensed or authorized inspectors, using FGIS-approved and checktested equipment. In addition, it allows applicants for inspection—working with FGIS or an official agency—to modify the sampling and inspection procedures to fit their individual needs. To foster additional savings, the instruction that establishes the official commercial inspection service provides for issuing certificates on an optional basis, upon request.

FGIS has projected that the official commercial inspection service, which was introduced on May 1, 1992, will increase the number of trucklot inspections performed by State and private official agencies by as much as 25 percent within three years, from 360,452 trucklots in FY 1991 to 450,000 in FY 1994. Hopper carlot inspections should increase by about 10 percent during the same period, from 944,246 in

FY 1991 to 1 million in FY 1994. The number of trucklot and hopper carlot inspections performed by FGIS would also increase by about the same percentage.

Comment Review

FGIS published an interim rule with request for comment in the April 3, 1992, Federal Register (57 FR 11427), that revised the requirement that an official certificate must be issued for each single-lot inspection of grain in a land carrier, container, or barge. FGIS received a total of four comments during the 30-day comment period. All of the commenters supported the changes to the regulations. The commenters also provided their views regarding the official commercial inspection service and various aspects of the service, as provided for by instructions. FGIS will consider these comments in its scheduled review of the official commercial inspection program.

Final Action

FGIS has determined that allowing the implementation of instructions that provide for issuing certificates on an optional basis will reduce a significant regulatory burden, have a positive economic impact on the U.S. grain industry, and facilitate the orderly and timely marketing of grain, particularly at country elevators and other points of first delivery.

Accordingly, the interim rule amending 7 CFR Part 800 which was published in 57 FR 11427 on April 3, 1992, is adopted as a final rule without change.

List of Subjects in CFR Part 800

Administrative practice and procedure, and Grain.

PART 800—GENERAL PROVISIONS

For reasons set out in the preamble, 7 CFR part 800 is amended as follows:

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

2. Accordingly, the interim final rule revising §§ 800.84(c) and 800.160(a) of the regulations, which was published on April 3, 1992, (57 FR 11427), is adopted as a final rule without change.

Dated: August 27, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92–21143 Filed 9–2–92; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 3

[Docket No. 92–17]

Risk-Based Capital: Residential Construction Loans Secured by Presold Homes

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this final rule to implement section 618(a) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA). This final rule amends the risk-based capital guidelines to include in the 50 percent risk weight category certain loans to builders to finance the construction of presold one-to-four family residential properties.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Donna E. Duncan, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170, or Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division, (202) 874-5330.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The OCC's risk-based capital guidelines were adopted in 1989 (codified at 12 CFR part 3, appendix A). See 54 FR 4168 (January 27, 1989). The risk-based capital guidelines impose capital requirements based primarily on the credit risk profiles of the assets and off-balance sheet items of a financial institution. The risk-based capital guidelines implement the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement), and were developed in cooperation with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB).

The risk-based capital guidelines are structured so that all assets receive a 100 percent risk weight unless the asset specifically qualifies for some lower risk weight category. Under the current risk-based capital guidelines only certain one-to-four family residential mortgages may qualify for a 50 percent risk weight. Loans to builders to finance the construction of residential properties and loans secured by first liens on multifamily rental properties are risk weighted at 100 percent. However, 12 CFR part 3, appendix A, section 3(a)(3)(iii) specifically provides that a loan secured by a first mortgage on a one-to-four family residential property qualifies for a 50 percent risk weight [1]. Section 3(a)(3)(iii) further provides:

> [R]esidential property loans that are made for the purpose of construction financing are assigned to the 100 percent risk-category of section 3(a)(4 of this Appendix A; however, this exclusion from the 50 percent risk category does not apply to loans to individual purchasers for the construction of their own homes.

The OCC notice of proposed rulemaking for the risk-based capital guidelines initially proposed to place all residential mortgages in the 100 percent risk weight category. See 53 FR 8550, 8559 (March 15, 1988). However, as explained in the preamble to the final rule, certain residential mortgages received a 50 percent risk weight because of the concern that a higher risk weight would put national banks at a competitive disadvantage. See 54 FR 4173. This ultimately could have had an adverse impact on consumers. To ensure that mortgages in the 50 percent risk weight category merit the lower risk weight, the OCC imposed the prudential qualification that the loan be secured by a one-to-four family residential property. *Id.*

After the risk-based capital guidelines were promulgated, the OCC along with the FDIC, FRB, and the Office of Thrift Supervision (OTS) revisited the issue concerning the capital treatment of residential mortgages. Specifically, the banking agencies considered whether the 50 percent risk weight should apply to certain loans to builders to finance the construction of residential properties which have been presold to qualifying individuals. As a result of this issue, the OTS published a proposed rule in the Federal Register on December 31, 1991. See 56 FR 67551 (December 31, 1991). Similarly, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the FDIC and the FRB published a joint proposal in the Federal Register on February 3, 1992.[2] See 57 FR 4027 (February 3, 1992).

[1] Under section 3(a)(3)(iii) residential property may be either owner occupied or rented; however, the mortgage cannot be more than 90 days past due, on nonaccrual or restructured.

[2] The FFIEC proposal would amend the definition of loans "secured by one-to-four family residential properties" in the Reports of Condition and Income (Call Report). The FRB and FDIC are able to implement this change through an amendment to the Call Report instructions because their risk-based capital guidelines explicitly incorporate the Call Report definition of one-to-four family residential loans.

The OCC also prepared a proposed rule; however, publication was delayed by the enactment of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA), Public Law No. 102–233, 105 Stat. 1761 (December 12, 1991). The OCC proposal was expanded to satisfy the requirements of section 618(a) of RTCRRIA and was published in the Federal Register on April 9, 1992. See 57 FR 12218 (April 9, 1992). The OCC proposed rule was subject to a 30 day comment period which closed May 11, 1992.

RTCRRIA required the federal banking agencies to amend their regulations to implement the requirements of the statute by April 10, 1992. The OCC has made every effort to promulgate this final rule by the April 10, 1992, deadline. However, in light of the issues involved, the potential supervisory concerns, and the need for interagency coordination, publication of this final rule by the deadline was not possible.

The main purpose of RTCRRIA was to provide for the recapitalization of the Resolution Trust Corporation. However, RTCRRIA also contained provisions relating to the capital treatment of certain one-to-four family and multifamily residential property loans. Specifically, section 618 of RTCRRIA requires the OCC to promulgate regulations providing a 50 percent risk weight, with certain conditions, for loans to finance the construction of one-to-four family residential properties which have been presold and loans secured by multifamily residential properties. As explained in the proposed rule, the OCC has decided to implement these provisions through two separate rulemakings. The primary reason for this decision is that section 305(b)(1)(B) of the Federal Deposit Insurance Corporation Act of 1991, Public Law No. 102–242, 105 Stat. 2236 (December 19, 1991) requires, among other things, that each appropriate federal banking agency revise its risk-based capital guidelines to reflect the actual performance and expected risk of loss of multifamily mortgages. The OCC believes that the intent of both RTCRRIA and FDICIA must be considered together in developing a rulemaking for multifamily housing loans.

In order for a loan to a builder to finance the construction of a one-to-four family residential property to qualify for a 50 percent risk weight, section 618(a)(1)(B) requires that (1) the loan must be for the construction of one-to-four family residential property, (2) the bank must have sufficient documentation, as may be required by the appropriate federal banking agency, to demonstrate the intent and ability of the buyer to purchase the property, (3) the purchaser must provide to the builder a nonrefundable deposit in an amount determined by the appropriate federal banking agency, but not less than 1 percent of the principal amount of the mortgage, and (4) the loan must satisfy prudent underwriting standards as established by the appropriate federal banking agency. In addition, section 618(a)(2) requires that if the purchase contract is canceled, the bank must promptly notify the appropriate federal banking agency of the cancellation and the bank must recategorize the loan at a 100 percent risk weight.

Discussion

In the NPRM, the OCC requested comments on several specific issues related to the implementation of section 618(a) of RTCRRIA. In response to the NPRM, the OCC received ten comments.

Comments were received from trade associations representing both the housing and banking industries, as well as from financial institutions. Five commenters generally indicated support for the proposed rule; while three commenters were opposed. One commenter indicated no opposition.[3] After careful consideration of all of the comments received, the OCC adopts this final rule to amend the risk-based capital guidelines to include in the 50 percent risk weight category certain loans to finance the construction of one-to-four family residential property which have been presold.

One commenter indicated concern as to whether the proposed residential construction loans were any less risky than other loans in the 100 percent risk weight category. Under the conditions imposed by this final rule, the OCC believes that the reduced 50 percent risk weight for a loan to a builder for the construction of a one-to-four family residence which has been presold to an individual purchaser is justified.

Currently, the risk-based capital guidelines permit a loan to an individual purchaser for the construction of a home to qualify for a 50 percent risk weight if the bank has applied prudent underwriting standards. *See* 12 CFR part 3, appendix A, section 3(a)(3)(iii). The reasoning behind this provision is that the personal stake and the motivation to make timely mortgage payments is the same for a homeowner whether the individual finances the construction of the home, or whether the individual finances the purchase of a preconstructed home. Likewise, the OCC believes that under certain conditions, and subject to prudent underwriting standards, a residential construction loan may have credit risks more similar to a loan to an individual purchaser for the construction of a residence than to a loan to a builder for speculative building purposes.

Generally, builders undertake speculative residential building and property development with the expectation of future sales. The builder typically does not have an individual purchaser committed to purchase the home prior to construction. A builder may not obtain a sales contract until well into the construction process or even after completion of the project. Therefore, the lender must rely on the ability of the builder to sell the inventory of homes in a reasonable period of time in order to generate cash flow sufficient to serve the debt. These speculative residential building loans are a form of commercial lending and pursuant to section 3(a)(3)(iii), are risk weighted at 100 percent.

In other cases, however, an individual purchaser may contract with a builder to construct a home specifically for the individual purchaser. The individual purchaser may provide specific floor plans to the builder or may select a floor plan available from the builder. In such cases, a written, binding contract to build a specific home exists between the builder and the individual purchaser prior to the onset of construction. Typically, the builder arranges for interim financing while the home is under construction, and the individual purchaser arranges in advance for permanent financing upon the completion of the home. Unlike a loan to a builder for speculative residential building and property development, in a residential construction loan as described in this final rule, both the builder and the individual purchaser have a substantial financial commitment to the completion of the project.

As discussed in the proposed rule, in order to qualify for the 50 percent risk weight a residential construction loan secured by a presold home must satisfy the following criteria:

(1) The builder must incur at least the first 10 percent of the direct costs (*i.e.*, actual costs of the land, labor, and material) before any drawdown is made

[3] One comment was misdirected. The comment addressed loans secured by multifamily housing loans and not by residential construction loans. This comment will be refiled and considered along with the other comments received on the proposed rule on loans secured by multifamily housing loans.

under the construction loan and the construction loan may not exceed 80 percent of the sales price of the presold home.

(2) The lender must have obtained, prior to making the construction loan, sufficient document demonstrating (a) that the property is subject to a legally binding written sales contract, and (b) that the purchaser has obtained a firm written commitment for permanent financing of the mortgage;

(3) The individual purchaser has made a substantial "earnest money" deposit of no less than 3 percent of the sales price that will be subject to forfeiture in order to cover the costs incurred as a result of termination of the contract by the individual purchaser even if the contract is terminated pursuant to some condition in the sales contract itself;

(4) The earnest money deposit must be held in escrow by the bank financing the builder or by an independent party in a fiduciary capacity; the escrow agreement must provide that in the event of default the escrow funds must be used to defray any cost incurred relating to any cancellation of the sales contract by the buyer;

(5) The individual purchaser must intend that the home will be owner-occupied;

(6) The construction loan must be made by the bank in accordance with prudent underwriting standards; and

(7) If the individual purchaser terminates the contract or if the loan fails to satisfy any other criterion under this section, then the bank must immediately recategorize the loan at a 100 percent risk weight and accurately report the loan in its next quarterly Consolidated Reports of Condition and Income (Call Report).

Builder Equity

In the NPRM, the OCC proposed to require that (1) the builder incur at least the first 10 percent of the direct costs (*i.e.* actual costs of the land, labor, and material) before any drawdown is made under the construction loan and (2) the construction loan not exceed 80 percent of the sales price of the presold home. The OCC requested specific comment on the factors that should be considered in defining builder equity. The OCC received one comment on this issue. The commenter supported increasing the builder equity requirement from 10 percent to 20 percent; however, the commenter also suggested that equity be defined to include the difference between the market value of the improved property and the cost of the improvements.

The builder equity requirement is designed to ensure that the builder has a sufficient interest in the project to ensure completion. The measure of builder equity suggested by the commenter would in essence permit the expected profits of the project to count as builder equity. The problem with this suggestion is that the measure is based on estimates of expected cost. Consequently, using this measure means that the actual amount of builder equity will depend on the accuracy of the cost estimates. The OCC believes that a measure of builder equity based on the actual direct costs incurred by the builder is easier to apply and more accurate. Therefore, as proposed in the NPRM, this final rule requires that the builder incur at least the first 10 percent of the direct costs (*i.e.* actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80 percent of the sales price of the presold home.

Sales Contract and Earnest Money Deposit

The NPRM included a discussion of two separate but related requirements concerning the sales contract between the builder and the individual purchaser and the earnest money deposit. Section 618 requires the bank to obtain documentation demonstrating that the buyer of the home intends to purchase the home and has the ability to obtain a mortgage loan sufficient to purchase the home. The OCC generally believes that this documentation requirement will be satisfied by a legally binding written sales contract and a firm written commitment for permanent financing of the home upon completion.

The proposed rule emphasized that a legally binding written sales contract between the builder and the individual purchaser must be obtained *prior* to the onset of construction. In addition, the individual purchaser must provide an earnest money deposit of no less than 3 percent of the sales price that will be subject to forfeiture if the contract is terminated by the individual purchaser. With respect to forfeiture of the earnest money deposit, the OCC noted that the earnest money deposit would be subject to forfeiture even if the sales contract was terminated pursuant to a provision in the contract.

The OCC requested comments on several specific issues: (1) Whether a 3 percent earnest money deposit is adequate to cover any costs which could be incurred by cancellation of the sales contract; (2) whether contingency clauses in the sales contract should disqualify the loan from the 50 percent risk weight; and (3) whether the deposit should be forfeited even if the individual purchaser terminates the contract pursuant to a clause in the contract. The OCC received three comments. One commenter indicated that a 3 percent earnest money deposit was high but still consistent with the housing industry practice, which ranges from 2 percent to 3 percent of the sales price. Another commenter suggested that the earnest money deposit requirement be lowered to the lesser of 2 percent or an amount common for the local market.

The earnest money deposit is intended to defray any costs incurred by the bank and the builder caused by the cancellation of the sales contract. The OCC believes that a 3 percent earnest money deposit should adequately cover any cost that normally might be incurred by the bank and the builder. The OCC agrees with the commenter that a 3 percent earnest money deposit is within the customary industry practice. In addition, it should be noted that the 3 percent earnest money deposit requirement is the minimum deposit amount required. Special circumstances may warrant a larger deposit.

With respect to the other comment, the OCC is concerned that in any particular area the customary deposit for the local market may be inadequate to fully defray the cost that could be incurred by the cancellation of the sales contract. Moreover, from a supervisory standpoint, the OCC believes that a local market standard would be difficult to monitor.

As to the use of contingency clauses, one commenter noted that although contingency clauses should not be permitted to frustrate the objective of obtaining a serious financial commitment from the buyer, the final rule should not needlessly interfere with the ability of the builder and buyer to negotiate the sales contract. The OCC agrees with this commenter. The OCC does not intend that this final rule should interfere with negotiations between the builder and buyer. This final rule does not, in any way, restrict or prohibit the inclusion of any terms in the sales contract that the builder and buyer wish to negotiate.

However, the OCC still has concern that the excessive use of contingency clauses in the sales contract could make the financial commitment of the buyer meaningless. To counter this concern, this final rule makes clear that the earnest money deposit would be subject to forfeiture by the buyer even if the contract is terminated pursuant to some condition in the sales contract itself. The OCC believes that this provision eliminates most of the concern raised by

the use of contingency clauses in the sales contract.

One commenter indicated that the discussion in the NPRM suggested that the earnest money deposit could be forfeited by the buyer even if the contract was cancelled by the builder and not the buyer. The commenter suggested that the final rule make clear that the earnest money deposit would only be forfeited by the buyer for cancellation of the sales contract caused by the buyer and not the builder. The OCC agrees with this position. The OCC never intended that the buyer should forfeit the earnest money deposit because of some action of the builder. As explained in the proposed rule, this requirement is not intended to apply to certain standard conditions, such as satisfactory completion of the home by the builder in accordance with the sales contract. Rather, the purpose of this requirement is to cover the exercise of contingency clauses by the buyer that are conditioned on the occurrence of events outside of the construction of the home. Accordingly, the final rule has been amended to make clear the buyer would forfeit the earnest money deposit only if the cancellation of the sales contract is caused by the buyer.

The proposed rule also required (1) that the earnest money deposit be held in escrow by the bank financing the builder and (2) that the escrow agreement provide that in the event of default the escrow funds must be used to first compensate the bank for its losses with the remainder to be turned over to the builder to be used in accordance with the terms of the sales contract. No comments were received on this issue; however, the language in the final rule is amended to be more consistent with the statutory language and to provide for the option of using an independent third party as the depository of the escrow funds.

In the event the sales contract is terminated, or for some other reason the loan no longer qualifies for the 50 percent risk weight, this final rule requires that the bank must immediately recategorize the loan at a 100 percent risk weight and accurately report the loan in the bank's next quarterly Call Report. Section 618(a)(2) requires that upon cancellation of the sales contract the bank must immediately recategorize loans and promptly notify the appropriate supervisory agency.

The OCC believes that the prompt notification requirement is satisfied in most instances through the accurate reporting of the loan at a 100 percent risk weight in the bank's next quarterly Call Report. For this reason, this final rule does not require direct notification to the OCC but only requires that the recategorized loan be accurately reported in the next quarterly Call Report. However, in cases where such recategorization results in a significant change in the bank's risk-based capital ratios, the OCC reserves the authority to require the bank to report to its supervisory office. Additionally, it should be noted that this final rule requires immediate recategorization of any residential construction loan which is subsequently disqualified from the 50 percent risk weight for any reason, including but not limited to the cancellation of the purchase contract.

Commitment for Permanent Financing

In addition to a legally binding written sales contract, the proposed rule also required a firm written commitment for permanent financing to be obtained prior to making the construction loan. The proposed regulation specifically names a legally binding sales contract because it clearly documents a borrower's intent to purchase a home. Likewise, a firm written commitment for permanent financing strongly demonstrates a buyer's ability to obtain a mortgage loan sufficient to purchase the home. The OCC received two comments on this issue. One commenter suggested that the firm commitment for permanent financing include prequalification of a buyer up to a specified loan amount but should not require a commitment for a specified rate of interest. The other commenter suggested permitting private mortgage insurance as a substitute for a commitment for permanent financing.

The OCC agrees with the commenter that a specified rate of interest should not be required in a commitment for permanent financing. The OCC does not believe that a specified rate of interest is generally necessary where the commitment would otherwise constitute a firm legal contract to provide permanent financing. The OCC disagrees, however, with the view that prequalification of a buyer up to a specific loan amount is sufficient to satisfy the requirement for a firm commitment for permanent financing. While prequalification is a good preliminary measure, the OCC does not believe that prequalification in itself has the same degree of legal certainty provided by a firm commitment for permanent financing.

With respect to the second comment concerning private mortgage insurance, the OCC does not believe that private mortgage insurance is a substitute for a firm commitment for permanent financing and permitting it as a substitute would not be consistent with the Basle Agreement. However, the capital treatment of private mortgage insurance for residential construction loans is an issue which may warrant further study as this insurance product develops.

The two comments received did raise the possibility that, in the future, other instruments may demonstrate intent and ability on the part of the buyer to purchase the home. Therefore, the OCC has modified the regulatory language to provide flexibility in the event other documents are developed which can satisfy the intent of this section.

Underwriting Standards

The proposed rule also required that a residential construction loan must be made in accordance with prudent underwriting standards in order to qualify for the 50 percent risk weight. As discussed in the NPRM, the OCC believes that prudent underwriting would generally include measures such as ensuring that: (1) The underlying lot is validly platted and bonded by the appropriate municipal authorities; (2) the development project is permissible and in accordance with municipal ordinances or regulations; (3) all necessary infrastructure improvements (appropriate for a given project stage) have been substantially completed; (4) the construction loan is properly secured by the underlying lot, the house under construction, and any other improvements on the lot; (5) disbursement of funds under the construction loan by the bank to the builder is to be made in accordance with a reasonable construction budget and a reasonable percentage-of-completion schedule; (6) the builder must cover any cost overruns and any other costs not included in the construction budget; and (7) the builder is adequately capitalized so that the completion of the project is likely. The OCC requested specific comment on whether these factors were sufficient to ensure that residential construction loans secured by presold homes satisfied prudent underwriting standards. The OCC also requested comment on whether alternative disbursement methods, other than the percentage-of-completion method, could be used.

The OCC received two comments on the proposed underwriting standards. One commenter indicated that in addition to the percentage-of-completion schedule there are other alternative methods of funds disbursement that are equally sound and should not be precluded. The OCC agrees that alternative methods of funds disbursement should be permitted

provided that the bank can demonstrate the soundness of that method. The OCC also would like to emphasize that the discussion on underwriting standards in the NPRM was not intended as a definitive statement on prudent underwriting but instead was intended to provide guidance. The OCC believes that, as a general matter, prudent underwriting would require these or similar measures be taken. However, the discussion on prudent underwriting standards in the NPRM and in this final rule is not intended to dictate absolute procedures. Therefore, while the final rule does require that residential construction loans must be made in accordance with prudent underwriting standards, the regulatory text does not mandate specific measures.

The second commenter expressed concern that some municipalities lack the local ordinances necessary to permit a lot to be bonded.
This commenter suggested that bonding should be required only where necessary under local ordinance. The OCC agrees with this comment. Additionally, the banks should note that, as with all underwriting decisions, sufficient documentation must be maintained to permit adequate review by OCC examiners in determining compliance with the risk-based capital guidelines.

Owner-Occupied

The proposed rule required that the individual purchaser must intend to occupy the home. No comments were received on this issue. This final rule adopts this requirement as proposed. The final rule makes clear that the 50 percent risk weight is available only for a residential construction loan where the presold home is intended to be owner-occupied, and not for a loan for the purchase of a house or houses by commercial entities (including a sole proprietorship) for speculative purposes.

Prior-to-Construction Requirement

The proposed rule required that the bank must obtain, prior to making the loan, sufficient documentation demonstrating that the property is subject to a legally binding written sales contract and that the purchaser has obtained a firm written commitment for permanent financing of the home upon completion. This requirement is based on section 618(a)(1)(B) which provides that:

> the lender (providing the residential construction loan to the builder must acquire) from the lender originating the mortgage loan for purchase of the residence, *before* the making of the construction loan * * * documentation demonstrating that the buyer of the residence intends to purchase the residence and has the ability to obtain a mortgage loan sufficient to purchase the residence; and * * * any other documentation from the mortgage lender that the (OCC) may consider appropriate to provide assurance of the buyer's intent to purchase the property * * *.
> (Emphasis added).

As explained in the NPRM, the OCC interprets section 618(a)(1)(B) to mean that the bank must obtain the required documentation before construction begins on a home. The OCC requested comments on this issue. Specifically, the OCC requested whether section 618(a)(1)(B) should be interpreted to include a home sold during some early stage of construction. The OCC received one comment on this issue. This commenter expressed the view that the residential construction loans should be permitted to qualify for the 50 percent risk weight at any time during construction of the home.

The OCC does not believe that such an expansive interpretation should be adopted. To permit residential construction loans to qualify for a 50 percent risk weight at any time prior to the completion of construction would be inconsistent with the intent of section 618. Adopting such a broad interpretation in essence would permit speculative residential construction to qualify for the lower 50 percent risk weight since any construction loan to a builder could be converted into a qualifying residential construction loan at any time.

Attached One-to-Four Family Homes

As required by section 618(a), the proposed rule would apply to residential construction loans on one-to-four family homes. With respect to detached single-family homes, application of the proposed rule is clear. However, the precise application of the proposed rule is uncertain when applied to multiple attached housing such as townhouses and condominiums (limited to four units) where one or more of the attached units may be presold. In the NPRM, the OCC requested specific comment on this issue.

The OCC received one comment on this issue. The commenter suggested that the proposed rule should be applied to attached housing on a *pro rata* basis. The OCC agrees with this commenter. Therefore, with respect to multiple attached housing which consist of one-to-four units, this final rule should be applied on a *pro rata* basis proportional to the number of presold units.

A related issue concerns the application of the proposed rule to multiple housing development projects. In the NPRM, the OCC explained that the proposed rule contemplated that the construction for each presold home would be covered by a separate loan. The OCC requested comment on whether the proposed rule should apply to multiple homes being constructed in a housing development project where some of the homes have been presold and the proceeds of the construction of all the homes are covered under one master note.

The OCC received one comment on this issue. The commenter expressed the view that a master note should be permitted on housing development projects consisting of multiple single-family homes. The OCC disagrees with this commenter. The OCC does not believe that a master note should be permitted to substitute for a separate residential construction loan.

The premise for the 50 percent risk weight on qualifying residential construction loans is that a loan to a builder for the construction of a home which has been presold entails less credit risk. The OCC believes that these loans should be made on a separate loan basis and not under an all-encompassing master note which is more akin to speculative development. Even with sufficient documentation, the OCC believes that the use of a single master note to cover a housing development project would make it difficult for bankers to determine the proper allocation of loan disbursement amounts for the homes which have been presold. Also, the use of a master note raises practical supervisory concerns relating to the examination process.

Credit Allocation

In the NPRM, the OCC requested comment on the possible impact of the proposed rule on credit allocation. The OCC received one comment on this issue. The commenter indicated concern that the proposed rule represented unwarranted government intervention in credit allocation through capital requirements. The OCC shares the concern raised by this commenter. The OCC has attempted to draft this final rule to avoid any undue credit allocation. The OCC believes that this final rule represents a balanced approach which permits only those residential construction loans which merit a lower risk weight to qualify for the 50 percent risk weight while keeping other speculative residential construction loans in the 100 percent risk weight category.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This final rule reduces the amount of capital required to be maintained by national banks for qualifying residential construction loans secured by presold homes. The OCC believes that this final rule will reduce somewhat the cost of bank operations. The OCC does not believe that the current amount of residential construction loans secured by presold homes held by national banks is significant. Therefore, lowering the capital requirements for these types of loans should not significantly impact national banks, regardless of size. In addition, this final rule would affect all national banks and would not disproportionally affect a substantial number of small banks.

Executive Order 12291

The OCC has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a regulatory impact analysis is not required. This final rule will reduce the amount of capital required to be maintained by national banks for qualifying residential construction loans secured by presold homes. As a result, the OCC believes that this final rule will reduce somewhat the cost of bank operations. Inasmuch as the OCC does not believe that the current amount of residential construction loans secured by presold homes held by national banks is significant, the effect of this final rule should not be material.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

Authority and Issuance:

For the reasons set forth in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is amended as set forth below.

PART 3—AMENDED

1. The authority citation for Part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1831n note, 3907, 3909.

2. In appendix A, section 3, paragraph (a)(3)(iv) is redesignated as paragraph (a)(3)(v) and new paragraph (a)(3)(iv) is inserted:

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(a) * * *

(3) * * *

(iv) Loans to residential real estate builders for one-to-four family residential property construction, if the bank obtains, prior to the making of the construction loan, sufficient documentation demonstrating that the buyer of the home intends to purchase the home (*i.e.*, a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (*i.e.*, a firm written commitment for permanent financing of the home upon completion), subject to the following additional criteria:

(A) The builder must incur at least the first 10% of the direct costs (*i.e.*, actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80% of the sales price of the resold home;

(B) The individual purchaser has made a substantial "earnest money deposit" of no less than 3% of the sales price of the home that must be subject to forfeiture by the individual purchaser if the sales contract is terminated by the individual purchaser; however, the earnest money deposit shall not be subject to forfeiture by reason of breach or termination of the sales contract on the part of the builder;

(C) The earnest money deposit must be held in escrow by the bank financing the builder or by an independent party in a fiduciary capacity; the escrow agreement must provide that in the event of default the escrow funds must be used to defray any cost incurred relating to any cancellation of the sales contract by the buyer;

(D) If the individual purchaser terminates the contract or if the loan fails to satisfy any other criterion under this section, then the bank must immediately recategorize the loan at a 100% risk weight and must accurately report the loan in the bank's next quarterly Consolidated Reports of Condition and Income (Call Report);

(E) The individual purchaser must intend that the home will be owner-occupied;

(F) The loan is made by the bank in accordance with prudent underwriting standards;

(G) The loan is not more than 90 days past due, or on nonaccrual; and

(H) The purchaser is an individual(s) and not a partnership, joint venture, trust, corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing one or more of the homes for speculative purposes.

3. In appendix A, Table 1, category 3, is amended by adding item 4 to read as follows:

Table 1.—Summary of Risk Weights and Risk Categories

* * * * *

Category 3: 50 Percent

* * *

4. Loans to residential real estate builders for one-to-four family residential property construction that have been presold pursuant to legally binding written sales contract.

* * * * *

Dated: August 19, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92-21261 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-126-AD; Amendment 39-8358; AD 92-19-01]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, that currently requires installation of vortex generators on the upper wing surface. This amendment revises a paragraph in the AD that currently allows dispatch with up to one vortex generator missing on each wing; this amendment will require that a symmetrical array of vortex generators be maintained. This amendment is prompted by results of an analysis of the effects of vortex generators on airflow over the ailerons, which indicates that unacceptable roll characteristics could result if the airplane is flown into icing conditions with only one vortex generator missing. The actions specified in this AD are intended to prevent reduced controllability of the airplane.

DATES: Effective September 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 18, 1992.

Comments for inclusion in the Rules Docket must be received on or before November 2, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-126-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On October 31, 1989, the FAA issued AD 89–09–05 R1, Amendment 39–6393 (54 FR 47197), November 13, 1989), to require installation of 16 vortex generators on the upper wing surface of Aerospatiale Model ATR42 series airplanes. That action was prompted by the results of flight testing and analysis, which demonstrated that installation of vortex generators on the upper surface of the wing significantly improves the effectiveness of the ailerons. This, in turn, reduces the severity of the roll upset that can occur with asymmetric ice accumulations resulting from icing conditions, such as freezing rain. The actions required by that AD are intended to prevent reduced controllability of the airplane.

Since the issuance of that AD, Aerospatiale has reviewed its analysis of the effects of vortex generators on airflow over the ailerons. Aerospatiale has concluded that if a symmetrical pair of vortex generators is missing, no adverse aerodynamic effects would result. However, unacceptable roll characteristics could result if the airplane is flown into icing conditions with only one vortex generator missing. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has reviewed and approved the results of the manufacturer's analysis and has forwarded the information to the FAA.

Consequently, the FAA has determined that it is necessary to revise a paragraph in AD 89–09–05 R1 that currently allows dispatch with up to one vortex generator missing on each wing. The AD must be revised to allow instead dispatch with an alternative configuration consisting of one vortex generator missing per wing, provided that the two missing vortex generators form a symmetrical pair in relation to the airplane centerline.

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 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.

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, this AD supersedes AD 89–09–05 R1 to revise a paragraph in that AD that currently allows dispatch with up to one vortex generator missing on each wing. This amendment revises the paragraph to delete that provision and allow instead an alternative configuration consisting of one vortex generator missing per wing, provided that two missing vortex generators form a symmetrical pair in relation to the airplane centerline.

This reduced number of required vortex generators is provided to allow operators to continue operations should one vortex generator be found damaged or missing. In this case, the symmetrical mate to the missing vortex generator could be removed, thus producing a symmetrical array of vortex generators. Operators should plan to maintain the full set of 16 vortex generators rather that the reduced number, however, because approval for more than two vortex generators missing will not be made.

The format of this AD has been restructured to be consistent with the standard Federal Register style.

Paragraph (d) of this AD clarifies the appropriate procedure for requesting alternative methods of compliance with this AD.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–126–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6393 (54 FR 47197, November 13, 1989), and by adding a new airworthiness directive (AD), amendment 39–8358, to read as follows:

92–19–01. Aerospatiale: Amendment 39–8358. Docket 92–NM–126–AD. Supersedes AD 89–09–05 R1, Amendment 39–6393.

Applicability: All Model ATR42 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating in icing conditions including freezing rain, accomplish the following:

(a) Within 10 hours time-in-service after May 3, 1989 (the effective date of AD 89–09–05, Amendment 39–6197), incorporate the following statement into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"When operating in icing conditions, as defined in the AFM, or when freezing rain is forecast or reported, use of the autopilot is prohibited.

Warning:

Prolonged operation in freezing rain should be avoided. Ice accretion due to freezing rain may result in asymmetric wing lift and associated increased aileron forces necessary to maintain coordinated flight. Whenever the aircraft exhibits buffet onset, uncommanded roll, or unusual control wheel forces, immediately reduce angle-of-attack and avoid excessive maneuvering."

(b) Within 60 days after December 15, 1989 (the effective date of AD 89–09–05 R1, Amendment 39–6393), install vortex generators, in accordance with Aerospatiale Service Bulletin ATR42–57–0018, Revision 1, dated June 28, 1989. This action constitutes terminating action for the AFM limitation required by paragraph (a) of this AD, regarding use of the autopilot when operating in icing conditions, and the limitation may be removed from the AFM.

(c) Operations may continue with a configuration consisting of one vortex generator missing per wing, provided that the two missing vortex generators form a symmetrical pair in relation to the airplane centerline.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

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

(f) The installation shall be done in accordance with Aerospatiale Service Bulletin ATR42–57–0018, Revision 1, dated June 28, 1989, which contains the following list of effective pages:

Page No.	Revision level	Date
1, 3, 5–13	1	June 28, 1989.
2, 4	Original	May 3, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 18, 1992.

Issued in Renton, Washington, on August 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–21184 Filed 9–2–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–45–AD; Amendment 39–8345; AD 92–18–01]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, that requires installation of bonding straps to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers. This amendment is prompted by reports of engine rundown (flame out) due to ice ingestion, resulting from static discharge and airframe and equipment electrical bonding difficulties that caused the engine de-icing timers to malfunction. The actions specified by this AD are intended to prevent engine rundown due to ice ingestion.

DATES: Effective October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes was published in the **Federal Register** on June 5, 1992 (57 FR 23968). That action proposed to require installation of bonding straps to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,150, or $715 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-18-01. British Aerospace: Amendment 39-8345. Docket 92-NM-45-AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2045, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine rundown (flame out) due to ice ingestion, accomplish the following:

(a) Within 90 days after the effective date of this AD, install bonding straps, Modification 35229A, at the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers, in accordance with British Aerospace Service Bulletin ATP-24-45-35229A, dated December 20, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

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

(d) The installation shall be done in accordance with British Aerospace Service Bulletin ATP-24-45-35229A, dated December 20, 1991, which contains the following list of effective pages:

Page No.	Revision level	Date
1-7, 9, 11, 13, 15, 17, 19.	Original	December 20, 1991.
8, 10, 12, 14, 16, 18.	(These pages are not used)	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 6, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21185 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-46-AD; Amendment 39-8350; AD 92-18-06]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model 146-100A, -200A, and -300A series airplanes, that requires removing certain hydraulic fuses and installing new hydraulic fuses that have an improved design. This amendment is prompted by two cases of fuse failure. The actions specified by this AD are intended to prevent double hydraulic system failure and potential loss of airplane braking and directional control.

DATES: Effective October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes was published in the **Federal Register** on June 15, 1992 (57 FR 26631). That action proposed to require removing certain hydraulic fuses and installing new hydraulic fuses that have an improved design.

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

consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Replacement parts will be provided at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $54,945, or $742.50 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-18-06 British Aerospace: Amendment 39-8350. Docket 92-NM-46-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes, equipped with Dunlop hydraulic fuses, part number ACM29100; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential loss of airplane braking and directional control, accomplish the following:

(a) Prior to the accumulation of 4,000 landings since installation of Dunlop hydraulic fuses having part number ACM29100 (Mod. states 1 or 2), or within 60 days after the effective date of this AD, whichever occurs later, remove green and yellow hydraulic systems Dunlop hydraulic fuses having part number ACM29100 (Mod. states 1 or 2) and install new hydraulic fuses having part number ACM30506 (Mod. 1), in accordance with British Aerospace Modification Service Bulletin SB.32-130-70295C, dated September 27, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

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

(d) The removal and installation shall be done in accordance with British Aerospace Modification Service Bulletin SB.32-130-70295C, dated September 27, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-21186 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-41-AD; Amendment 39-8359; AD 92-19-02]

Airworthiness Directives; Fokker Model F28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 series airplanes, that requires modification of the lapjoint between stringers 16 and 17. This amendment is prompted by the discovery of cracking at lapjoint, stringer, and frame member areas. The actions specified by this AD are intended to prevent cracking that could reduce the structural integrity of the fuselage and lead to decompression.

DATES: Effective October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 series airplanes was published in the Federal Register on April 27, 1992 (57 FR 15259). That action proposed to require modification (" repair") of the lapjoint

between stringers 16 and 17 (58 and 59) at various frames.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests that adoption of the subject rule be delayed until Fokker can review an inspection technique that will detect smaller cracks better than the method currently recommended by Fokker. The commenter reports that it is reviewing an eddy current sliding probe inspection that has been used successfully on one other type of airplane. The commenter anticipates that such inspections, conducted on a repetitive basis, would be less costly to its operation than the proposed lapjoint modification. The commenter considers that, during the period that this rulemaking is delayed, the FAA could easily assess the maintenance program for affected airplanes to assure that safety of flight is not compromised. The FAA does not concur. Requiring repair of the lapjoint instead of repetitive inspections is justified based on a review conducted by the manufacturer, and concurred with by the FAA, which indicated that cracks hidden by the rivet heads on or behind a layer of the lapjoint were difficult to detect. It has not been substantiated that a sliding probe technique would work on the Model F28 lapjoint better than the existing inspection techniques. Further, the FAA is not aware of any means to assess the maintenance program to assure safety of flight in this specific case where the capability of non-destructive testing methods is in question. The compliance terms of this AD allow the operator and Fokker approximately 11 months (or 900 more flight cycles under the schedule cited in the Netherlands Airworthiness Directive BLA 91-022, Issue 2), to review an alternative inspection technique, before the first airplane would be required to begin compliance. In the event that an acceptable lapjoint inspection technique and inspection schedule are developed in the interim, the FAA may consider further rulemaking. Under the provisions of paragraph (d) of the final rule, however, operators may apply for the approval of an alternative method of compliance or adjustment of the compliance time if sufficient justification is presented to the FAA.

Paragraphs (a) and (b) of the notice contained a typographical error that has been corrected in this final rule. The modification configuration was incorrectly cited as "SBF28/21-18;" however, the correct reference is "SBF28/21-16."

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 270 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $699,300, or $16,650 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-19-02. Fokker: Amendment 39-8359. Docket 92-NM-41-AD.

Applicability. Model F28 series airplanes: serial numbers 11003 through 11241, 11991, and 11992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the lapjoints between stringers 16 and 17, and consequent decompression, accomplish the following:

(a) For airplanes in the post-SBF28/21-16 configuration, repair the lapjoints located between stringers 16 and 17 (58 and 59), between frames 13345 and 14285, in accordance with Fokker Service Bulletin F28/58-121, Revision 1, dated December 13, 1991, and in accordance with the following schedule:

(1) For airplanes that have accumulated less than 32,000 flight cycles as of the effective date of this AD, accomplish the repair prior to the accumulation of 32,000 flight cycles or within 35 months after the effective date of this AD, whichever occurs later;

(2) For airplanes that have accumulated 32,000 or more flight cycles but less than 40,000 flight cycles as of the effective date of this AD, accomplish the repair prior to the accumulation of 40,000 flight cycles or within 23 months after the effective date of this AD, whichever occurs later;

(3) For airplanes that have accumulated 40,000 or more flight cycles as of the effective date of this AD, accomplish the repair within 11 months after the effective date of this AD.

(b) For airplanes in the pre-SBF28/21-16 configuration, repair the lapjoints located between stringers 16 and 17, (58 and 59) between frames 13345 and 14285, in accordance with Fokker Service Bulletin F28/53-121, Revision 1, dated December 13, 1991, and in accordance with the following schedule:

(1) For airplanes that have accumulated less than 48,000 flight cycles as of the effective date of this AD, accomplish the repair prior to the accumulation of 48,000 flight cycles or within 35 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 48,000 or more flight cycles but less than 60,000 flight cycles as of the effective date of this AD, accomplish the repair prior to the accumulation of 60,000 flight cycles or within 23 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated 60,000 or more flight cycles as of the effective date of this AD, accomplish the repair within 11 months after the effective date of this AD.

(c) Accomplishment of the repairs required by paragraphs (a) and (b) of this AD constitutes terminating action for the inspections identified as item 53–30–08 in the Fokker F–28 Structural Integrity Program (SIP), which are required by AD 89–07–16 R1, Amendment 39–6444.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) The repair shall be done in accordance with Fokker Service Bulletin F28/53–121, Revision 1, dated December 13, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–21187 Filed 9–2–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–79–AD; Amendment 39–8347; AD 92–18–03]

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1125 Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Israel Aircraft Industries, Ltd., Model 1125 Astra series airplanes that requires inspection of all oxygen tubing for security, chafing, and general condition; and protection of the oxygen tubing, if necessary. This amendment is prompted by indications of potentially insufficient clearance around the oxygen lines such that chafing can occur. The actions specified by this AD are intended to prevent chafing and damage to the oxygen tubing, which could lead to increased potential for fire ignited from arcing or heated components.

DATES: Effective October 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Astra Jet Corporation, Technical Publications, 77 McCollough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model 1125 Astra series airplanes was published in the **Federal Register** on June 6, 1992 (57 FR 23975). That action proposed to require inspection of all oxygen tubing for security, chafing, and general condition; and protection of the oxygen tubing, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $20 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,900, or $2,220 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.23 [Amended]

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

92–18–03. Israel Aircraft Industries, Ltd.: Amendment 39–8347. Docket 92–NM–79–AD.

Applicability: Model 1125 Astra series airplanes, all serial numbers prior to 059; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and damage to the oxygen tubing, which could lead to increased potential for fire ignited from arcing or heated components, accomplish the following:

(a) Within 200 hours time-in-service or 6

months after the effective date of this AD, whichever occurs first, inspect all oxygen tubing for security, chafing, and general condition, in accordance with Astra Service Bulletin SB 1125–35–071, dated February 12, 1992.

(b) If any discrepancies are detected as a result of the inspections required by paragraph (a) of this AD, prior to further flight, protect the oxygen tubing in accordance with Astra Service Bulletin SB 1125–35–071, dated February 12, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and protection shall be done in accordance with Astra Service Bulletin SB 1125–35–071, dated February 12, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Astra Jet Corporation, Technical Publications, 77 McCollough Drive, suite 11, New Castle, Delaware 19720. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 8, 1992.

Issued in Renton, Washington, on August 6, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–21188 Filed 9–2–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92–83]

Generalized System of Preferences Direct Importation Requirement

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule an interim amendment to the Customs Regulations which expanded the definition of "imported directly" under the Generalized System of Preferences (GSP) in order to allow goods produced in a member of a GSP-designated association of countries to be shipped through, and subjected to limited operations in, another member of the same association whose designation as a member of that association for GSP purposes was terminated by the President.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1992, Customs published in the **Federal Register** as T.D. 92–6, 57 FR 2016, an interim rule amending the Customs Regulations implementing the Generalized System of Preferences (GSP), Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The GSP provides for duty-free treatment on articles which (1) are designated by the President as eligible articles for GSP purposes, (2) are the growth, product, or manufacture of a country designated by the President as a beneficiary developing country (BDC) for GSP purposes, (3) have at least 35 percent of their appraised value attributable to the cost or value of materials produced in the BDC and/or the direct costs of processing operations performed in the BDC, and (4) are imported directly from the BDC into the Customs territory of the United States. The Customs Regulations implementing the GSP are contained in §§ 10.171–10.178 (19 CFR 10.171–10.178).

The interim amendment contained in T.D. 92–6 involved an expansion of the definition of "imported directly" set forth in § 10.175 of those implementing regulations. Specifically, T.D. 92–6 added a new paragraph (e) to incorporate within the concept of "imported directly" a transaction involving goods produced in a member of a GSP-designated association of countries which are shipped through, and only subjected to limited processing operations or non-retail export sale in, another member of the same association whose designation as a member of that association for GSP purposes was terminated by the President. New paragraph (e) also (1) provides that in such a case a new GSP Certificate of Origin Form A must be prepared and signed declaring what, if any, operations were performed on the goods in the former BDC and (2) lists Brunei Darussalam and Singapore as former BDCs for purposes of the paragraph.

The interim regulatory amendment described above went into effect on the date of publication, and the notice prescribed a public comment period which closed on March 17, 1992. No comments were received during the public comment period. Accordingly, Customs believes that the interim regulatory amendment should be adopted as a final rule without change.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports.

Amendment to the Regulations

Accordingly, under the authority of 19 U.S.C. 66 and 1624, the interim rule amending 19 CFR part 10 which was published at 57 FR 2016 on January 17, 1992, is adopted as a final rule without change.

Carol Hallett,

Commissioner of Customs.

Approved: August 31, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–21278 Filed 9–2–92; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health, Center for Drug Evaluation and Research, and Center for Biologics Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to general redelegations of authority from the Commissioner of Food and Drugs to certain officers of FDA to redelegate authorities to certain FDA officials in the Center for Devices and Radiological Health (CDRH), the Center for Drug Evaluation and Research (CDER), and the Center for Biologics Evaluation and Research (CBER) to require a manufacturer to conduct required and discretionary postmarket surveillance of devices, including devices that are or contain a biologic or a drug. These authorities were given to the FDA by the Safe Medical Devices Act of 1990.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: On November 28, 1990, the President signed into law the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629), which amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*). The purpose of the new legislation is to strengthen the Medical Device Amendments of 1976, the first legislation to provide a comprehensive framework for regulating medical devices, and to further ensure the safety and effectiveness of medical devices by providing the agency with tools to remove dangerous and defective articles quickly from the market. One such tool that the SMDA provided the Secretary of Health and Human Services is the authority to require manufacturers to conduct postmarket surveillance of certain devices. (See section 522 of the act (21 U.S.C. 360l).) Under section 522(a) of the act (subchapter A of chapter 5), the Secretary shall require a manufacturer to conduct postmarket surveillance for any device of the manufacturer first introduced or delivered for introduction into interstate commerce after January 1, 1991, that is a permanent implant the failure of which may cause serious, adverse health consequences or death, is intended for a use in supporting or sustaining human life, or potentially presents a serious risk to human health. Under that same section, the Secretary may require a manufacturer to conduct postmarket surveillance for a device of the manufacturer, without limitation of a date of introduction into interstate commerce, if it is determined that such surveillance is necessary to protect the public health or to provide safety or effectiveness data for the device. Under 21 CFR 5.10(a), authority to exercise functions vested in the Secretary under the act are redelegated to the Commissioner of Food and Drugs. Under this regulation, the Commissioner of Food and Drugs is redelegating the authority to require certain manufacturers to conduct postmarket surveillance under the act (section 522) to CDRH, CDER, and CBER because such authority is directly related to their current operations and programs. Further, this redelegation will allow decentralized decisionmaking, resulting in more efficient administration of the program. Authority to require a manufacturer to conduct postmarket surveillance meeting any of the above conditions for any device or any devices that are or contain a biologic or a drug is redelegated to the Director and Deputy Director, CDRH; the Director and Deputy Director, Office of Science and Technology, CDRH; the Director and Deputy Director, Division of Biometric Sciences, Office of Science and Technology, CDRH; the Director, Deputy Director, Associate Director, Division Directors, and Associate Division Directors, Office of Device Evaluation, CDRH; the Chief, Premarket Notification Section; Chief, Premarket Approval Section; and Director, Program Operations Staff, Office of Device Evaluation, CDRH; the Director and Deputy Director, Office of Compliance and Surveillance, CDRH; the Director and Deputy Director, CDER; the Director, Pilot Drug Evaluation Staff, CDER; the Directors and Deputy Directors of the Offices of Drug Evaluation I and Drug Evaluation II, CDER; the Director and Deputy Director, Office of Compliance, CDER; the Director and Deputy Director, CBER; the Director and Deputy Director, Office of Compliance, CBER; and the Director and Deputy Director, Office of Biological Product Review, CBER.

Further redelegation of the authority is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. New § 5.60 is added to subpart B to read as follows:

§ 5.60 Required and discretionary postmarket surveillance.

(a) For any device (including any device that is or contains a drug or biologic) that was first introduced or delivered for introduction into interstate commerce after January 1, 1991, and that is either a permanent implant, the failure of which may cause serious adverse health consequences or death, a life-sustaining or life-supporting device, or a device that potentially presents a serious risk to human health, any of the following officials is authorized to require a manufacturer of such device to conduct postmarket surveillance:

(1) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(2) The Director and Deputy Director, Office of Science and Technology, CDRH.

(3) The Director and Deputy Director, Division of Biometric Sciences, Office of Science and Technology, CDRH.

(4) The Director, Deputy Director, Associate Director, Division Directors, and Associate Division Directors, Office of Device Evaluation, CDRH.

(5) The Chief, Premarket Notification Section; Chief, Premarket Approval Section; Director, Program Operations

Staff, Office of Device Evaluation, CDRH.

(6) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(7) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER).

(8) The Director, Pilot Drug Evaluation Staff, CDER.

(9) The Directors and Deputy Directors of the Offices of Drug Evaluation I and Drug Evaluation II, CDER.

(10) The Director and Deputy Director, Office of Compliance, CDER.

(11) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(12) The Director and Deputy Director, Office of Compliance, CBER.

(13) The Director and Deputy Director, Office of Biological Product Review, CBER.

(b) For any device (including any device that is or contains a drug or biologic), any of the following officials is authorized to require a manufacturer of a device to conduct postmarket surveillance if the official determines that postmarket surveillance of the device is necessary to protect the public health or provide safety or effectiveness data for the device:

(1) The Director and Deputy Director, CDRH.

(2) The Director and Deputy Director, Office of Science and Technology, CDRH.

(3) The Director and Deputy Director, Division of Biometric Sciences, Office of Science and Technology, CDRH.

(4) The Director, Deputy Director, and Associate Director, Office of Device Evaluation, CDRH.

(5) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(6) The Director and Deputy Director, CDER.

(7) The Director, Pilot Drug Evaluation Staff, CDER.

(8) The Directors and Deputy Directors of the Offices of Drug Evaluation I and Drug Evaluation II, CDER.

(9) The Director and Deputy Director, Office of Compliance, CDER.

(10) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER).

(11) The Director and Deputy Director, Office of Compliance, CBER.

(12) The Director and Deputy Director, Office of Biological Product Review, CBER.

Dated: August 26, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21228 Filed 9-2-92; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health, Center for Biologics Evaluation and Research, and Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug and Administration (FDA) is amending the regulations for two delegations of authority relating to functions performed by the Center for Devices and Radiological Health (CDRH), the Center for Biologics Evaluation and Research (CBER), and the Center for Drug Evaluation and Research (CDER). This action will add officials authorized to: (1) Make determinations that medical devices present an unreasonable risk of substantial harm to the public, and (2) order repair, replacement of, or refund for medical devices. Redelegation of these authorities will aid the Centers in being responsive to the health needs of the public.

EFFECTIVE DATES: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.54 *Determinations that medical devices present unreasonable risk of substantial harm* (21 CFR 5.54) by adding the Director and Deputy Director, Office of Compliance and Surveillance, CDRH, the Director and Deputy Director, Office of Compliance, CBER, the Director and Deputy Director, CDER, and the Director and Deputy Director, Office of Compliance, CDER, to those officials authorized to make determinations that medical devices, including devices that are or contain a drug or biologic, present an unreasonable risk of substantial harm to the public and to order adequate notification thereof, under section 518(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h(a)). FDA is also amending the delegations of authority under § 5.55 *Orders to repair or replace, or make refunds for, medical devices* (21 CFR 5.55) by adding the Director and Deputy Director, Office of Compliance and Surveillance, CDRH, the Director and Deputy Director, Office of Compliance, CBER, the Director and Deputy Director, CDER, and the Director and Deputy Director, Office of Compliance, CDER, to those officials authorized to order repair or replacement of, or refund for, medical devices, including devices that are or contain a drug or biologic, under section 518(b) and (c) of the act.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis. Persons authorized to issue determinations and orders under this rule will consult with others for scientific or technical guidance before acting.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50; 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. Section 5.54 is amended by revising paragraphs (a) and (b) and by adding new paragraph (c) to read as follows:

§ 5.54 Determinations that medical devices present unreasonable risk of substantial harm.

* * * * *

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

(c) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Compliance, CDER.

3. Section 5.55 is amended by revising paragraphs (a) and (b) and by adding new paragraph (c) to read as follows: .

§ 5.55 Orders to repair or replace, or make refunds for, medical devices.

* * * * *

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(b) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

(c) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Compliance, CDER.

Dated: August 26, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21230 Filed 9-2-92; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 5

Delegations of Authority and Organization; Temporary Suspension of Premarket Approval Applications and Medical Device Recalls

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority, to extend the authority to suspend temporarily the approval of a premarket approval application (PMA) and to recall devices (in the event these devices would cause serious adverse consequences to health or death), to certain FDA officials in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). In the Federal Register of October 10, 1991 (56 FR 51169), this authority was exclusively delegated to the Center for Devices and Radiological Health (CDRH). However, in some cases principal responsibilities for the regulation of certain medical devices is assigned to CDER or CBER. Accordingly, officials of CDER and CBER need to have the authority to suspend PMA approvals and to order recalls for those devices for which they are responsible.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 10, 1991 (56 FR 51169), FDA issued a final rule redelegating to certain officials in CDRH the medical device recall authority and the temporary suspension of a PMA authority granted to the agency pursuant to sections 518(e) and 515(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360h(e) and 360e(e)), respectively. Because the principal authority for regulating some medical devices is assigned to CDER or CBER (e.g., because they contain a drug or a biological product), the delegation is being extended, by adding § 5.56(c) and (d) and § 5.57(d) and (e), to give these authorities to certain officials in CDER and CBER as well. See 21 CFR part 3 (56 FR 58754, November 21, 1991) and 21 CFR 5.32 and 5.33 (56 FR 58758). Under 21 CFR 5.10(a), authority to exercise functions vested in the Secretary are redelegated to the Commissioner of Food and Drugs. Accordingly, the introductory text of § 5.56 is also being revised to reflect this.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. Section 5.56 is amended by revising the introductory text and by adding new paragraphs (c) and (d) to read as follows:

§ 5.56 Recall authority.

The following officials, for medical devices assigned to their respective organizations, are authorized to perform all of the recall functions under section 518(e) of the Federal Food, Drug, and Cosmetic Act, which have been delegated to the Commissioner of Food and Drugs:

* * * * *

(c) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Compliance, CDER.

(d) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

3. Section 5.57 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 5.57 Temporary suspension of a medical device application.

* * * * *

(d) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER); the Director, Pilot Drug Evaluation Staff, CDER; the Directors and Deputy Directors of the Offices of Drug Evaluation I and Drug Evaluation II, CDER; the Director and Deputy Director, Office of Generic Drugs, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

(e) The Director and Deputy Director, Center for Biologics Evaluation and Research (CBER), and the Director and Deputy Director, Office of Compliance, CBER.

Dated: August 26, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-21228 Filed 9-2-92; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to general redelegations of authority from the Commissioner of Food and Drugs to delegate authorities to additional Office of Compliance and Surveillance officials in the Center for Devices and Radiological Health (CDRH).

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations in § 5.22 *Certification of true copies ond use of Department seol* (21 CFR 5.22), § 5.37 *Issuance of reports of minor violotions* (21 CFR 5.37), and § 5.45 *Imports and exports* (21 CFR 5.45) to add the Deputy Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH, to those CDRH officials already delegated authorities under those sections. FDA is also amending the regulations in § 5.23 *Disclosure of official records* (21 CFR 5.23) to add the Chief, Device Registration and Listing Branch, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH, to those CDRH officials authorized to sign affidavits regarding the presence or absence of medical device establishment registration records. FDA is further amending § 5.37 above by adding the Director, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH, to those CDRH officials authorized to perform all the functions of the Commissioner under section 306 of the Federal Food, Drug, and Cosmetic Act regarding the issuance of written notices or warnings.

These additional delegations of authority will allow the Center to be more responsive in serving public health needs.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.22 is amended by revising paragraph (a)(9)(iv) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(9) * * *

(iv) The Director and Deputy Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

* * * * *

3. Section 5.23 is amended by adding new paragraph (c)(4) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(c) * * *

(4) The Chief, Device Registration and Listing Branch, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH.

* * * * *

4. Section 5.37 is amended by revising paragraph (a)(2)(iii) and by adding new paragraph (a)(2)(iv) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(2) * * *

(iii) The Director and Deputy Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

(iv) The Director, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH.

* * * * *

5. Section 5.45 is amended by revising paragraph (e)(1)(iii) to read as follows:

§ 5.45 Imports and exports.

* * * * *

(e) * * *

(1) * * *

(iii) The Director and Deputy Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

* * * * *

Dated: August 26, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–21229 Filed 9–2–92; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 573

[Docket No. 86F–0060]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; denial of certain requests for hearing and response to certain objections; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of July 27, 1992 (57 FR 33244), denying certain requests that it has received for a hearing on and stay of a final rule (April 6, 1987 (52 FR 10887)), that increased the maximum permitted use level of selenium in animal feeds. The document was published with some inadvertent computer errors. This correction document will remove the numerals "09" that appeared in the place of hyphens throughout the document.

FOR FURTHER INFORMATION CONTACT: Robin F. Thomas, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 92–17573, appearing on page 33244, in the Federal Register of Monday, July 27, 1992, the following corrections are made:

1. On page 33244, in the 1st column, under the heading "**FOR FURTHER INFORMATION CONTACT:**", in the 2d line, "(HFV09226)" is corrected to read "(HFV–226)".

2. On page 33245, in the 2d column, in the 1st line, "21409215" is corrected to

read "214–215"; and in the same column, in the 4th line, "62009621" is corrected to read "620–621".

3. On page 33247, in the 1st column, in the 3d full paragraph, in the 4th line, "86F090060" is corrected to read "86F–0060".

4. On page 33249, in the 3d column, in the 3d full paragraph, in the 13th line, "80095769" is corrected to read "80–5769"; and in the same column, in the 4th paragraph, in the 3d line, "(HFA09305)" is corrected to read "(HFA–305)"; and in the same paragraph, in the 4th line, "10923" is corrected to read "1–23".

5. On page 33250, in References 1, 2, and 3, in the 3d line, "86F090060" is corrected to read "86F–0060"; in Reference 10, in the 3d line, "1982091989" is corrected to read "1982–1989"; and in Reference 20, in the 4th line, References 21 and 22, in the 3d line, and Reference 25, in the 2d line, "86F090060" is corrected to read "86F–0060".

Dated: August 27, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–21225 Filed 9–2–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8431]

Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to reporting requirements with respect to single-class real estate mortgage investment conduits (REMICs) and the market discount fraction reported with other REMIC information. This document also contains final regulations that require an issuer of publicly offered debt instruments with original issue discount (OID) to file an information return with the Internal Revenue Service. The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and by the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATES: Sections 1.67–3 and 1.6049–7(f)(2)(i)(G) are effective for calendar quarters and calendar years ending after September 2, 1992. Section 1.1275–3 is effective for debt instruments issued after September 2, 1992. The amendments to § 602.101 are effective September 2, 1992.

FOR FURTHER INFORMATION CONTACT: James W.C. Canup, 202–622–3950 (not a toll-free number), with respect to the REMIC reporting regulations, and William E. Blanchard, 202–622–3930 (not a toll-free number), with respect to the OID reporting regulations.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1545–1018 (relating to REMICs) and 1545–0887 (relating to OID).

The estimated total annual reporting and/or recordkeeping burden for the requirements contained in § 1.67–(f) (1), (2), (3), (4)(i), (5), and (6) of this regulation is reflected in the burden of Schedule Q and Forms 1066, 1099–INT, 1099–OID, 8281, and 8811. The estimated annual burden per respondent for § 1.67–3(f)(4)(ii) varies from 0.1 hours to 1.0 hours, depending on individual circumstances, with an estimated average of 0.3 hours. The estimated annual burden per respondent for § 1.1275–3 is reflected in the burden of Form 8281.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of these burden estimates and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

REMIC Provisions

Temporary regulations [T.D. 8366] and a notice of proposed rulemaking (FI–61–91) under sections 67 and 6049 of the Internal Revenue Code of 1986 (Code), relating to REMICs, were published in the **Federal Register** on September 30, 1991 (56 FR 49512 and 49524, respectively). No written comments were received from the public on the proposed regulations. In addition, on December 5, 1991, the Internal Revenue Service held a public hearing concerning these regulations. No statements were made at the public hearing concerning these proposed regulations. The proposed regulations are adopted as revised by this Treasury decision.

Section 132 of the Tax Reform Act of 1986 (the 1986 Act) added to the Code section 67, which disallows certain miscellaneous itemized deductions in computing the taxable income of an individual to the extent that the aggregate of those deductions does not exceed two percent of the individual's adjusted gross income. Section 67(c) directs that regulations be issued to prohibit the indirect deduction through pass-through entities of amounts that are not allowable as a deduction if paid or incurred directly by an individual. Section 67(c) also directs that regulations provide any necessary reporting requirements. The regulations under section 67 that are contained in this document fulfill the requirements of section 67(c) as it applies to REMICs.

OID Provisions

Section 41(a) of the Tax Reform Act of 1984 added to the Code section 1275(c)(2), which requires certain information relating to OID on publicly offered debt instruments to be submitted to the Secretary in the time and manner prescribed by the Secretary in regulations. Pursuant to the authority in section 1275(c), § 1.1275–3T (TD 8030) was published in the **Federal Register** on June 18, 1985 (50 FR 25219). Under § 1.1275–3T(b), unless otherwise provided, an issuer must file an information return (Form 8281) with the Internal Revenue Service within 30 days after the issue date of an issue of publicly offered debt instruments that have OID. Section 1.1275–3T(b) lists the information required to be reported on the information return, such as the name, address, and taxpayer identification number of the issuer and the amount of OID for the entire issue.

Amendments to § 1.1275–3T(b) were proposed in a notice of proposed rulemaking (LR–189–84), which was published in the **Federal Register** on April 8, 1986 (51 FR 12086). In addition, § 1.1275–3T(b) was amended by T.D. 8259, which was published in the **Federal Register** on September 7, 1989 (54 FR 37102). A cross-reference notice of proposed rulemaking (FI–27–89) was published in the **Federal Register** on the

same day. In general, the amendments provided additional exceptions to the types of debt instruments subject to the regulation and required additional information to be reported on the information return.

Written comments were received from the public on the temporary and the proposed regulations. As explained below, the comments were considered in the drafting of the final regulations.

Explanation of Provisions

In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The regulations under sections 67 and 6049 require notice of income and other information to be provided to REMIC investors and the Internal Revenue Service.

Treatment of Allocable Investment Expenses

Section 1.67–3T(a)(1) requires a REMIC to allocate to each of its pass-through interest holders (as defined in § 1.67–3T(a)(2)(i)(A)) the holder's proportionate share of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter.

Pursuant to § 1.67–3T(b)(1) a pass-through interest holder is treated both as having received or accrued income and as having paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company) in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC.

A REMIC is required under § 1.67–3(f)(1) to provide written notice to each pass-through interest holder to whom an allocation of expenses is required to be made. Except in the case of notice to a regular interest holder in a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)), notice is furnished quarterly on Schedule Q (Form 1066). The notice must list the aggregate amount of expenses accrued during each calendar quarter for which the REMIC is allowed a deduction under section 212 and the interest holder's proportionate share of these expenses for the calendar quarter. A REMIC must also report this information annually to the Internal Revenue Service pursuant to § 1.67–3(f)(3)(i).

If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may provide the written notice to the nominee and make the information return to the Internal Revenue Service with respect to the nominee. Section 1.67–3(f)(5) provides reporting requirements for nominees to which a REMIC provides notice.

Single-Class REMICs

In the case of a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)), the term "pass-through interest holder" is defined more broadly to include any regular or residual interest holder that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as would an individual, or a pass-through entity, interests which are owned by certain types of holders. Under § 1.67–3T(c)(3), a single-class REMIC allocates its investment expenses for a calendar quarter to each holder in proportion to the amount of income that accrues to the holder for that quarter.

As required under § 1.67–3(f) for all other REMICs, a single-class REMIC must report to pass-through interest holders and the Internal Revenue Service the holder's proportionate share of allocable investment expenses. The REMIC is required to report this information quarterly to pass-through interest holders who hold a residual interest on Schedule Q (Form 1066) and annually to the Internal Revenue Service as required in § 1.860F–4(e)(4).

Notice to Pass-Through Interest Holders who Hold Regular Interests in Single-Class REMICs

Section 1.67–3(f) provides that a single-class REMIC must furnish information to certain of its regular interest holders showing each such interest holder's allocable share of the REMIC's investment expenses. The information may be furnished annually and, as provided in § 1.67–3(f)(2)(ii), may be separately stated on the statement containing Form 1099 information instead of in a separate statement provided in a separate mailing. The REMIC, however, must provide quarterly information to a person who requests information pursuant to § 1.6049–7(e) together with the information described in that section.

Market Discount Fraction and de minimis OID

A REMIC or an issuer of a collateralized debt obligation is required to provide information necessary to compute the accrual of market discount. Market discount is allocated based on a fraction determined by reference to either the interest or OID or an instrument. The regulations under § 1.6049–7(f)(2)(i)(G) permit the use of de minimis OID in computing the market discount fraction required to be reported with other financial information with respect to REMICs and other collateralized debt obligations.

Information Reporting Requirements for an Issuer of Publicly Offered Debt Instruments With OID

In general, the final regulations adopt the rules of § 1.1275–3T(b), as amended by § 1.1275–3(b) of the proposed regulations. Under § 1.1275–3(c), an issuer of publicly offered debt instruments with OID must provide the information required by Form 8281 (or any successor form) to the Internal Revenue Service within 30 days from the issue date of the debt instruments. The regulations, however, do not apply to debt instruments described in section 1272(a)(2), debt instruments issued by natural persons, certificates of deposit, REMIC regular interests or other debt instruments subject to section 1272(a)(6), or (unless otherwise required by the Commissioner) stripped bonds and coupons.

The final regulations do not contain rules for the information reporting requirements under section 1275(c)(1) and § 1.1275–3(a) of the proposed regulations (the legending requirements). These rules will be addressed in future regulations.

Summary of Amendments

No comments were received on the proposed section 67 and section 6049 REMIC reporting regulations. Therefore, no amendments to those proposed regulations were made. Editorial change, however, have been made to clarify the final regulations.

In general, the final OID reporting regulations adopt the amendments contained in the proposed regulations. The final regulations also make editorial changes to the temporary regulations, including the deletion of the detailed list of information that was in § 1.1275–3T(b). Form 8281, however, currently requires the issuer to submit the same information that was listed in § 1.1275–3T(b).

In addition, § 1.1275–3(d) clarifies that neither a foreign nor a domestic issuer is required to file an information return if the issue is not offered for sale or resale in the United States in connection with its original issuance. This change was made in response to several comments on the definition of issuer in the temporary and proposed regulations.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact

Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is James W. C. Canup, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 through 1.67–4T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1231–1 through 1.1297–3T

Income taxes.

26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 1.67–3 also issued under 26 U.S.C. 67(c). * * * Section 1.1275–3 also issued under 26 U.S.C. 1275(c). * * *

Par. 2. Section 1.67–3 is added to read as follows:

§ 1.67–3 Allocation of expenses by real estate mortgage investment conduits.

(a) *Allocation of allocable investment expenses.* [Reserved]

(b) *Treatment of allocable investment expenses.* [Reserved]

(c) *Computation of proportionate share.* [Reserved]

(d) *Example.* [Reserved]

(e) *Allocable investment expenses not subject to backup withholding.* [Reserved]

(f) *Notice to pass-through interest holders*—(1) *Information required.* A REMIC must provide to each pass-through interest holder to which an allocation of allocable investment expense is required to be made under § 1.67–3T(a)(1) notice of the following—

(i) If, pursuant to paragraph (f)(2) (i) or (ii) of this section, notice is provided for a calendar quarter, the aggregate amount of expenses paid or accrued during the calendar quarter for which the REMIC is allowed a deduction under section 212;

(ii) If, pursuant to paragraph (f)(2)(ii) of this section, notice is provided to a regular interest holder for a calendar year, the aggregate amount of expenses paid or accrued during each calendar quarter that the regular interest holder held the regular interest in the calendar year and for which the REMIC is allowed a deduction under section 212; and

(iii) The proportionate share of these expenses allocated to that pass-through interest holder, as determined under § 1.67–3T(c).

(2) *Statement to be furnished*—(i) *To residual interest holder.* For each calendar quarter, a REMIC must provide to each pass-through interest holder who holds a residual interest during the calendar quarter the notice required under paragraph (f)(1) of this section on Schedule Q (Form 1066), as required in § 1.860F–4(e).

(ii) *To regular interest holder.* For each calendar year, a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)) must provide to each pass-through interest holder who held a regular interest during the calendar year the notice required under paragraph (f)(1) of this section. Quarterly reporting is not required. The information required to be included in the notice may be separately stated on the statement described in § 1.6049–7(f) instead of on a separate statement provided in a separate mailing. See § 1.6049–7(f)(4). The separate statement provided in a separate mailing must be furnished to each pass-through interest holder no later than the last day of the month following the close of the calendar year.

(3) *Returns to the Internal Revenue Service*—(i) *With respect to residual interest holders.* Any REMIC required under paragraphs (f)(1) and (2)(i) of this section to furnish information to any pass-through interest holder who holds a residual interest must also furnish such information to the Internal Revenue Service as required in § 1.860F–4(e)(4).

(ii) *With respect to regular interest holders.* A single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)) must make an information return on Form 1099 for each calendar year, with respect to each pass-through interest holder who holds a regular interest to which an allocation of allocable investment expenses is required to be made pursuant to § 1.67–3T(a)(1) and (2)(ii). The preceding sentence applies with respect to a holder for a calendar year only if the REMIC is required to make an information return to the Internal Revenue Service with respect to that holder for that year pursuant to section 6049 and § 1.6049–7(b)(2)(i) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(1) and § 1.6049–7(b)(2)(i)). The REMIC must state on the information return—

(A) The sum of—

(*1*) The aggregate amounts includible in gross income as interest (as defined in § 1.6049–7(a)(1) (i) and (ii)), for the calendar year; and

(*2*) The sum of the amount of allocable investment expenses required to be allocated to the pass-through interest holder for each calendar quarter during the calendar year pursuant to § 1.67–3T(a); and

(B) Any other information specified by the form or its instructions.

(4) *Interest held by nominees and other specified persons*—(i) *Pass-through interest holder's interest held by a nominee.* If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may make the information return described in paragraphs (f)(3) (i) and (ii) of this section with respect to the nominee in lieu of the pass-through interest holder and may provide the written statement described in paragraphs (f)(2) (i) and (ii) of this section to that nominee in lieu of the pass-through interest holder.

(ii) *Regular interests in a single-class REMIC held by certain persons.* If a person specified in § 1.6049–7(e)(4) holds a regular interest in a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)), then the single-class REMIC must provide the information described in paragraphs (f)(1) and (f)(3)(ii) (A) and (B) of this section to that person with the information specified in § 1.6049–7(e)(2) as required in § 1.6049–7(e).

(5) *Nominee reporting*—(i) *In general.* In any case in which a REMIC provides information pursuant to paragraph (f)(4) of this section to a nominee of a pass-through interest holder for a calendar quarter or, as provided in paragraph

(f)(2)(ii) of this section, for a calendar year—

(A) The nominee must furnish each pass-through interest holder with a written statement described in paragraph (f)(2) (i) or (ii) of this section, whichever is applicable, showing the information described in paragraph (f)(1) of this section; and

(B) The nominee must make an information return on Form 1099 for each calendar year, with respect to the pass-through interest holder and state on this information return the information described in paragraphs (f)(3)(ii) (A) and (B) of this section, if—

(*1*) The nominee is a nominee for a pass-through interest holder who holds a regular interest in a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)); and

(*2*) The nominee is required to make an information return pursuant to section 6049 and § 1.6049–7 (b)(2)(i) and (b)(2)(ii)(B) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(2) and § 1.6049–7(b)(2)(i)) with respect to the pass-through interest holder.

(ii) *Time for furnishing statement.* The statement required by paragraph (f)(5)(i)(A) of this section to be furnished by a nominee to a pass-through interest holder for a calendar quarter or calendar year must be furnished to this holder no later than 30 days after receiving the written statement described in paragraph (f)(2) (i) or (ii) of this section from the REMIC. If, however, pursuant to paragraph (f)(2)(ii) of this section, the information is separately stated on the statement described in § 1.6049–7(f), then the information must be furnished to the pass-through interest holder in the time specified in § 1.6049–7(f)(5).

(6) *Special rules*—(i) *Time and place for furnishing returns.* The returns required by paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for any calendar year must be filed at the time and place that a return required under section 6049 and § 1.6049–7(b)(2) is required to be filed. See § 1.6049–4(g) and § 1.6049–7(b)(2)(iv).

(ii) *Duplicative returns not required.* The requirements of paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for the making of an information return are satisfied by the timely filing of an information return pursuant to section 6049 and § 1.6049–7(b)(2) that contains the information required by paragraph (f)(3)(ii) of this section.

Par. 3. Section 1.1275–3 is added to read as follows

§ 1.1275–3 Original issue discount information reporting requirements.

(a) *In general.* [Reserved]

(b) *Information required to be set forth on face of debt instruments that are not publicly offered.* [Reserved]

(c) *Information required to be reported to Secretary upon issuance of publicly offered debt instruments*—(1) *In general.* Except as provided in paragraph (c)(3) or paragraph (d) of this section, the information reporting requirements of this paragraph (c) apply to any debt instrument that is publicly offered and has original issue discount. The issuer of any such debt instrument must make an information return on the form prescribed by the Commissioner (Form 8281, as of September 2, 1992. The prescribed form must be filed with the Internal Revenue Service in the manner specified on the form. The taxpayer must use the prescribed form even if other information returns are filed using other methods (e.g., electronic media), unless the Commissioner announces otherwise in a revenue procedure.

(2) *Time for filing information return.* The prescribed form must be filed for each issue of publicly offered debt instruments within 30 days after the issue date of the issue.

(3) *Exceptions.* The rules of paragraph (c)(1) of this section do not apply to debt instruments described in section 1272(a)(2), debt instruments issued by natural persons (as defined in § 1.6049–4(f)(2)), certificates of deposit, REMIC regular interests or other debt instruments subject to section 1272(a)(6), or (unless otherwise required by the Commissioner pursuant to a revenue ruling or revenue procedure) stripped bonds and coupons (within the meaning of section 1286).

(d) *Application to foreign issuers and U.S. issuers of foreign-targeted debt instruments.* A foreign or domestic issuer is subject to the rules of this section with respect to an issue of debt instruments unless the issue is not offered for sale or resale in the United States in connection with its original issuance.

(e) *Penalties.* See section 6706 for rules relating to the penalty imposed for failure to meet the information reporting requirements imposed by this section.

(f) *Effective date.* Paragraphs (c), (d), and (e) of this section are effective for an issue of debt instruments issued after September 2, 1992.

Par. 4. Section 1.6049–7 is amended by revising paragraph (f)(2)(i)(G) to read as follows:

§ 1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(g) Information necessary to compute accrual of market discount. For calendar years after 1989, this requirement is satisfied by furnishing to the holder for each accrual period during the year a fraction computed in the manner described in either paragraph (f)(2)(i)(G)(*1*) or (f)(2 (i)(G)(*2*) of this section. For calendar years after December 31, 1991, the REMIC or the issuer of the collateralized debt obligation must be consistent in the method used to compute this fraction.

(*1*) The numerator of the fraction equals the interest, other than original issue discount, allocable to the accrual period. The denominator of the fraction equals the interest, other than original issue discount, allocable to the accrual period plus the remaining interest, other than original issue discount, as of the end of that accrual period. The interest allocable to each accrual period and the remaining interest are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption, if any, determined as of the startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligaiton that would be made in computing original issue discount if the debt instrument had been issued with original issue discount.

(*2*) If the REMIC regular interest or the collateralized debt obligation has de minimis original issue discount (as defined in section 1273(a)(3) and any regulations thereunder), then, at the option of the REMIC or the issuer of the collateralized debt obligation, the fraction may be computed in the manner specified in paragraph (f)(2)(ii)(K) of this section taking into account the de minimis original issue discount.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding the following entries to the table:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.67-3	1545-1018
* * * * *	
1.1275-3	1545-0887
* * * * *	
1.6049-7	1545-1018
* * * * *	

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: August 20, 1992.

Robert Glenn Hubbard,
Acting Assistant Secretary of the Treasury.

[FR Doc. 92-21153 Filed 9-2-92; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[T.D. ATF-333; Re: T.D. ATF-317, T.D. ATF-311, T.D. ATF-306, Notices Nos. 716, 403, 410, 583; 91F009P]

RIN 1512-AA10

Vodka: Deferral of Compliance Date

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule defers the compliance date with respect to the citric acid limitation set forth in section 5.23(a)(3)(ii). The deferral of the compliance date is necessary to complete ATF's review of all data submitted relative to the citric acid limitation.

DATES: This document is effective September 3, 1992. The compliance date for § 5.23(a)(3)(ii) with respect to the citric acid limitation is September 3, 1993.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

T.D. ATF-306 (55 FR 49996), amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2,000 parts per million) of sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million) of citric acid in the production of vodka. T.D. ATF-306 was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products not made within the limitations of the Treasury decision.

Petition

On March 4, 1991, ATF issued T.D. ATF-311, 56 FR 8922, deferring the compliance date with respect to the citric acid limitation set forth in § 5.23(a)(3)(ii) by T.D. ATF-306. T.D. ATF-311 was issued in response to a petition from Heublein, Inc., for the reconsideration of T.D. ATF-306. Heublein's petition was based on a representation that new scientific information and data not previously available had come to their attention concerning maximum levels for the use of citric acid in vodka.

Notice No. 716

On April 29, 1991, ATF issued Notice No. 716, 56 FR 19623, to gather additional information by inviting comments from the public and industry as to whether the 150 ppm citric acid limitation set forth in T.D. ATF-306 should be retained or revised. During the comment period, ATF secured an outside testing firm to conduct independent testing on sensory threshold levels for citric acid addition to vodka.

In response to Notice No. 716, ATF received ten comments. All of the comments were opposed to setting a maximum limitation as low as 150 ppm for the addition of citric acid to vodka. The only commenter submitting sensory test data from independent contractors was Heublein, Inc. An evaluation of the test data by ATF revealed a disparity between the Heublein independent contractors' test results and the sensory test results from the outside firm secured by ATF. Therefore, the compliance data of December 4, 1991, set forth in T.D. ATF-311, was deferred until September 3, 1992, by T.D. ATF-317 (56 FR 63398) in order to allow time to resolve the disparity in test results.

On January 28, 1992, the President asked U.S. government agencies to set aside a 90-day period to evaluate existing regulations and programs and to identify and accelerate action on initiatives that would eliminate any unnecessary regulatory burden or otherwise promote economic growth.

Subsequently, the president's 90-day moratorium on new regulations has been extended until August 28, 1992. ATF is in the process of reexamining its system of regulatory controls over the labeling of distilled spirits to ensure that existing regulations do not impose any unnecessary regulatory burdens. Consistent with this objective, ATF requires additional time to interpret and balance data relative to the citric acid requirement in T.D. ATF-306.

Notice and Public Procedure

Because this final rule merely postpones the compliance date with respect to the citric acid requirement in T.D. ATF-306, in order to complete evaluation of the test information submitted by the industry to ATF, and in view of the immediate need for guidance to the industry with respect to compliance with this provision in T.D. ATF-306, it is found to be impractical and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it does not result in:

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

(b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of Heublein's petition, the notices, the Treasury decisions, and all comments are available for public inspection during normal business hours at: ATF Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer

Branch, Bureau of Alcohol, Tobacco and Firearms.

Therefore, pursuant to the authority set forth in 27 U.S.C. 205(e), ATF is further postponing the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF-306. The compliance date is September 3, 1993.

Signed August 10, 1992.

Stephen E. Higgins,
Director.

Approved: August 14, 1992.

Peter K. Nunez,
Assistant Secretary (Enforcement).

[FR Doc. 92-21387 Filed 9-2-92; 8:45 am]
BILLING CODE 4810-31-M

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27 CFR Part 53

[T.D. ATF-330]

Firearms and Ammunition Excise Taxes (No. 92-D-006)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, Final rule.

SUMMARY: This final rule amends regulations with respect to the method of payment and filing of tax returns for the payment of firearms and ammunition excise taxes. ATF is establishing a voluntary electronic payment system that will allow taxpayers, at their option, to make firearms and ammunition excise taxpayments by electronic fund transfer. This rule will also liberalize the current tax return filing requirement by eliminating quarterly tax returns when no liability is incurred.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Specialist, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 26 U.S.C. 4181, a tax is imposed on the sale by the manufacturer, importer or producer of pistols, revolvers, firearms (other than pistols and revolvers), shells, and cartridges. The tax is 10 percent of the sale price for pistols and revolvers, 11 percent of the sale price for firearms (other than pistols and revolvers) and 11 percent of the sale price for shells and cartridges. Regulations in 27 CFR part 53 require that taxpayers incurring a tax liability on the sale or use of firearms and ammunition file excise tax returns quarterly on ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return. In addition, depending on the volume of taxable sales made during the return period, taxpayers are required to make tax deposits on a monthly or semimonthly basis on ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit.

The existing regulations require that once taxpayers incur liability for tax, they must continue to file returns, whether or not liability was incurred for the return period, until the taxpayers have ceased operations. This final rule amends this requirement so that taxpayers will be required to file a return for a particular calendar quarter only if they incur tax liability during that return period. In addition, taxpayers who incur no tax liability during the calendar year will only be required to file an annual return. Consequently, the paperwork burden for occasional taxpayers will be greatly reduced.

Additionally, ATF has received requests from taxpayers to allow for the payment of firearms and ammunition excise taxes by electronic fund transfer (EFT). ATF recognizes that EFT is an accurate, efficient and convenient method for transferring money. This final rule establishes regulations which will provide taxpayers with the opportunity to remit payments to ATF by EFT. This amendment will allow taxpayers, upon notification to the regional director (compliance), to utilize this method to remit firearms and ammunition excise taxes due with semimonthly and monthly tax deposits and quarterly tax returns. The election to remit firearms and ammunition excise taxes by EFT must be made at the beginning of the calendar quarter preceding the calendar quarter in which the taxpayer will begin remitting payments by EFT. Once a taxpayer elects to remit firearms and ammunition excise taxes by EFT, the taxpayer must continue to make payments in this manner for at least four consecutive calendar quarters or until the taxpayer files a final return.

ATF considered allowing taxpayers to make elections concerning the method of payment on a more frequent basis. However, it was determined that this would cause administrative difficulties in processing the payments. Although payment by EFT will be voluntary, taxpayers are subject to the same filing and deposit requirements as prescribed for all other firearms and ammunition excise taxpayers. ATF will provide guidance to taxpayers who elect to remit taxes by EFT by issuing a procedure on how to prepare deposits, returns and EFT remittances.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this rule is not a "major rule" since it will not result in:

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

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

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

Administrative Procedures Act

Because this final rule merely establishes an optional method of taxpayment and liberalizes the existing requirements for filing tax returns, it is hereby found to be unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new reporting or recordkeeping requirements.

Drafting Information

The principal author of this document is Tamara Light, ATF Specialist, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, 27 CFR part 53, entitled "Manufacturers Excise Taxes—Firearms and Ammunition" is amended as follows:

PART 53—[AMENDED]

1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416.

2. Section 53.11 is amended by adding in alphabetical order the definition of the terms *"Calendar yeor, Electronic fund transfer (EFT), Treasury Account, ond Financial institution"*, to read as follows:

§ 53.11 Meaning of terms.

* * * * *

Calendar year. The period which begins January 1 and ends on the following December 31.

* * * * *

Electronic fund tronsfer (EFT). Any transfer of funds effected by a taxpayer's financial institution, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank.

* * * * *

Financiol institution. A bank or other financial institution, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications Systems (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member financial institutions to effect a transfer of funds for their customers (or other financial institutions) to the Treasury Account at the Federal Reserve Bank.

* * * * *

Treasury Account. The Department of Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

3. Paragraph (a) of § 53.151 is revised to read as follows:

§ 53.151 Returns.

(a) *In generol.* (1) Liability for tax imposed under chapter 32 of the Code shall be reported on ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return. Except as provided in paragraphs (a)(2) and (b) of this section, a return on Form 5300.26 shall be filed for a period of one calendar quarter.

(2) *Return periods after September 30, 1992.* For return periods after September 30, 1992, every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability in a given calendar quarter shall not be required to file a return on ATF Form 5300.26 for that calendar quarter. Every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability for the entire calendar year and who has not filed a final return in accordance with § 53.152 shall file an annual return on ATF Form 5300.26.

(3) *Return periods prior to October 1, 1992.* For return periods prior to October 1, 1992, every person required to make a return on ATF Form 5300.26 shall make a return for each calendar quarter (whether or not liability was incurred for any tax reportable on the return for the return period) until the person has filed a final return in accordance with § 53.152.

(4) *Forms, etc.* Each return required under the regulations in this part, together with any prescribed copies, records, or supporting data, shall be completed in accordance with the applicable forms, instructions, and regulations.

* * * * *

4. Paragraph (a) of § 53.152 is revised to read as follows:

§ 53.152 Final returns.

(a) *In general.* Any person who is required to make a return on ATF Form 5300.26 pursuant to § 53.151 and who in any return period ceases operations in respect of which the person is required to make a return on the form, shall make the return for that return period as a final return. A return made as a final return shall be marked "Final Return" by the person filing the return. A taxpayer who has only temporarily ceased to incur liability for tax required to be reported on ATF Form 5300.26 because of temporary or seasonal suspension of business or for other reasons, shall not make a final return until such operations are permanently ceased.

* * * * *

5. Section 53.153 is amended by revising paragraph (a), by revising the paragraph heading of paragraph (b), and by adding paragraph (b)(3) to read as follows:

§ 53.153 Time for filing returns.

(a) *Quorterly returns.* Each return required to be made under § 53.151(a) for a return period of one calendar quarter shall be filed on or before the last day of the first calendar month following the close of the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following the close of the period if timely deposits under section 6302(c) of the Code and § 53.157 have been made in full payment of the taxes due for the period. For purposes of the preceding sentence, a deposit which is not required by regulations in respect of the return period may be made on or before the last day of the first calendar month following the close of the period.

(b) *Monthly, semimonthly ond annuol returns.*

(1) * * *

(2) * * *

(3) *Annuol returns.* Each return filed under the provisions of § 53.151(a) for a return period of one calendar year shall be filed not later than the 31st day following the close of the calendar year.

* * * * *

6. Paragraph (b) of § 53.154 is revised to read as follows:

§ 53.154 Manner of filing returns.

* * * * *

(b) When the taxpayer sends the return on ATF Form 5300.26 by U.S. Mail, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the return. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the taxpayer. When the taxpayer sends the return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the return and, if accompanied, of the remittance.

7. Section 53.157 is amended by revising the section heading and by revising paragraphs (a), (b)(1), (c), (e)(1), and (e)(4) to read as follows:

§ 53.157 Timeliness of deposits.

(a) *Monthly deposits.* Except as provided in paragraph (b) of this section, if for any calendar month (other than the last month of a calendar quarter) any person required to file a quarterly excise tax return on ATF Form 5300.26 has a total liability under this part of more than $100 for all excise taxes reportable on that form, the amount of liability for taxes shall be deposited by the person in accordance with the instructions on ATF Form 5300.27 on or before the last day of the month following the calendar month.

(b) *Semimonthly deposits.* (1) If any person required to file an excise tax return on ATF Form 5300.26 for any

calendar quarter has a total liability under this part of more than $2,000 for all excise taxes reportable on that form for any calendar month in the preceding calendar quarter, the amount of that liability for taxes under this part for any semimonthly period (as defined in paragraph (d)(1) of this section) in the succeeding calendar quarter shall be deposited by the person in accordance with the instructions on ATF Form 5300.27 on or before the depositary date (as defined in paragraph (d)(2) of this section) applicable to the semimonthly period.

* * * * *

(c) *Deposit of certain excess undeposited amounts.* Notwithstanding paragraphs (a) and (b) of this section, if any person required to file an excise tax return on ATF Form 5300.26 for any calendar quarter beginning after December 31, 1990, has a total liability under this part for all excise taxes reportable on the form for the calendar quarter which exceeds by more than $100 the total amount of taxes deposited by the person pursuant to paragraph (a) or (b) of this section for the calendar quarter, the person shall, on or before the last day of the calendar month following the calendar quarter for which the return is required to be filed, deposit in accordance with the instructions on ATF Form 5300.27 the full amount by which the person's liability for all excise taxes reportable on the return for that calendar quarter exceeds the amount of excise taxes previously deposited by the person for that calendar quarter.

* * * * *

(e) *Depositary forms and procedures*—(1) *In general.* Each remittance of amounts required to be deposited for periods beginning after December 31, 1990 shall be accompanied by an ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form, or ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, which shall be prepared in accordance with the applicable instructions. Taxpayers electing to remit deposits by EFT pursuant to § 53.158 shall prepare and submit ATF Form 5300.26 or ATF Form 5300.27 in accordance with the instructions on the form. The timeliness of the deposit will be determined by the date it is received (or is deemed received under section 7502(e) and 26 CFR 301.7502–1) by the lockbox financial institution, or the ATF officer designated on ATF Form 5300.27 or ATF Form 5300.26 accompanying the deposit, or when made by electronic fund transfer, the Treasury Account. Amounts deposited pursuant to this paragraph shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(2) * * *

(3) * * *

(4) *Procurement of prescribed forms.* Copies of the Federal Firearms and Ammunition Excise Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished. A person not supplied with the form is required to apply for it in ample time to make the required deposits within the time prescribed, supplying with the application the person's name, employer identification number, address, and the taxable period to which the deposits will relate. Copies of the Federal Firearms and Ammunition Excise Tax Deposit form may be obtained by applying for them with the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

* * * * *

8. Section 53.158 is added to read as follows:

§ 53.158 Payment of tax by electronic fund transfer.

(a) *In general.* For return periods after September 30, 1992, any taxpayer liable for firearms and ammunition excise taxes incurred under this part may elect to remit payments and deposits of the taxes (taxpayments) by electronic fund transfer (EFT). A taxpayer who elects to make remittance by EFT must use that method of remitting excise taxes on firearms and ammunition for a minimum of four consecutive calendar quarters. A taxpayer who makes remittance by EFT for a calendar quarter may not use any other method of remitting and ammunition excise taxes for that quarter.

(b) *Requirements.* (1) On or before the 10th day of the calendar quarter preceding the calendar quarter in which the taxpayer will begin remitting taxes by EFT, each taxpayer who elects to make remittances by EFT of firearms and ammunition excise taxes incurred under this part shall give written notice to the regional director (compliance) of the ATF region in which taxes are paid, indicating that remittances will be paid by EFT. Taxpayers who gave written notification in a previous calendar quarter electing to make remittances of tax by EFT are not required to give additional written notifications to continue remitting tax by EFT for succeeding calendar quarters.

(2) For each deposit made or return filed in accordance with this subpart, the taxpayer shall direct the taxpayer's financial institution to make an EFT in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request will be made to the financial institution early enough for the transfer of funds to be made to the Treasury Account by no later than the close of business on the last day for making the deposit or filing the return as prescribed in §§ 53.157 and 53.153. The request will take into account any time limit established by the financial institution.

(3) Taxpayers who elect to discontinue making remittances by EFT of firearms and ammunition excise taxes may make such election at any time following four consecutive calendar quarters in which tax is remitted by EFT. Taxpayers electing to discontinue making remittances by EFT shall remit the tax with the next deposit or return as prescribed in §§ 53.157 and 53.151 for remittances not made by EFT and notify the regional director (compliance) by attaching a written notification to the tax deposit form or return stating that remittance of firearms and ammunition excise taxes will no longer be made by EFT.

(c) *Remittance.* (1) Taxpayers who elect to make firearms and ammunition excise taxpayments by EFT shall file the deposit form and/or return with ATF in accordance with the applicable instructions on the forms.

(2) Remittances will be considered as made when the taxpayment by EFT is received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the financial institution to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, the transfer data record furnished to the taxpayer through normal banking procedures will serve as the record of payment and will be retained as part of the required records.

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to penalties imposed by 26 U.S.C. 6651 and 6656, as applicable, for failure to make a payment or deposit of tax by EFT on or before the close of business on the prescribed last day for making such payment or deposit.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled Payment of Tax by Electronic Fund Transfer. This

publication outlines the procedure a taxpayer follows when preparing deposits, returns and EFT remittances in accordance with this subpart.

Signed: June 17, 1992.

Stephen E. Higgins,

Director.

Approved: July 24, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21055 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 70

[T.D. ATF-331; No. 92-D-003]

Change in Certain Procedural and Administrative Practices Regarding Firearms and Ammunition Excise Taxes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: ATF is amending certain of its procedural regulations to adopt the IRS procedures with respect to claims for refund, offers in compromise, and enforced collection in relation to firearms and ammunition excise taxes. These amendments are the result of the transfer of authority to administer the excise taxes on firearms and ammunition from the Commissioner, IRS, to the Director, ATF.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Specialist, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, (202-927-8210).

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1990, the Secretary of the Treasury signed Treasury Order No. 120-03 (55 FR 47422) which transferred the authority to administer the excise taxes on firearms and ammunition from the Commissioner, IRS, to the Director, ATF. The order gave the Director the authority to issue regulations for the purpose of carrying out the functions, powers, and duties delegated under the Treasury Order. The order also provided that all rules and regulations of the IRS prescribed for the enforcement of 26 U.S.C. 4181 would continue in effect as rules and regulations of ATF until superseded or revised.

Effective January 1, 1991, T.D. ATF-308 (56 FR 302, January 3, 1991) adopted the existing IRS regulations in 26 CFR part 48 and established ATF regulations in 27 CFR part 53 relating to firearms and ammunition excise taxes. The procedural IRS regulations in 26 CFR part 301 with respect to claims for refund, offers in compromise, and enforced collection for firearms and ammunition excise taxes continued to be utilized by ATF.

This final rule merely amends ATF procedural regulations in 27 CFR part 70 to include those provisions of the IRS regulations relating to claims for refund, offers in compromise, and enforced collection with respect to firearms and ammunition excise taxes.

Executive Order 12291

Because this rule relates to agency organization, management and procedure, the provisions of Executive Order 12291 do not apply.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

Administrative Procedure Act

Because this final rule merely adopts existing IRS procedural regulations relating to claims for refund, offers in compromise, and enforced collection of firearms and ammunition excise taxes, it is hereby found to be unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 533(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

Paperwork Reduction Act

This final rule does not affect any recordkeeping or reporting requirements.

Drafting Information

The principal author of this document is Tamara Light, ATF Specialist, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance.

PART 70—PROCEDURE AND ADMINISTRATION

Part 70—Procedure and Administration, is amended as follows:

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

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331-6343, 6401-6404, 6407, 6416, 6423, 6501-6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601-7606, 7608-7610, 7622, 7623, 7653, 7805.

2. Section 70.1(d) is revised to read as follows:

§ 70.1 General.

* * * * *

(d) Distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, firearms, ammunition, and explosives.

3. Section 70.11 is amended by revising the definition for "Provisions of 26 U.S.C. enforced and administered by the Bureau" to read as follows:

§ 70.11 Meaning of terms.

* * * * *

Provisions of 26 U.S.C. enforced and administered by the Bureau. Sections 4181 and 4182 of the Internal Revenue Code of 1986 (the Code), as amended; subchapters F and G of chapter 32 of the Code, insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the Code; subtitle E of the Code; and subtitle F of the Code as it relates to any of the foregoing.

* * * * *

4. Section 70.21 is revised to read as follows:

§ 70.21 Canvass of regions for taxable persons and objects.

Each regional director (compliance) shall, to the extent deemed practicable, cause officers or employees under the regional director's supervision and control to proceed, from time to time, through the region and inquire after and concerning all persons therein who may be liable to pay any tax, imposed under provisions of 26 U.S.C. enforced and administered by the Bureau, and all persons owning or having the care and

management of any objects with respect to which such tax is imposed.

5. Section 70.22 is amended by revising paragraph (a) to read as follows:

§ 70.22 Examination of books and witnesses.

(a) *In general.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any such tax, or collecting any such liability, any authorized officer or employee of the Bureau may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

* * * * *

6. Section 70.32 is revised to read as follows:

§ 70.32 Examination of records and objects.

Any officer of the Bureau may enter, during business hours, the premises of any regulated establishment for the purpose of inspecting and examining any records, articles, or other objects required to be kept by such establishment under 18 U.S.C. chapter 40 or 44, or provisions of 26 U.S.C. enforced and administered by the Bureau, or regulations issued pursuant thereto.

(68A Stat. 715, as amended, 903, 72 Stat. 1348, 1361, 1373, 1381, 1390, 1391, 1395, 82 Stat. 231, as amended, 84 Stat. 955; (26 U.S.C. 5741, 7606, 5146, 5207, 5275, 5367, 5415, 5504, 5555, 18 U.S.C. 923, 843))

7. Section 70.61 is amended by revising paragraph (a)(3) to read as follows:

§ 70.61 Payment by check or money order.

(a) * * *

(3) *Payment of tax on distilled spirits, wine, beer, tobacco products, pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges; proprietor in default.* Where a check or money order tendered in payment for taxes on distilled spirits, wine or beer products (imposed under Chapter 51 of the Internal Revenue Code), or tobacco products (imposed under chapter 52 of the Internal Revenue Code), or pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges (imposed under chapter 32 of the Internal Revenue Code) is not paid on presentment, or where a taxpayer is otherwise in default in payment of such taxes, any remittance for such taxes made during the period of such default, and until the regional director (compliance) finds that the revenue will not be jeopardized by the acceptance of personal checks, shall be in cash, or shall be in the form of a certified, cashier's, or treasurer's check, drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State or possession of the United States, or a money order as described in paragraph (a)(1) of this section.

* * * * *

8. Section 70.131 is revised to read as follows:

§ 70.131 Conditions to allowance.

(a) For regulations under section 6416 of the Internal Revenue Code, see part 53 of this chapter, relating to manufacturers excise taxes on firearms and ammunition.

(b) For regulations under section 6423 of the Internal Revenue Code, see part 170 of this chapter, relating to distilled spirits, wine, and beer; and part 296 of this chapter, relating to tobacco products, and cigarette papers and tubes.

§ 70.131 [Amended]

9. The authority citation immediately following § 70.131 is revised to read as follows:

* * * * *

(26 U.S.C. 6416 and 6423)

10. Section 70.223 is amended by revising paragraph (b) to read as follows:

§ 70.223 Exceptions to general period of limitations on assessment and collection.

(a) * * *

(b) *Willful attempt to evade tax.* In the case of a willful attempt in any manner to defeat or evade any tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

* * * * *

11. Part 70 is amended by revising the undesignated center heading immediately following section 70.438 to read as follows:

Provisions Relating to Firearms, Shells and Cartridges, and Explosives

12. Section 70.441 is amended by adding a new paragraph (f) to read as follows:

§ 70.441 Applicable laws.

* * * * *

(f) Chapter 32 of the Internal Revenue Code (26 U.S.C. 4181), imposes a tax upon the sale by the manufacturer, producer, or importer of pistols, revolvers, firearms (other than pistols and revolvers), and shells and cartridges.

13. Section 70.443 is revised to read as follows:

§ 70.443 Firearms and ammunition.

(a) *Commerce in firearms and ammunition.* (1) 27 CFR part 178 contains the regulations relative to:

(i) The licensing of importers and manufacturers of firearms and ammunition, collectors of firearms, and dealers in firearms,

(ii) The identification of firearms,

(iii) The acquisition and disposition of firearms and ammunition,

(iv) The records required to be kept by licensees, and

(v) The forfeiture and disposition of seized firearms and ammunition, under the provisions of title I of the Gun Control Act of 1968, as amended, and also

(vi) The restrictions regarding the receipt, possession, or transportation of firearms by certain persons.

(b) *Firearms and ammunition excise taxes.* (2) 27 CFR part 53 contains the regulations relative to:

(i) Payment of excise tax on the sale of pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges,

(ii) Establishing constructive sales price,

(iii) Registration for tax free sales,

(iv) Keeping of records and rendering of returns, and

(v) The exportation or use in further manufacture of tax-paid articles.

14. Section 70.448 is revised to read as follows:

§ 70.448 Claims.

(a) The procedures applicable to the filing of claims under chapter 53 of the Internal Revenue Code are set forth below:

(1) Claims for refund of the making and transfer taxes, and of occupational taxes, whether paid pursuant to assessment or voluntarily paid, and claims for redemption of "National Firearms Act" stamps, are prepared and filed in accordance with the procedures set forth in 27 CFR part 179.

(2) Claims for abatement of making and transfer taxes, and claims for abatement of occupational taxes and penalties erroneously assessed, are

prepared and filed in accordance with the procedures set forth in § 70.413(b).

(3) Claims may be reopened or amended in accordance with the provisions of § 70.414 (k) and (l).

(b) The procedures applicable to the filing of claims relating to the tax imposed by section 4181 of the Internal Revenue Code are set forth below:

(1) Claims for credit or refund of manufacturers taxes, whether paid pursuant to assessment of voluntarily paid, are prepared and filed in accordance with the procedures set forth in § 70.123 and 27 CFR 53.171 through 53.186. For regulations under section 6416 of the Internal Revenue Code, relating to conditions to allowance and other procedural requirements, see 27 CFR 53.172 through 53.186.

(2) Claims for abatement of manufacturers taxes are to be prepared and filed in accordance with § 70.125.

(3) Claims may be reopened or amended in accordance with the provisions of § 70.414 (k) and (l).

15. Section 70.449 is revised to read as follows:

§ 70.449 Offers in compromise.

The procedures in the case of offers in compromise of liabilities under 26 U.S.C. 4181 and chapter 53 are set forth in §§ 70.482 and 70.484.

16. Section 70.471 is amended by revising paragraph (a)(3) to read as follows:

§ 70.471 Rulings.

(a) * * *

(3) The taxes relating to machine guns, destructive devices, and certain other firearms imposed by chapter 53 of the Internal Revenue Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; the licensing of importers and manufacturers of, and dealers in, firearms and ammunition, and collectors of firearms and ammunition curios and relics under chapter 44 of title 18 of the United States Code; the licensing of manufacturers, importers, limited manufacturer of, and dealers in, explosives and issuance of permits for users of explosives under chapter 40 of title 18 of the United States Code; and registration of importers of, and permits to import, arms, ammunition, and implements of war, under section 38 of the Arms Export Control Act of 1976; and the taxes relating to pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges imposed by chapter 32 of the Internal Revenue Code, may request a ruling thereon by addressing a letter to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, to the Chief, Tax Processing Center, or to the regional director (compliance) of the ATF region in which the inquirer's business is located. Since a ruling can issue only from the Bureau Headquarters, any such request made to the Chief, Tax Processing Center or to the regional director (compliance) will be referred to the Director for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations.

* * * * *

17. Section 70.482 is amended by revising paragraph (d)(1) to read as follows:

§ 70.482 Offers in compromise of liabilities (other than forfeiture) under 26 U.S.C..

* * * * *

(d) *Procedure with respect to offers in compromise*—(1) *Submission of offers.* (i) Offers in compromise under this section shall be submitted on ATF Form 5640.1, along with any additional information required by the official authorized to accept or reject the offer. If the offer in compromise is based on inability to pay, the proponent must submit any financial statement required by such official.

(ii) The Associate Director (Compliance Operations) has the authority to accept or reject offers in compromise of civil liability (which do not exceed $1,000,000) and criminal liability arising under 26 U.S.C. 4181 and chapters 51, 52, and 53 in cases not subject to compromise by regional directors (compliance).

(iii) Each regional director (compliance) has the authority to accept or reject offers in compromise of:

(A) Tax liabilities arising from:

(*1*) The illegal production of untaxpaid distilled spirits, wines, or beer,

(*2*) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, or firearms,

(*3*) The failure to pay firearms making or transfer taxes; and

(B) Criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles.

(iv) The Director accepts or rejects all other offers in compromise except those in compromise of liabilities listed in §§ 70.483 and 70.484 of this part.

(v) In civil cases involving liability of $500 or over and in criminal cases the functions of the General Counsel under 26 U.S.C. 7122(b) are performed by the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms.

(vi) The offer should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. When final action has been taken, the regional director (compliance), when applicable, and the proponent are notified of the acceptance or rejection of the offer.

* * * * *

Signed: June 25, 1992.

Daniel R. Black,

Acting Director.

Approved: August 10, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-21056 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-31-M

Fiscal Service

31 CFR Part 204

RIN Number—1510-AA28

Responsibilities and Liabilities Under Letter of Credit—Treasury Financial Communications System (LOC-TFCS)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule; removal.

SUMMARY: The Financial Management Service is removing sections 204.1; 204.2; 204.3; 204.4; 204.5; 204.6. This action removes the Letter of Credit—Treasury Financial Communications System (LOC-TFCS) regulations from this Part. Part 204 is reserved.

Use of the funds transfer system described in this Part, known as LOC-TFCS, was discontinued as of December 1991, and is no longer available for use by Federal Program agencies, commercial banks, or the Federal Reserve System.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Maloney, Program Analyst 202-874-6901.

SUPPLEMENTARY INFORMATION: LOC-TFCS was an electronic funds transfer system which relied on the Federal Reserve Communications System (FRCS). This system allowed Federal agencies to delivery funds to recipient organization financial institutions under a Federal letter-of-credit arrangement. The Board of Governors of the Federal Reserve System announced in March 1988, that current communications protocols were being replaced with new protocols and existing protocols would

not be supported after January 1, 1990. Due to an impending change in Treasury computer systems, a decision was made not to incur the high cost of conversion necessary for the existing system to accept the new Federal Reserve communications protocol, and to phase out the LOC–TFCS system completely. Federal agencies were notified of this decision in January 1990. Interim arrangements between Treasury and the Federal Reserve allowed the system to continue in limited operation until December 1991.

It has been determined that this is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. This determination was based on the reasoned conclusion that the removal of this regulation will not have an annual effect on the economy of $100 million or more; that there will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions as a result of the regulation removal; and that there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

It is hereby certified that the removal of this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Because alternative comparable means of funds transfer are available, no significant economic impact on small entities is envisioned.

Pursuant to 5 U.S.C. 553(b)(B), the Financial Management Service finds that notice and comment are unnecessary. The LOC–TFCS program was operated at the discretion of Treasury, and its use has already been discontinued. Public notice and comment, therefore, would serve no useful purpose.

Authority: 31 U.S.C. 321; 31 U.S.C. 3325; 31 U.S.C. 3332; 31 U.S.C. 6503.

List of Subjects in 31 CFR Part 204

Banks, banking, Electronic funds transfers.

PART 204—[REMOVED]

For the reasons set out in the preamble, the Financial Management Service is removing and reserving Part 204.

Russell D. Morris,

Commissioner.

[FR Doc. 92–21170 Filed 9–2–92; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP TAMPA Regulation 92–93]

Safety Zone Regulations; Headwaters of Crystal River in Kings Bay, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the headwaters of the Crystal River in Kings Bay, Florida. The zone is needed to protect boaters and their vessels from safety hazards associated with anticipated heavy boating traffic in this area during the Labor Day weekend. Vessels in the area are to proceed at "idle speed" during the holiday weekend.

EFFECTIVE DATES: This regulation becomes effective on Friday, September 4, 1992 at 6 p.m. Eastern Daylight Time (EDT). It terminates on Monday, September 7, 1992 at Midnight.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade L.J. Pearson, Coast Guard Marine Safety Office, Tampa, FL at (813) 228–2189.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to respond to potential hazards to the vessels involved.

Drafting Information

The drafters of this regulation are LTJG L.J. Pearson, project officer for the Captain of the Port, and LT J.M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

This regulation is required, because the Labor Day holiday weekend traditionally results in an increased amount of boating traffic in the headwaters of the Crystal River in Kings Bay, Florida. In order to decrease the hazard to boaters and their vessels, all boats transiting the zone must proceed at "idle speed." The entrance areas to the zone shall be marked with buoys indicating, "No wake—Idle Speed."

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

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

List of Subjects in 33 CFR Part 165

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

Regulations

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended 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; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary section 165.T0793 is added to read as follows:

§ 165.T0793 Safety Zone: Headwaters of Crystal River in Kings Bay, Florida

(a) *Location:* The following area is a safety zone: the waters of Kings Bay and the connecting tributaries south and west of the points of land at Crystal Shores on the east and Magnolia Shores on the west wherein the Crystal River meets Kings Bay. Specifically, the northern boundary of the safety zone is formed by a line drawn from position 28–53–63 N, 82–36–29 W, to position 28–53–67 N, 82–35–92 W. The southern boundary is formed by a line drawn from position 28–53–13 N, 82–35–97 W, to position 28–53–10 N, 82–35–71 W. The eastern boundary is formed by a line drawn from position 28–53–67 N, 82–35–92 W, to position 28–53–10 N, 82–35–71 W. Finally, the western boundary is formed by a line drawn from position 28–53–63 N, 82–36–29 W, to position 28–53–13 N, 82–35–97 W.

(b) *Effective dates:* This regulation becomes effective on Friday, September 4, 1992, at 6 p.m. EDT. It terminates on Monday, September 7, 1992 at Midnight.

(c) *Regulations:* In accordance with the general regulations of § 165.23 of the this part, all vessels transiting in this zone must proceed at "idle speed."

Dated: August 18, 1992.

W.H. Fels,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Tampa, Florida.

[FR Doc. 92-21234 Filed 9-2-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO13-1-5491; FRL-4157-7]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Greeley Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves the revision to the Colorado Carbon Monoxide (CO) State Implementation Plan (SIP) for Greeley, Colorado. The Governor of Colorado submitted the SIP revision in a letter dated November 25, 1987, in response to an EPA finding that the Greeley CO SIP was inadequate as published in the **Federal Register** (52 FR 1908) on January 16, 1987. Additional information was received from the State in a letter dated February 25, 1988. EPA proposed to approve portions of this SIP revision on March 2, 1990 (55 FR 7503). No comments were received.

The major control strategies contained in the SIP revision are a motor vehicle inspection and maintenance program (AIR Program), the State oxygenated fuels program, and controls on woodburning stoves. However, no CO reduction credit is assumed for the woodburning stove controls.

At the time of this submittal, EPA had no legal basis to take action on an attainment demonstration as it showed attainment after 1987. Now, pursuant to Sections 186 and 187 of the 1990 Clean Air Act Amendments, the area is not required to submit an attainment demonstration. Therefore, EPA is fully approving the SIP and presumes that the existing SIP requirements, and any existing and future Federal requirements, will be sufficient to provide for attainment in this area.

EFFECTIVE DATE: This rule will become effective on October 5, 1992.

ADDRESSES: Copies of the State submittal are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, CO 80202-2405

Colorado Department of Health, Air Pollution Control Division, 3773 Cherry Creek Drive, North, Ptarmigan Place, suite 300, Denver, CO 80209

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jeff Houk, Air Programs Branch, Environmental Protection Agency, Region VIII, Denver Place, suite 500, 999 18th Street, Denver, CO 80202-2405, (303) 293-1766.

SUPPLEMENTARY INFORMATION:

Background

The Greeley element of the Colorado CO SIP was originally approved on December 12, 1983 (48 FR 55284). The plan called for CO reduction measures to be implemented in the Greeley nonattainment area. This area, defined as the Greeley urbanized area, includes the cities of Greeley, Garden City, Rosedale, Evans, and La Salle. The plan was based upon emission reductions of 35% to be gained entirely from the Federal Motor Vehicle Control Program (FMVCP). A series of ongoing, local transportation control measures were included in the plan which would result in an additional 1% reduction. An inspection and maintenance (I/M) program was not required because the area had less than 200,000 total population and was expected to be in attainment by the end of 1987 without an I/M program. The SIP committed to attainment by December 31, 1987.

Since the approval of this SIP, Greeley has shown continuing violation of the CO NAAQS. Data indicate the following:

Year	2nd maximum 8 hour average concentration
1983	11.0 ppm.
1984	16.2 ppm (SIP Design Value).
1985	9.5 ppm.
1986	11.6 ppm.
1987	10.5 ppm.

In a report dated May 30, 1986, the Air Pollution Control Division (APCD) of the Colorado Department of Health (CDH) completed an analysis of Greeley's progress in attaining the CO NAAQS. In evaluating the available data for the 1986 report, the highest second maximum CO concentration over a three year period occurred in 1984. This CO concentration indicated that a 41% reduction in CO emissions was required to attain the standard (9 ppm). Calculations using mobile emission factors (MOBILE 3) indicated that the FMVCP would only result in a 35% CO reduction between 1983 and the end of 1987. Even with the additional transportation measures, the Greeley CO SIP would not have been capable of meeting the CO standard by December 31, 1987.

SIP Call

In a letter dated October 6, 1986, EPA advised the State that the Greeley area had shown an insufficient decline in CO levels to allow the area to attain the CO standard by 1987. An information notice of this SIP Call was published in the **Federal Register** (52 FR 1908) on January 16, 1987.

In a letter dated January 7, 1987, the Governor submitted a schedule for revising the Greeley element of the Colorado CO SIP. The schedule committed to an October 1987 deadline for submittal of the required SIP revision. EPA responded on January 27, 1987, approving the proposed schedule.

SIP Revision

In a letter dated November 25, 1987, the Governor submitted a revision to the Colorado SIP containing the CO attainment strategies for the Greeley nonattainment area. After initial review, the EPA found the SIP revision to be deficient in several areas. Of primary importance was the exclusion from the submittal of the relevant statute and regulation regarding the addition of Greeley into the State's AIR Program. A letter from EPA to CDH, dated February 17, 1988, informed the State of the SIP revision's deficiencies and set a schedule for the State to submit additional, necessary information to EPA. Additional information which addressed the deficiencies was submitted by CDH in a letter dated February 25, 1988. Concerning this amendment, the State determined that the revised submittal did not contain substantive changes and, therefore, did not require an additional public comment period.

The revised SIP, which was adopted and submitted to the AQCC by the Larimer-Weld Regional Council of Governments (LWRCOG) and the Cities of Greeley and Evans, contained the following authority and regulations:

1. Inclusion of HB 1192 in the Greeley SIP. HB 1192 amended the Colorado AIR Program to include the Greeley nonattainment area. Initially, the AIR Program should capture 85% of the VMT in the Greeley urbanized area; this covers all of the vehicles registered in

the Greeley (nonattainment) urbanized area which are subject to the program. However, should the CO standard be exceeded more than twice in any year after January 1, 1988, the program will automatically be expanded to include additional portions of Weld County (as of January 1, 1992, this had not occurred). Under the expanded program, virtually 100% of the VMT in the Greeley urbanized area would be captured by the AIR Program.

2. Inclusion of the AIR Program area (as described in HB 1192) in Weld County into the program area for Colorado Regulation No. 13 which established an oxygenated fuels program beginning January 1, 1988, in all CO nonattainment areas.

3. Colorado Phase 2 woodstove standards as described in Colorado Regulation No. 4, effective July, 1988.

The SIP also included analyses of, and conclusions behind, the control strategies listed in the SIP, as well as the local agency resolution of the appropriate government bodies supporting the Greeley area element of the SIP.

Justification for the three control strategies is demonstrated by analyzing the primary sources of CO emissions in the Greeley urbanized area. CDH evaluated the contribution each source made to CO emissions; the emission inventory is summarized below:

1984 (base yr.)	Mobile sources	Wood-burning	Point sources	Total
Tons/year	38,259	2581	31	40,871
Percent contribution	93.6	6.3	.1	100.0

The only significant point source in 1984 was Natural Gas Associates in the City of Evans. This source emits approximately 23 tons/year of CO.

Due to the fact that over 99% of CO emissions come from the combination of mobile sources and woodburning, these two categories offer the greatest and most logical potential for reductions in CO emissions. Additionally, because the CO NAAQS is exceeded during the winter months, inclusion of the Greeley AIR Program area into the oxygenated fuels program (operated in winter months only) and implementation of woodstove Phase 2 standards (woodstoves are primarily used in cold winter months) are control measures which will have significant impact during the periods when the pollution problems are most severe.

Control Strategies

A. Mobile Sources

The primary reduction of CO emissions mandated by the SIP revision must logically come from mobile source emissions. The SIP calls for three control strategies to attain the necessary reduction. The control strategies are:

1. FMVCP,
2. the AIR Program, and
3. the Oxygenated Fuels Program.

Discussion of these strategies appears below.

1. FMVCP

The FMVCP requires vehicle manufacturers to certify that new vehicles meet federal vehicle emission standards. The program's effectiveness is based on the replacement of older vehicles in a fleet with newer vehicles that meet more stringent vehicle emission standards, resulting in an overall reduction of CO emissions. This strategy produces an 11% reduction in vehicle CO emissions (10% reduction in total CO emissions) in the Greeley area.

2. AIR Program

The AIR Program has operated in Colorado since January 1, 1982, and was significantly strengthened by revisions which took effect on July 1, 1987. The Colorado AIR Program was implemented in the Greeley urbanized area on January 1, 1988.

The AIR Program is a decentralized, computerized analyzer inspection program. All model years and all weight classes of gasoline, gasohol, and propane or dual-fueled vehicles are inspected (limited exemptions are available). An inspection for tampering of certain emission control system components is performed on 1975 and newer vehicles. All model year vehicles receive a tailpipe test for CO and hydrocarbon (HC) emissions and excessive exhaust dilution, and a visual inspection for visible smoke emissions. The program is registration enforced.

CDH maintains lead responsibility for AIR Program operations and oversight, and performs mechanic training, calibration gas naming, and data analysis functions. The Colorado Department of Revenue (DOR) is responsible for day-to-day operation of the program, including routine and covert audits of inspection stations, enforcement, and resolution of consumer complaints. Both CDH and DOR are involved in many other mobile source activities, directly and indirectly related to the AIR Program. Another section of DOR administers the State vehicle registration system. EPA approved the AIR Program regulations submitted with the Greeley SIP revision on March 12, 1990 (55 FR 9122). The State will be required to further revise the program when EPA issues new regulations for I/M programs later in 1992.

3. Oxygenated Fuels

The AQCC adopted Regulation No. 13 to mandate the sale of oxygenated fuels during the winter months along the Front Range. The oxygenated fuels program was in effect during the months of January and February, 1988, and was expanded in winter 1988–1989 to include the months of November and December. EPA approved Colorado's oxygenated fuels program in the Federal Register on March 12, 1990 (55 FR 9122). Under the Clean Air Act Amendments of 1990, the State must revise the program by November 15, 1992, to require an increased oxygen content in fuels sold in neighboring CO nonattainment areas. This requirement may lead to an increased oxygen content in fuels sold in the Greeley area as well.

B. Woodburning

The only non-vehicle significant source of CO emissions in the Greeley area is woodburning, which accounted for 6.3% of CO emissions during 1984. The control measure for woodburning represents an effort to ensure that new woodstoves sold in Colorado are cleaner burning/lower CO emitting than currently operated woodstoves. Colorado Regulation No. 4 (approved by EPA on April 10, 1986, at 51 FR 12321) regulates the sale of new woodstoves, prescribing that only woodstoves that emit particulate matter and CO below established maximum levels may be certified and sold in Colorado. Colorado's regulation regulates CO, where the federal regulation does not. EPA's New Source Performance Standards for woodstoves (promulgated at 53 FR 5860, February 26, 1988) also apply in Colorado.

The primary factor that drives increasing woodstove emissions is growth in the development of new housing units with woodstoves and fireplaces. Regulation No. 4 will ensure that new housing equipped with woodstoves will contain woodstoves which meet the State's requirements, thus significantly reducing the potential CO emissions generated by development growth in the Greeley area. However, the SIP does not claim credit for reducing existing woodburning CO emissions.

Effectiveness

The effectiveness of the above control strategies is demonstrated by observing the following CO data for Greeley:

Year	2nd maximum 8 hour average concentration
1988	9.2 ppm.
1989	7.3 ppm.
1990	7.1 ppm.
1991	7.8 ppm.

Greeley has shown a recent ability to meet the CO NAAQS.

Final Action

EPA is today approving the revision to the Colorado CO SIP for Greeley, Colorado, as submitted by the Governor in a letter dated November 25, 1987, with supplemental information received in a letter dated February 25, 1988. The SIP revision commits to attainment of the CO standard by 1992 (a commitment supported by existing air quality data) and maintenance of levels beneath the standard through at least 1995.

In a May 26, 1988, letter to the Governor, EPA issued a SIP Call to Colorado for deficiencies in its CO SIP. The May 1988 SIP Call referenced the October 6, 1986, call for a revised Greeley SIP, and stated that the State must continue to evaluate the area's nonattainment status. EPA finds the SIP revision to be consistent with the May 1988 SIP Call and subsequent Clean Air Act requirements. Pursuant to the Clean Air Act Amendments of 1990, this area is not required to submit an attainment demonstration. Therefore, EPA is fully approving the Greeley SIP and presumes that the existing SIP requirements, and any existing and future Federal requirements, will be sufficient to provide for attainment in this area.

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

Today's action makes final the action proposed in the **Federal Register** on March 2, 1990 (55 FR 7503). In addition, it serves to fully approve the Greeley element of the Colorado CO SIP. As noted elsewhere in this notice, EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established in 54 FR 2214, January 19, 1989. On January 6, 1989, the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Tables 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provision of the 1990 Amendments to the Clean Air Act enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Dated: July 16, 1992.

James Scherer,

Acting Regional Administrotor.

40 CFR part 52, subpart G, is amended as follows:

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

Authority: 42 U.S.C. 7401–7671g.

2. Section 52.320 is amended by adding paragraph (c)(57) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(57) Revision to the State Implementation Plan for Carbon Monoxide: Greeley Element.

(i) Incorporation by reference.

(A) Letter and submittal dated November 25, 1987, from the Governor of Colorado to the EPA Region VIII Administrator, to revise the SIP to include the Greeley Element. The revision was adopted by the State on September 17, 1987.

[FR Doc. 92–21181 Filed 9–2–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[IL1–1–5044; FRL–4196–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving revisions to the Illinois Sulfur Dioxide (SO_2) State Implementation Plan (SIP). Approval of these rules reinstates SO_2 emission limits for existing solid fuel fired sources in the Chicago and East St. Louis major metropolitan areas.

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

DATES: This action will be effective November 2, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Mary Onischak at (312) 353–5954, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Illinois SO_2 SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Regulation Development Branch, Regulation Development Section (AR–18J) U.S

Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION:

I. Background/Summary of State Submittal

On March 13, 1985, the Illinois Environmental Protection Agency (IEPA) submitted amendments of 35 Illinois Administrative Code (35 IAC) 214 (sulfur limitations) to the United States Environmental Protection Agency (USEPA) as a revision to the Illinois Sulfur Dioxide (SO_2) State Implementation Plan (SIP). This SIP revision, which consists of 35 IAC sections 214.141 (in part), 214.201, and 214.202, governs SO_2 emissions from existing solid fuel fired combustion sources in the Chicago and East St. Louis major metropolitan areas. While these rules had been approved by USEPA on May 31, 1972 (37 FR 10862), SO_2 emission limits for these sources have not existed at the Federal level since September 27, 1978, when the Illinois Appellate Court vacated most of the federally approved rules in the SO_2 SIP on State procedural grounds [*Ashland Chemical Company* v. *PCB*, 64 Ill App 3d 169, 381 N.E. 2d 56 (3d Dist. 1978) and *Illinois State Chamber* v. *PCB*, 67 Ill App 3d 839, 384 N.E. 2d 922 (1st Dist. 1978)]. On July 12, 1979, USEPA issued Illinois a notice of SIP deficiency pursuant to Section 110(a)(2)(H) of the Clean Air Act because Illinois' lack of enforceable regulations constituted a deficiency in their SIP.

The March 13, 1985, submittal, intended to satisfy USEPA's notice of SIP deficiency, includes an SO_2 emission limit of 1.8 pounds SO_2 per million British Thermal Units (lb/MMBTU) for existing solid fuel fired combustion sources in the Chicago and East St. Louis areas (Section 214.141), an emission limit of 6.8 lb/MMBTU for sources in Kankakee and McHenry Counties [Section 214.141(a)], procedures for sources to petition the Illinois Pollution Control Board for alternate emission limits up to 6.8 lb/MMBTU (Section 214.201), and a prohibition on the use of dispersion techniques to support such relaxations (Section 214.202).

It should be noted that section 214.141 [formerly Illinois Rule 204(f)] was federally approved for the Peoria major metropolitan area on August 8, 1984 (49 FR 31687). Rulemaking on section 214.141(b) [formerly Illinois Rule 204(f)(2)] occurred on August 7, 1984 (49 FR 31413)

II. Discussion of the Rules

The first paragraph of section 214.141 limits the SO_2 emissions from solid fuel combustion sources in the Chicago and East St. Louis metropolitan areas to 1.8 lb/MMBTU. This merely reestablishes identical SO_2 emission limits to those previously federally approved in Rule 204(c)(1)(A). Section 214.141(a) relaxes the SO_2 emission limit for sources in Kankakee and McHenry Counties from the previously applicable 1.8 lb/MMBTU to 6.8 lb/MMBTU. IEPA supported this relaxation by submitting results from screening model analyses, which indicate that the combined impact of the sources which could take advantage of this rule change does not have the potential to violate the SO_2 National Ambient Air Quality Standards (NAAQS). The remaining portions of this Section (subsections (b), (c), and (d)) apply only to the Peoria area, and are therefore not included in today's action.

Section 214.201 allows sources to petition the Illinois Pollution Control Board for an alternate SO_2 emission rate up to 6.8 lb/MMBTU, provided that the alternate emission rate will not cause or contribute to a violation of the SO_2 NAAQS. This section is approvable because it requires that alternative emission standards be incorporated as a permit condition in the subject sources' operating permit. In a recent Final Rule, USEPA approved Illinois' operating permit program for the purpose of issuing federally enforceable operating permits. Approval of the operating permit program was granted without prior proposal and is subject to withdrawal if notice is received within 30 days of publication that someone wishes to submit adverse comments on USEPA's approval. USEPA is approving section 214.201 today because USEPA has approved the State's operating permit program. If USEPA withdraws its approval of the State's operating permit program, it will also withdraw its approval of the SO_2 rules which are the subject of today's rulemaking. If today's rulemaking is withdrawn, it will be held in abeyance until completion of rulemaking on the State's operating permit program.

Section 214.202 prohibits sources from using dispersion enhancement techniques to support requests for alternate SO_2 emission limits under Section 214.201. This section is approvable because it defines dispersion enhancement techniques to be consistent with Section 123 of the Clean Air Act and regulations promulgated thereunder.

III. Subject Sources

It should be noted that during the State rulemaking process, Illinois granted site-specific exemptions from the SO_2 emission limits of section 214.141 to four facilities. Illinois has set forth a site-specific SO_2 emission limit for the Village of Winnetka Power Plant in 35 IAC Section 214.521. Site-specific SIP revisions which set emission limits for CPC International in Argo, Olin Corporation in Joliet, and Stauffer Chemical Company in Chicago Heights are currently under development. The rules contained in the March 13, 1985, submittal apply to all existing solid fuel fired combustion sources in the Chicago and East St. Louis areas except the Village of Winnetka Power Plant, CPC International, Olin Corporation, and Stauffer Chemical Company. USEPA will rulemake on the emission limitations for these sources at a later date.

IV. Modeling Issues

USEPA policy states that a dispersion modeling study predicting NAAQS attainment is not necessary when new rules equal or tighten approved emission limits. Section 214.141 merely reinstates SO_2 emission limits previously approved by USEPA, and effectively tightens the federal regulation of solid fuel fired combustion sources in Chicago and East St. Louis, which have not been subject to federally enforceable SO_2 emission limits since September 27, 1978. Therefore, USEPA does not require that a modeled attainment demonstration be provided by the State in support of the emission limits in section 214.141. Illinois had submitted air quality analyses for the Chicago and St. Louis metropolitan areas in the March 13, 1985, submittal. Although the models predicted some violations of the SO_2 NAAQS, the sources subject to the emission limits in the March 13, 1985, submittal clearly do not cause or substantially contribute to the predicted NAAQS violations. The culpable sources include process and liquid fuel combustion sources of SO_2, which are subject to emission limits currently under review by USEPA.

The emission limits contained in section 214.141(a) for Kankakee and McHenry Counties, however, are required to be supported by a modeled attainment demonstration. Illinois has provided USEPA with acceptable modeling data to support section 214.141(a).

V. Enforceability Issues

When this rule submittal was received, Illinois' compliance test

methods (Section 214.101), which are coupled with the emission limits in the March 13, 1985, submittal, were not consistent with federal policy requirements intended to protect the short-term SO_2 NAAQS. Illinois was informed of the deficiencies in the compliance methodology and was asked to correct them. On February 8, 1991, Illinois submitted SO_2 compliance measurement methodology revisions to USEPA. USEPA approved the revisions on June 26, 1992 (57 FR 28617). The revisions have corrected the deficiencies identified by USEPA in 1985.

On June 12, 1991, USEPA compiled a list of enforcement deficiencies in SO_2 plans nationwide. This list is known as the Yellow Book. Illinois received a copy of the Yellow Book on June 28, 1991. USEPA plans to correct these deficiencies through a nationwide effort coordinated by Headquarters. The March 13, 1985, submittal contains enforcement deficiencies which had not been identified in 1985. Those deficiencies have been addressed within the Yellow Book rule correction effort.

In view of the fact that the Yellow Book enforcement deficiencies had not been identified as grounds for disapproval when these rules were originally submitted, USEPA is approving the March 13, 1985, rules under the grandfathering policy, with the provision that the enforcement deficiencies identified will be addressed at a later date. This submittal meets the requirements for grandfathering described in the June 6, 1988, grandfathering guidance memorandum from the Director of the Office of Air Quality Planning and Standards to the Regional Air Division Directors.

VI. USEPA's Rulemaking Action

USEPA approves 35 IAC sections 214.141 (in part), 214.201, and 214.202 as revisions to the Illinois SO_2 SIP for the Chicago and St. Louis (Illinois) major metropolitan areas. Approval of these rules satisfies USEPA's notice of SIP deficiency of July 12, 1979. Approval of section 214.141 (in part) will restore federal enforceability to the previously approved 1.8 lb/MMBTU SO_2 emission limits. Modeling analyses which demonstrate that the 6.8 lb/MMBTU limit for two industrial boiler sources in Kankakee County will not jeopardize the SO_2 NAAQS support the approval of section 214.141(a). The approval of Section 214.201 is contingent on USEPA's granting approval of the State's operating permit program for the purpose of issuing federally enforceable operating permits. If USEPA withdraws its approval of the operating permit program it will also withdraw its approval of these SO_2 rules for Chicago and East St. Louis. Section 214.202 is consistent with USEPA's Good Engineering Practice stack height regulations and with 40 CFR 51.100(hh).

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on (60 days from the date of this notice). However, if we receive notice by (30 days from the date of this notice) that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. Further, as stated above, if USEPA withdraws its approval of Illinois' operating permit program it will also withdraw this approval.

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

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 31, 1992.

Ralph Bauer,

Regional Administrator.

For the reasons set out in the preamble, chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671(q).

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(87) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(87) On March 13, 1985, the State submitted revisions to its sulfur dioxide limitations.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Part 214 Sulfur Limitations, Subpart C: Existing Solid Fuel Combustion Emission Sources, Section 214.141 Sources Located in Metropolitan Areas, through paragraph (a) only, effective March 28, 1983; Subpart F: Alternative Standards for

Sources Inside Metropolitan Areas, Section 214.201 Alternative Standards for Sources in Metropolitan Areas and Section 214.202 Dispersion Enhancement Techniques, effective March 28, 1983.

[FR Doc. 92-21182 Filed 9-2-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[TN 89-5544; FRL-4196-7]

Approval of State Implementation Plan for Knox County: Proposed Amendments for Miscellaneous Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving amendments to the Knox County portion of Tennessee's State Implementation Plan (SIP). On January 4, 1991, the State of Tennessee through the Department of Environment and Conservation submitted amendments to miscellaneous regulations on behalf of the Knox County Department of Air Pollution Control. The amendments being approved include several miscellaneous revisions to the Knox County portion of the Tennessee SIP. A brief discussion about each amendment and the correction is contained in the "Supplementary Information" section of this action.

EFFECTIVE DATE: This action will be effective November 2, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37243-1531

Knox County Department of Air Pollution Control, City/County Building, Suite 459, 400 Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Andrew Fischer of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On January 4, 1991, the Knox County Department of Air Pollution Control, through the Tennessee Department of Conservation, submitted amendments to Knox County's regulations 25.2B, 29.1B, 17.4E, 18.1, 19.1 and 47.3C. These amendments were adopted by the Air Pollution Control Board on December 13, 1990. These amendments were submitted with the Volatile Organic Compound (VOC) deficiency corrections, which will be acted upon in a separate notice once supplemental information addressing all deficiencies is received by the Regional Office. The amendments addressed in this notice are as follows.

(1) Section 25.2B, "Applications Permit," is deleted. This section provided that in the event the requirement for a construction permit prior to the construction of a new source or the modification of an existing source created an undue hardship on the applicant, the applicant was able to request of the Director a waiver to proceed with the construction or modification prior to the issuance of the Construction Permit.

(2) Section 29.1B, "Appeals," is amended to include a provision allowing any other citizen of Knox County besides the applicant to appeal a ruling which may confirm, modify or reverse the Director's decision.

(3) Sections 17.4E, "Regulation of Visible Emissions," 18.1B, "Non-Process Emission Standards," 19.1B, "Process Emissions," and 47.3C, "Good Engineering Practice Stack Height Regulations Standards," are amended to include a provision allowing any air contaminant source and the Director, upon mutual agreement, to approve more restrictive emission limits, operating hours, process flow rates, or any other operating parameter. This agreement will be established as a binding limit which shall be stated as a special condition for any permit or order concerning the source and violation of which shall result in revocation of the issued permit.

(4) Sections 18.1, "Non-Process Emission Standards" and 19.1, "Process Emissions," are amended to include a provision which states that no person shall cause, suffer, allow, or permit non-process emissions in excess of the standard set forth in this section.

Final Action

The Agency has determined that the aforementioned changes are consistent with Agency policies. Therefore, EPA is today approving these amendments to the Knox County Portion of the Tennessee SIP. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

If no adverse or critical comments are received by EPA under section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule of action. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2) of the Clean Air Act 42 U.S.C. 7607(b)(2)].

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 5, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(106) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(106) Amendments to the Knox County portion of Tennessee's SIP, submitted on January 4, 1991.

(i) Incorporation by reference.

(A) Amendments to Regulations 25.2B, 29.1B, 17.4E, 18.1, 19.1, 47.3C, effective December 13, 1990.

(ii) Other material.

(A) Letter of January 4, 1991, from the Tennessee Department of Health and Environment.

[FR Doc. 92–21183 Filed 9–2–92; 8:45 am]

BILLING CODE 6560–50–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 641

Environmental Assessment Procedures for Proposed National Science Foundation Actions in Antarctica

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This final rule institutes procedures for the National Science Foundation's implementation of Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957, as it applies to NSF's activities in Antarctica, and the environmental assessment requirements of the Protocol on Environmental Protection to the Antarctic Treaty and its related annexes (the "Protocol"), adopted by the fourth session of the Eleventh Special Antarctic Treaty Consultative Meeting (SCM XI) on October 4, 1991, and signed by the United States on that date. The procedures require environmental assessment of proposed U.S. Antarctic Program (USAP) actions so that responsible agency officials may consider the potential environmental effects of those proposed actions.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Miriam Leder, Assistant General Counsel, National Science Foundation, 1800 G Street, NW., room 501, Washington, DC 20550; (202) 357–9435.

SUPPLEMENTARY INFORMATION: On March 2, 1992, the National Science Foundation (NSF) published proposed procedures for environmental assessment of USAP activities, and invited public comment on those procedures. 57 FR 7355 (March 2, 1992). NSF received written comments from six persons and organizations, including the U.S. Environmental Protection Agency (EPA), the President's Council on Environmental Quality (CEQ), and the Environmental Defense Fund (EDF). The commenters each addressed a variety of issues, and those comments, together with NSF's responses, are discussed below. For ease of reference, general comments are discussed first, and comments on specific regulatory provisions are discussed in the order in which those provisions appear in the rule.

General Comments

Consistency With Protocol

A few of the comments NSF received noted minor inconsistencies between the proposed regulations and the Protocol's environmental assessment provisions. The regulations have been revised to resolve those inconsistencies.

Some other comments proposed revisions to language and phrases that were taken verbatim from the Protocol. Those proposed revisions were not included in the final regulations.

Authority To Issue Regulations

EPA suggested that the regulations themselves include a provision describing NSF's legal authority for promulgating this Rule. The authority citation already states that NSF derives its authority from Executive Order 12114. Moreover, NSF does not believe it necessary to include an additional legal analysis in the regulations.

Applicability of NEPA

Throughout its comments, EDF points out inconsistencies between the proposed regulations, and the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321–4347, and CEQ's implementing regulations thereunder, 40 CFR § 1500 et seq. (the "CEQ regulations"). EDF believes that NEPA and the CEQ regulations apply to NSF's proposed Antarctic activities.

NSF disagrees with EDF's assertion that NEPA applies in Antarctica. In fact, the Federal District Court for the District of Columbia recently decided this issue, holding that NEPA does not apply in Antarctica. See *EDF* v. *Massey*, 772 F.Supp.1296 (D.D.C. 1991). As a result, while NSF's regulations basically adopt NEPA's approach to environmental assessment, they do not incorporate all of NEPA's requirements. Such incorporation is neither mandated by law, nor appropriate or desirable in all instances.

Where EDF's comments include substantive arguments for adopting the NEPA/CEQ regulations approach, NSF discusses those comments below. NSF does not, in every instance, address EDF's comments where EDF simply notes an inconsistency between NEPA and the proposed regulations.

Comments on Specific Regulatory Provisions

Section 641.10 Purpose

EDF commented that one purpose of NSF's regulations should be to fully involve the public in NSF's environmental decisionmaking. NSF's regulations do involve the public in environmental decisionmaking when a proposed action may have more than a minor or transitory impact on the Antarctic environment. They also apply, however, to proposed actions that will have less than minor or transitory impacts. NSF will involve the public in those cases if it deems such involvement appropriate on a case-by-case basis, but it will not necessarily involve the public in every instance. As a result, Section 641.10 was not revised to include EDF's suggested change.

Section 641.11 Policy

EDF commented that NSF should use all means (not just practicable means) to comply with the assessment requirements of the regulations, without regard to the availability of resources. NSF agrees that its general policy of conducting environmental assessments should not be limited by the availability of resources, and NSF has deleted that language from the final regulations.

Section 641.12 Applicability

EPA suggested promoting wider applicability of the regulations by including actions "subject to the control and responsibility" of NSF within the scope of the regulations. NSF agrees,

and has made this change to Section 641.12 and to Section 641.14(a).

Section 641.13 Right of Action

EDF believes that NSF's decisions should be subject to judicial review. However, E.O. 12114, which gives NSF the requisite authority to promulgate these regulations, expressly provides that the Executive Order does not create a private right of action. E.O. 12114, Section 3–1. NSF regulations are consistent with this provision.

Section 641.14 Definitions

Action—EDF commented on the differences between NSF's definition of the term *action* and the definition set forth in CEQ regulations. NSF has broadened its definition in response to EPA's comments on Section 641.12 to include all actions subject to NSF's control and responsibility, but does not feel that there is any substantive reason for using a definition that is identical to the one used in the CEQ regulations.

Comprehensive Environmental Evaluation—EPA and CEQ both suggested that comments received on draft CEEs be included as components of the final CEEs. NSF agrees, and has revised its regulations accordingly.

Environmental Action Memorandum—EPA recommended clarifying this definition by stating that an EAM is prepared when the responsible official determines that a proposed action will have less than a minor or transitory impact. NSF has done so in the final regulations.

Environmental Review—EPA suggested expanding this definition to include public and other external review and comment. NSF has made this change to the final regulations.

Section 641.15 Preliminary Environmental Review

EDF believes that Section 641.15 essentially authorizes the responsible official to categorically exclude particular actions from required assessment procedures, without any public review or oversight. It is not clear how EDF reaches this conclusion. Categorical exclusions dispense with assessment requirements for particular categories of actions, while Section 641.15 requires the responsible official to look at each proposed agency action individually to determine whether it requires the preparation of an environmental document. Neither NEPA nor CEQ regulations requires an agency to prepare an assessment for every possible action undertaken by the agency. Such a requirement would make no sense. The responsible official must give initial consideration to the scope of the activity and to the probability of environmental impacts in determining whether or not to prepare an environmental document.

Section 641.16(a)

CEQ and EPA both found the criteria for determining when to prepare an environmental document to be confusing and, in some cases, inappropriate. EPA suggested the provisions of Article 3(2) of the Protocol might provide useful criteria for making this determination. NSF agrees, and has included these criteria in the final regulations.

Section 641.16(b) Prior Assessments

CEQ and EPA both recommended adopting standards for determining when an environmental document prepared for one action will allow NSF to forego the preparation of a new environmental document for a different, similar proposed action. NSF agrees, and has included standards suggested by EPA in the final regulations (i.e., that there be no site-specific or other impacts which would require further evaluation).

Section 641.16(c) Exclusions

CEQ, EPA and EDF are all concerned that some of the activities excluded from the assessment requirements were too broadly stated in the proposed regulations. For example, all three commenters raised questions about the scope of the "small scale detonations of explosives" exclusion. EPA also stated that the exclusion for the use of radioisotopes was too vague, and an individual commenter suggested clarifications to Section 641.16(c)(1)(i). EPA further stated that NSF should provide some documentation to support the exclusions.

NSF agrees that qualifications to some of the proposed rule's exclusions are appropriate, and has included qualifications in the final regulations. NSF does not believe, however, that specific documentation supporting these general exclusionary categories is necessary.

Section 641.16(d) Coordination With Other Committees, Offices and Agencies

Both CEQ and EPA suggested that NSF consult with other agencies as soon as feasible when it intends to prepare an environmental document. NSF agrees with this suggestion, and has revised its regulations accordingly.

EPA also suggested that the responsible official routinely consult with the inter-agency Antarctic Policy Working Group (APWG) to identify and, as appropriate, solicit the participation of other sources of relevant knowledge and expertise. NSF's practice has been to inform the APWG when it is preparing CEEs, and it intends to continue to do so in the future. However, NSF does not believe it necessary to mandate such consultation in its regulations.

Section 641.16(f) Obligation of Funds

EDF pointed out the inconsistency between the obligation of funds provision in NSF's regulations, and the CEQ regulation requirement that agencies not commit resources prejudicing selection of alternatives before making final decisions. EDF believes that NSF's provision "flies in the face of NEPA's most fundamental requirement—that an agency "evaluate the environmental effects of its action at the point of commitment * * * prior to a decision * * *" These comments are inapposite.

As described in the regulation, logistic constraints can make it impossible to complete an environmental review before funds must be committed. Generally, antarctic activities must be planned at least eighteen months in advance, particularly in light of the fact that a supply ship arrives at McMurdo only once each year. It is sometimes necessary to purchase supplies before an environmental review can be completed, or forego the option of using those supplies for an entire year. Given this practical reality, and the regulations' requirement that implementation of the proposed action in Antarctica be modified or canceled if the completed environmental review indicates that modifications or cancellation is warranted, NSF does not believe that this provision circumvents the purpose of these regulations.

CEQ commented that the term *logistic constraints*, as used in the proposed regulations, is too vague. The final regulations have clarified what is meant by the use of that term.

Section 641.17 Initial Environmental Evaluation

EDF argued that NSF's regulations do not require either a discussion of impacts of alternatives to a proposed action, or the preparation of a "Finding of No Significant Impact" for any action which NSF concludes will not require an environmental impact statement (EIS), as required by the CEQ regulations. EDF also stated that the regulations do not provide for a 30-day review period for decisions not to prepare an EIS. EDF fails to recognize, however, that these regulations are designed to implement the provision of Executive Order 12114 and the assessment requirements of the

Protocol on Environmental Protection to the Antarctic Treaty, not NEPA. They fully accomplish this purpose.

CEQ suggested that NSF designate a point of contact from whom the public can request the information described in § 641.17(c). The final regulations designate the Environmental Officer, Division of Polar Programs, as the point of contact.

Section 641.18(a) Scoping

EDF believes that NSF should publish notice of its intent to prepare a CEE in the Federal Register, and should invite "interested persons" to participate in the scoping process. NSF agrees, and has revised the final regulations accordingly.

Section 641.18(c) Circulation of Draft CEE

This provision requires NSF to provide the State Department with draft CEEs for circulation to the Parties to the Protocol and to organizations or committees established pursuant to the Protocol or the Treaty. EPA suggested that it might be advisable for the APWG to review the draft CEE before it is circulated. While NSF agrees that this might be appropriate in some cases, NSF believes that decision should be made by the State Department on a case-by-case basis.

Section 641.18(d) Final CEE

EPA suggested that notice be given of the availability of final CEEs, and CEQ and EDF suggested that persons who commented on the draft CEE should receive copies of the final CEE, without having to request them. NSF has modified the regulations to require notice of the availability of final CEEs. NSF intends to continue its practice of providing persons who commented on the draft CEE with copies of the final CEE. However, NSF does not believe it necessary to include this requirement in the regulations.

EDF also believes that NSF should include in the final CEE, the full text of comments received on the draft (rather than summaries), unless the comments are exceptionally voluminous. EDF is concerned that summaries may lead to a distorted representation of public comments.

The Protocol expressly provides that final CEEs shall include or summarize comments received on the drafts, and NSF's regulations mirror this requirement. If summaries of comments are included in a final CEE, NSF will not distort the meaning or intent of those comments. Moreover, the full text of those comments will be available to the public under the Freedom of Information Act.

Section 641.18(e) Implementation of Proposed Actions

EDF pointed out that the CEQ regulations require the preparation of a record of decision while NSF's regulations do not. Again, EDF fails to recognize that NSF's regulations are not designed to duplicate NEPA's implementing regulations, which do not apply to Antarctic activities. Rather they implement the provisions of the Executive Order and the Protocol, and are fully consistent with those authorities.

Section 641.20 Notification of Availability of Environmental Documents and Other Information

In its comments, EDF described the CEQ regulations requirements on notice and availability of documents and on the release of monitoring data, and notes where they differ from those set forth in NSF's regulations. In response to comments received on previous sections (e.g., 641.18 (a) and (d)), NSF revised its regulations to require notice of its intent to prepare a CEE and of the availability of draft and final CEEs. Since NSF wishes to encourage public involvement in the preparation of all CEEs, it is important to provide public notice in these instances. However, where public involvement is not required (i.e., in the preparation of EAMs and IEEs), NSF does not believe that public notice is always necessary.

EDF also commented that the regulations' provision on availability of monitoring data is inconsistent with the Freedom of Information Act ("FOIA"). NSF does not agree. The regulations include the Protocol's requirement on public availability of monitoring data. To the extent FOIA requires additional disclosure, NSF will, of course, comply.

Section 641.21 Manitoring

An individual commenter suggested that sites with comparable environmental characteristics should be identified to serve as control areas for assessing minor or transitory impacts. NSF is likely to consider establishing controls in some cases, but does not believe it appropriate to include a requirement to that effect in the regulations.

Section 641.22 Cases of Emergency

EDF commented on the difference between requirements set forth in the CEQ regulations, and the ones set forth in NSF's regulations. However, NSF's regulations are fully consistent with the Executive Order and the assessment provisions of the Protocol, and the CEQ regulations do not apply to activities conducted in Antarctica.

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation, and that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 641

Antarctica, Environmental protection.

Pursuant to the authority granted by the Executive Order, NSF is adding a new part 641 to title 45 of the Code of Federal Regulations, as set forth below:

Dated: August 26, 1992.

Charles H. Herz,

General Counsel.

PART 641—ENVIRONMENTAL ASSESSMENT PROCEDURES FOR PROPOSED NATIONAL SCIENCE FOUNDATION ACTIONS IN ANTARCTICA

Sec.

Authority: E.O. 12114, 44 FR 1957, 3 CFR 1979 Comp., p. 356.

§ 641.10 Purpose.

These procedures are designed to elicit and evaluate information that will inform the National Science Foundation (NSF) of the potential environmental consequences of proposed U.S. Antarctic Program (USAP) actions, so that relevant environmental considerations are taken into account by decisionmakers before reaching final decisions on whether or how to proceed with proposed actions. These procedures are consistent with and implement the requirements of:

(a) Executive Order 12114 as it relates to NSF's Antarctic activities, and

(b) the environmental assessment provisions of the Protocol on Environmental Protection to the Antarctic Treaty.

§ 641.11 Policy.

It is the policy of NSF to use all practicable means, consistent with its authority, to ensure that potential environmental effects of actions undertaken by NSF in Antarctica, either independently or in cooperation with another country, are appropriately identified and considered during the decisionmaking process, and that appropriate environmental safeguards which would limit, mitigate or prevent adverse impacts on the Antarctic environment are identified.

§ 641.12 Applicability.

The requirements set forth in this part apply to all proposed projects, programs and actions authorized or approved by, or subject to the control and responsibility of NSF that may have an impact on the Antarctic environment.

§ 641.13 Right of action

The procedures set forth in this part establish internal procedures to be followed by NSF in considering the potential environmental effects of actions taken in Antarctica. Nothing in this part shall be construed to create a cause of action.

§ 641.14 Definitions.

As used in these procedures, the term:

(a) *Action* means a project, program or other activity, including the adoption of an official policy or formal plan, that is undertaken, authorized, adopted or approved by, or subject to the control or responsibility of NSF, the decommissioning of a physical plant or facility, and any change in the scope or intensity of a project, program or action.

(b) *Antarctica* means the area south of 60 degrees south latitude.

(c) *Antarctic environment* means the natural and physical environment of Antarctica and its dependent and associated ecosystems, but excludes social, economic and other environments.

(d) *Antarctic Treaty Consultative Meeting* means a meeting of the Parties to the Antarctic Treaty, held pursuant to Article IX(1) of the Treaty.

(e) *Comprehensive Environmental Evaluation* or *CEE* means a study of the reasonably foreseeable potential effects of a proposed action on the antarctic environment, prepared in accordance with the provisions of § 641.18, and includes all comments thereon received during the comment period described in § 641.18(c). A Comprehensive Environmental Evaluation shall constitute an environmental impact statement for purposes of the Executive Order.

(f) *Environmental Action Memorandum* means a document briefly describing a proposed action and its potential impacts, if any, on the antarctic environment prepared by the responsible official when he or she determines that a proposed action will have less than a minor or transitory impact on the Antarctic environment.

(g) *Environmental document* means an initial environmental evaluation or a comprehensive environmental evaluation.

(h) *Environmental review* means the environmental review required by the provisions of this part, and includes preliminary environmental review and preparation of an environmental document, and review by the parties to the Protocol, and committees established under the Protocol for that purpose, and the public, as applicable.

(i) *Executive Order* means Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957.

(j) *Initial Environmental Evaluation* or *IEE* means a study of the reasonably foreseeable potential effects of a proposed action on the antarctic environment, prepared in accordance with the provisions of § 641.17.

(k) *Preliminary environmental review* means the environmental review described in § 641.15(a).

(l) *Protocol* means the Protocol on Environmental Protection to the Antarctic Treaty, adopted on October 4, 1991, in Madrid, at the fourth session of the Eleventh Special Antarctic Treaty Consultative Meeting and signed by the United States on that date, and all annexes thereto.

(m) *Responsible official* means the Assistant Director for Geosciences of NSF, or any NSF employee(s) designated by the Assistant Director to be principally responsible for the preparation of environmental action memoranda or environmental documents under this part.

(n) *Treaty* means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959, T.I.A.S No. 4780.

§ 641.15 Preliminary environmental review.

(a) The responsible official shall be notified early in the general planning process of actions proposed by USAP components that may have impacts on the Antarctic environment, so that environmental review may be integrated into the planning and decisionmaking processes. The responsible official shall conduct a preliminary environmental review of each action, including consideration of the potential direct and reasonably foreseeable indirect effects of a proposed action on the Antarctic environment.

(b) If, on the basis of the preliminary environmental review, the responsible official determines that an action will have less than a minor or transitory impact on the Antarctic environment, he will prepare an Environmental Action Memorandum briefly summarizing the environmental issues considered and conclusions drawn from the review. No further environmental review shall be necessary.

§ 641.16 Preparation of environmental documents, generally.

(a) *Preparation of an environmental document.* If the responsible official determines, either initially or on the basis of a preliminary environmental review, that a proposed action may have at least a minor or transitory impact on the Antarctic environment, he will prepare an environmental document in accordance with the provisions of this part. In making this determination, the responsible official should consider whether and to what degree the proposed action:

(1) Has the potential to adversely affect the Antarctic environment;

(2) May adversely affect climate and weather patterns;

(3) May adversely affect air or water quality;

(4) May affect atmospheric, terrestrial (including aquatic), glacial or marine environments;

(5) May detrimentally affect the distribution, abundance or productivity or species, or populations of species of fauna and flora;

(6) May further jeopardize endangered or threatened species or populations of such species;

(7) May degrade, or pose substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance;

(8) Has highly uncertain environmental effects, or involves unique or unknown environmental risks; or

(9) Together with other actions, the effects of any one of which is individually insignificant, may have at least minor or transitory cumulative environmental effects.

(b) *Prior assessments.* Notwithstanding the provisions of § 641.16(a), if (1) An environmental document (including a generic or programmatic CEE) or its equivalent has been prepared for a particular type of action; (2) That document includes an analysis of potential environmental effects that are directly relevant to the potential effects of the proposed action,

taking in account factors such as the similarity of the actions and of the locations within which they take place; and (3) There are no potential site specific or other impacts that would require further evaluation, then a new environmental document need not be prepared. Instead, the responsible official shall prepare an Environmental Action Memorandum for the proposed action, cross-referencing the previously prepared environmental document.

(c) *Exclusions.* NSF has determined that the following actions will have less than a minor or transitory impact on the Antarctic environment, and are not subject to the procedures set forth in this part, except to the extent provided herein:

(1) Scientific research activities involving:

(i) Low volume collection of biological or geologic specimens, provided no more mammals or birds are taken than can normally be replaced by natural reproduction in the following season;

(ii) Small-scale detonation of explosives in connection with seismic research conducted in the continental interior or Antarctica where there will be no potential for impact on native flora and fauna;

(iii) Use of weather/research balloons, research rockets, and automatic weather stations that are to be retrieved; and

(iv) Use of radioisotopes, provided such use complies with applicable laws and regulations, and with NSF procedures for handling and disposing of radioisotopes.

(2) Interior remodelling and renovation of existing facilities.

Notwithstanding the foregoing, if information developed during the planning of any of the actions described in this paragraph (c) indicates the possibility that the action may have at least a minor or transitory impact on the Antarctic environment, the environmental effects of the action shall be reviewed to determine the need for the preparation of an environmental document.

(d) *Coordination with other committees, offices and federal agencies.* The responsible official shall notify NSF's Committee of Environmental Matters and the Office of the General Counsel when he intends to prepare an environmental document, and will coordinate preparation of the document with those entities. Responsibility for preparation of the environmental document rests primarily with the responsible official, but, as soon as is feasible, he should consult with and encourage the participation of other knowledgeable individuals within NSF, and, where appropriate, with other individuals, government agencies and entities with relevant knowledge and expertise.

(e) *Type of environmental document.* The type of environmental document required under this part depends on the nature of the proposed action under consideration. An IEE must be prepared for proposed actions which the responsible official concludes may have at least a minor or transitory impact on the Antarctic environment and for which a CEE is not prepared. A CEE must be prepared if an IEE indicates, or if it is otherwise determined, that a proposed action is likely to have more than a minor or transitory impact on the Antarctic environment.

(f) *Obligation of funds.* Because of logistic constraints (*i.e.*, constraints due to transportation difficulties, inaccessibility of Antarctic bases for much of the year, and the need to obtain items or materials requiring long lead times), it may not be possible to complete the environmental review of a proposed action before funds must be committed and/or disbursed. In such cases, funds for the proposed action may be committed and/or disbursed, provided:

(1) The appropriate environmental review is completed before implementation of the proposed action in Antarctica, and

(2) Implementation plans for the proposed action will be modified or canceled, if appropriate, in light of the completed environmental review (including public comments, if applicable).

§ 641.17 Initial environmental evaluation.

(a) *Contents.* An IEE shall contain sufficient detail to assess whether a proposed action may have more than a minor or transitory impact on the Antarctic environment, and shall include the following information:

(1) A description of the proposed action, including its purpose, location, duration and intensity; and

(2) Consideration of alternatives to the proposed action and any impacts that the proposed action may have on the Antarctic environment, including cumulative impacts in light of existing and known planned actions and existing information on such actions.

(b) *Further environmental review.* If an IEE indicates that a proposed action is likely to have no more than a minor or transitory impact on the Antarctic environment, no further environmental review of the action is necessary provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the action.

(c) *Availability to public.* An annual list of IEEs and a description of any decisions taken in consequence thereof shall be provided to the Department of State for circulation to all Parties to the Protocol and to organizations or committees established pursuant to the Protocol or the Treaty, as required. The Environmental Officer, Division of Polar Programs, shall also make the list and copies of final IEEs available to the public upon request.

§ 641.18 Comprehensive environmental evaluation.

(a) *Scoping.* If it is determined that a CEE will be prepared, the responsible official shall publish a notice of intent to prepare a CEE in the **Federal Register**, inviting interested persons and government agencies to participate in the process of identifying significant issues relating to the proposed action and determining the scope of the issues to be addressed in the CEE.

(b) *Contents of CEE.* A CEE shall be a concise and analytical document, prepared in accordance with the range of relevant issues identified in the scoping process. It shall contain sufficient information to permit informed consideration of the reasonably foreseeable potential environmental effects of a proposed action and possible alternatives to that proposed action. Such information shall include the following:

(1) A description of the proposed action including its purpose, location, duration and intensity;

(2) A description of the initial baseline environmental state with which predicted changes are to be compared, and a prediction of the future environmental state in the absence of the proposed action;

(3) A description of the methods and data used to forecast the potential impacts of the proposed action;

(4) An estimate of the nature, extent, duration and intensity of the likely direct potential impacts of the proposed action;

(5) A consideration of the potential indirect or second order impacts from the proposed action;

(6) A consideration of potential cumulative impacts of the proposed action in light of existing activities and other known planned actions and available information on those actions;

(7) A description of possible alternatives to the proposed action, including the alternative of not proceeding, and the potential consequences of those alternatives, in sufficient detail to allow a clear basis

for choice among the alternatives and the proposed action;

(8) Identification of measures, including monitoring, that could be employed to minimize, mitigate or prevent potential impacts of the proposed action, detect unforeseen impacts, provide early warning of any adverse effects, and carry out prompt and effective response to accidents;

(9) Identification of unavoidable potential impacts of the proposed action;

(10) Consideration of the potential effects of the proposed action on the conduct of scientific research and on other existing uses and values;

(11) Identification of gaps in knowledge and uncertainties encountered in compiling the information required by this paragraph (b);

(12) A non-technical summary of the information included in the CEE; and

(13) The name and address of the person and/or organization which prepared the CEE, and the address to which comments thereon should be directed.

(c) *Circulation of draft CEE.* A draft of each CEE shall be provided to the Department of State for circulation to all Parties to the Protocol and to organizations or committees established pursuant to the Protocol or Treaty, as required by the Protocol, and shall be made publicly available. Notice of such public availability shall be published in the Federal Register. All such parties shall have a period of not less than ninety (90) days within which to review and comment upon the draft CEE.

(d) *Final CEE.* A final CEE shall address, and shall include or summarize, comments received on the draft CEE. The final CEE, notice of any decisions related thereto, and any evaluation of the significance of the predicted impacts in relation to the advantages of the proposed action shall be provided to the Department of State for circulation to all Parties to the Protocol, and shall be available to the public upon request, at least sixty (60) days prior to the commencement of the proposed activity in Antarctica. Notice of such public availability shall be published in the Federal Register.

(e) *Implementation of proposed action.* No final decision shall be taken to proceed in Antarctica with an action for which a final CEE is required until after the earlier of:

(1) The first Antarctic Treaty Consultative Meeting taking place at least one hundred and twenty days after circulation of the draft CEE, or

(2) Fifteen months following the circulation of the draft CEE.

§ 641.19 Modification of environmental documents.

The responsible official should revise or supplement an environmental document if there is a change in a proposed action that may have more than a minor or transitory effect on the antarctic environment, or if there are new circumstances or information that indicate the action may have impacts not anticipated in the original environmental document.

§ 641.20 Notification of the availability of environmental documents and other information.

The Environmental Officer, Division of Polar Programs, shall make Environmental Action Memoranda, environmental documents and final data obtained under § 641.21, available to the public upon request. However, notice of such availability need not be given, except as specifically provided in this part.

§ 641.21 Monitoring.

Scientific, analytic and/or reporting procedures shall be put in place, including appropriate monitoring of key environmental indicators, to assess and verify the potential environmental impacts of actions which are the subject of a CEE. All proposed actions for which an environmental document has been prepared shall include procedures designed to provide a regular and verifiable record of the actual impacts of those actions, in order, *inter alia*, to

(a) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(b) Provide information useful for minimizing or mitigating those impacts, and, where appropriate, information on the need for suspension, cancellation or modification of the action.

§ 641.22 Cases of emergency.

This part shall not apply to actions taken in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the protection of the environment which require an action to be taken without completion of the environmental review required by this part. Notice of any such actions which would otherwise have required the preparation of a CEE shall be provided immediately to the Department of State for circulation to all Parties to the Protocol and to committees and organizations established pursuant to the Treaty or Protocol, as required. A description of the emergency action undertaken shall also be provided to the Department of State for appropriate circulation within ninety days of the action.

Vicki L. De Hullu,

Legal Office Administrator.

[FR Doc. 92-21023 Filed 9-2-92; 8:45 am]

BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-580; RM-6977, RM-7177, and RM-7446]

FM Radio Broadcasting Services; Elkins, West Virginia, Mountain Lake Park and Westernport, Maryland

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On reconsideration, the Commission grants the request of Southern Highlands, Inc., licensee of Station WKHJ, Channel 255A, Mountain Lake Park, Maryland, to substitute Channel 283A rather than Channel 239A, allotted in that community in the Report and Order, 56 FR 52478, published October 21, 1991, and to modify the license of Station WKHJ accordingly. The Commission also substitutes Channel 266A, rather than Channel 283A, at Westernport, Maryland for Station WWPN (FM), and modifies Station WWPN(FM)'s license accordingly. The Commission also denies Southern Highlands' alternative request on reconsideration to substitute Channel 255B1 to Mountain Lake Park in lieu of Channel 255A. With this action, the proceeding is terminated. See **SUPPLEMENTARY INFORMATION**, *supra*.

EFFECTIVE DATES: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 89-580, adopted July 29, 1992 and released August 27, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington DC. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, N.W., Suite 640, Washington DC 20036.

Channel 283A can be allotted to Mountain Lake Park in compliance with the Commission's minimum distance

separation requirements using a site restricted to 8.2 kilometers (5.1 miles) west of Mountain Lake Park at coordinates North Latitude 39–24–37 and West Longitude 79–17–15. Channel 266A can be allotted at Westernport in compliance with the Commission's minimum distance separations requirements at coordinates North Latitude 39–29–12 and West Longitude 79–02–42.

List of Subjects in 47 CFR Part 73

Radio Broadcasting

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments under Maryland, is amended by removing Channel 255A and adding Channel 283A at Mountain Lake Park and by removing Channel 224A and adding Channel 266A at Westernport.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 92–21161 Filed 9–2–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 95 and 97

[DA 92–1098]

General Mobile Radio Service, Radio Control Radio Service, Citizens Band Radio Service, and Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action makes nonsubstantive changes in the General Mobile Radio Service Rules, the Radio Control Radio Service Rules, the Citizens Band Radio Service Rules, and the Amateur Service Rules. The rule amendments are necessary in order to delete obsolete dates, to revise mailing addresses, to reflect the current monetary forfeiture amounts for violations, and to make other editorial changes. The effect of the rule changes is to provide users with service rules that are accurate and current.

EFFECTIVE DATE: October 30, 1992.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

In the matter of Editorial Amendment of Part 95, Subparts A, C, and D of the Commission's Rules Concerning the General Mobile Radio Service, Radio Control Radio Service, and Citizens Band Radio Service, and of Part 97, Concerning the Amateur Radio Service.

Order

[DA 92–1098]

Adopted: August 7, 1992.
Released: August 20, 1992.

By the Chief, Private Radio Bureau:

1. By this action, we are editorially amending various rules in the radio services shown in the caption. The rule amendments are necessary in order to delete obsolete dates, to revise mailing addresses, to reflect the current monetary forfeiture amounts for repeated or willful violations of the Communications Act or of the Commission's Rules, and to make other necessary editorial changes.

2. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1), and 47 U.S.C. 154(i) and 303(r).

3. Accordingly, Part 95, subparts A, C, and D, 47 CFR part 95, subparts A, C, and D, and part 97, 47 CFR part 97, are amended, effective October 30, 1992, as set forth in the appendix.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

List of Subjects

47 CFR Part 95

Penalties, Permissible communications, Radio.

47 CFR Part 97

Examinations, Licenses, Radio.

Rule Changes

A. Part 95 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 95 continues to read as follows:

Authority citation: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Appendix A to part 95, subpart A, is amended by revising the last sentence in paragraph (d) to read as follows:

Appendix A to Part 95—Making a Control Station Power Test

* * * * *

(d) * * * The maximum transmitter output power permitted any GMRS station must not be exceeded (see § 95.135).

* * * * *

3. Section 95.207 is amended by revising the numbers "79.93" in paragraph (a)(2) to read "72.93", and by removing paragraph (a) (4) and (5).

4. Section 95.211 is amended by revising paragraph (b)(2) to read as follows:

§ 95.211 (R/C Rule 11) What communications may be transmitted?

* * * * *

(b) * * *

(1) * * *

(2) A sensor at a remote location turns on and/off an indicating device for the operator. (Refer to Diagram 2). Only Channels 26.995 to 27.255 MHz (see R/C Rule 7, § 95.207(a)(1)) may be used for this purpose. (A remote location means a place distant from the operator.)

* * * * *

5. Section 95.218 is amended by revising paragraph (a) to read as follows:

§ 95.218 (R/C Rule 18) What are the penalties for violating these rules?

(a) If the FCC finds that you have willfully or repeatedly violated the Communications Act or the FCC Rules, you may have to pay as much as $10,000 for each violation, up to a total of $75,000. (See Section 503(b) of the Communications Act.)

* * * * *

6. Section 95.419 is amended by revising the third sentence in paragraph (b) to read as follows:

§ 95.419 (CB Rule 19) May I operate my CB station transmitter by remote control?

* * * * *

(b) * * * Send your request and justification to FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. * * *

* * * * *

7. Section 95.421 is amended by revising paragraph (a) to read as follows:

§ 95.421 (CB Rule 21) What are the penalties for violating these rules?

(a) If the FCC finds that you have willfully or repeatedly violated the Communications Act or the FCC Rules, you may have to pay as much as $10,000 for each violation, up to a total of $75,000. (See section 503(b) of the Communications Act.)

* * * * *

B. Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

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

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.17 is amended by revising the second sentence in paragraph (d) to read as follows:

§ 97.17 Application for new license.

* * * * *

(d) * * * The application must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

3. Section 97.19 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 97.19 Application for a renewed or modified license.

* * * * *

(b) * * * All other applications must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

4. Section 97.27 is revised to read as follows:

§ 97.27 Replacement license.

Each license or permittee whose original document is lost, mutilated, or destroyed must request a replacement. The request must be made to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. A statement of how the document was lost, mutilated, or destroyed must be attached to the request. A replacement license must bear the same expiration date as the license that it replaces.

5. Section 97.303 is amended by revising the word "amatuer" in paragraph (h) to read "amateur".

6. Section 97.513 is amended by revising paragraph (b) to read as follows:

§ 97.513 Novice Class operator license examination.

* * * * *

(b) Within 10 days of the administration of a successful examination for a Novice Class operator license, the administering VEs must submit the application to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

7. Section 97.519 is amended by revising the second sentence in paragraph (b) to read as follows:

§ 97.519 Coordinating examination sessions.

* * * * *

(b) * * * The coordinating VEC must screen and forward all applications for qualified examinees within 10 days of their receipt from the administering VEs to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

[FR Doc. 92–21162 Filed 9–2–92; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation; Superfund Tax

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are correcting a misstatement in the December 21, 1990, **Federal Register** notice (55 FR 52782) for the final rule on allowability of the costs of the "Superfund Tax." The Supplementary Information section of the Background statement in the Superfund Tax final rule notice published at 55 FR 52782 is hereby corrected to read as follows: "The purpose of this rule is to revise the cost principle at FAR 31.205–41 to make the costs of the Environmental Tax (popularly known as the "Superfund Tax") allowable, as a matter of public policy.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, GS Building, Washington, DC 20405, (202) 501–3221.

SUPPLEMENTARY INFORMATION: The FAC 90–3 change in Superfund Tax allowability (55 FR 52783) erroneously used the word "clarify" in explaining the purpose of the rule. However, the corresponding FAC introductory item (55 FR 52787) correctly stated that Federal Acquisition Regulation 31.205–41 was being "revised" to make Superfund Tax payments allowable.

Dated: August 26, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 92–21177 Filed 9–2–92; 8:45 am]
BILLING CODE 6820–34–M

Proposed Rules

Federal Register
Vol. 57, No. 172
Thursday, September 3, 1992

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 ENERGY

10 CFR Part 1023

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney fees and other expanses to parties who prevail over the Federal Government in certain administrative and court proceedings. These proposed rules, which reflect the changes in the law made by Public Law 99–80 and Public Law 99–509, establish procedures for the submission and consideration of applications for such awards where eligible parties have prevailed before the Energy Board of Contract Appeals on appeals from decisions of contracting officers pursuant to section 6 of the Contract Disputes Act of 1978, 41 U.S.C. 605, as provided in section 8 of that Act, 41 U.S.C. 607.

DATE: Comments must be received October 5, 1992.

ADDRESS: Interested persons may submit written comments to: E. Barclay Van Doren, Chairperson, Department of Energy, Board of Contract Appeals, Room 1006, Webb Building, 4040 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Stephen Lee, Department of Energy, Board of Contract Appeals, (703) 235–2700.

SUPPLEMENTARY INFORMATION: These proposed rules are based upon the Model Rules for Implementation of the Equal Access to Justice Act in Agency Proceedings issued by the Administrative Conference of the United States on May 6, 1986, and appearing at 1 CFR part 315. As indicated below, several changes to the Model Rules are proposed. Additionally, the Model Rules contain a number of alternative provisions proposed specifically for Boards of Contract Appeals. Those alternatives appear in these proposed rules without significant modification. Further, the words "covered proceeding" are substituted for "adversary adjustication" where the latter appears in the Model Rules. Still further, provisions in the Model Rules relating to the payment of fees charged by agents are proposed for omission. The Board has no provision for agents to appear before it. A synopsis of other significant proposed changes follows. Except for § 1023.300, which is new, a cross reference to the Model Rules follows in parenthesis after the synopsis for each section.

Section 1023.300, "Definitions," would be added to include definitions of "Agency Counsel," "Board," "Covered Proceeding," and "Days."

Section 1023.301, "Purpose of these rules," would modify its counterpart in the Model Rules to reflect that these rules apply only to proceedings before the Energy Board of Contract Appeals brought pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) as provided in section 8 of that Act (41 U.S.C. 607). (1 CFR 315.101.)

Section 1023.302, "When the Act applies," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.102.)

Section 1023.303, "Proceedings covered," would modify its counterpart in the Model Rules to reflect that the rules apply only to applications filed pursuant to the Equal Access to Justice Act (EAJA) for fees and expenses associated with appeals from decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) to the Board as provided in section 8 of that Act (41 U.S.C. 607). Subsection (b) of § 1023.303 is not applicable and would be marked "Reserved" in order to maintain paragraph designations consistent with the Model Rules. (1 CFR 315.103.)

Section 1023.304, "Eligibility of applicants," is proposed without significant changes. (1 CFR 315.104.)

Section 1023.305, "Standards for awards," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.105.)

Section 1023.306, "Allowable fees and expenses," would utilize its counterpart in the Model Rules without significant changes. However, references to agents have been deleted as noted above. (1 CFR 315.106.)

Section 1023.308, "Awards against other agencies," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.108.)

Section 1023.310, "Contents of application," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.201.)

Section 1023.311, subsection (b) of "Net worth exhibit," would modify its counterpart in the Model Rules by deleting the reference to the Freedom of Information Act, (FOIA), 5 U.S.C. 552(b)(1)–(9). Specific references are unnecessary since requests by third parties for exhibits filed with the Board are processed in accordance with agency rules implementing the FOIA which appear at 10 CFR part 1004. (1 CFR 315.202.)

Section 1023.312, "Documentation of fees and expenses," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.203.)

Section 1023.313, "When an application may be filed," would modify its counterpart in the Model Rules to avoid unnecessary fragmentation of EAJA award proceedings. Additionally, the reference to "review" is proposed for deletion since there is no provision for administrative review of Board decisions as distinguished from appeals from those decisions to the Court of Appeals for the Federal Circuit as provided in section 8(g)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)(1)). (1 CFR 315.204.)

Section 1023.320, "Filing and service of documents," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.301.)

Section 1023.321, "Answer to application," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.302.)

Section 1023.322, "Reply," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.303.)

Section 1023.323, "Comments by other parties," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.304.)

Section 1023.324, "Settlement," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.305.)

Section 1023.325, "Further proceedings," would modify its counterpart in the Model Rules to reflect that the Appeal File and supplements filed pursuant to Rule 4 of the Board's Rules of Practice, 10 CFR part 1023, are

part of the administrative record. (1 CFR 315.306.)

Section 1023.326, "Decision," would rename its counterpart in the Model Rules "Board decision" but otherwise would follow the Model Rules without significant changes. (1 CFR 315.307.)

Section 1023.327, "Agency review," would rename its counterpart in the Model Rules "Reconsideration" and would modify it further to reflect the finality of Board decisions. (1 CFR 315.308.)

Section 1023.328, "Judicial review," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.309.)

Section 1023.329, "Payment of award," would utilize its counterpart in the Model Rules without significant changes. (1 CFR 315.310.)

Several sections of the Model Rules have not been included.

Section 315.107 of the Model Rules, "Rulemaking on maximum rates for attorney fees," is not proposed for implementation. The EAJA, in 5 U.S.C. 504(b)(A)(ii), specifies that attorney fees "shall not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys * * * for the proceedings involved, justified a higher fee." The Department does not have sufficient data to support a determination that a higher fee is justified. Accordingly, § 1023.307 is marked "Reserved" in order to maintain paragraph designations consistent with the Model Rules.

Additionally, § 315.109 of the Model Rules, "Delegations of authority," is inapposite to the Board's functions under the Contract Disputes Act of 1978 and, consequently, has not been retained.

Review Under Executive Order 12291

These proposed rules have been reviewed under Executive Order 12291 and have been determined not to be a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based industries to compete in domestic export markets.

Review Under the Paperwork Reduction Act

These proposed rules have been reviewed under the Paperwork Reduction Act, 44 U.S.C. 3501, and have been determined to be exempt from its requirements by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. It has been determined that these proposed rules will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

Review Under the National Environmental Policy Act

These rules have been reviewed under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), Council of Environmental Quality guidelines (40 CFR parts 1500–1508), and the Department of Energy environmental guidelines (10 CFR part 1021), and have been determined not to represent a major federal action having a significant impact on the human environment. Therefore, no environmental impact statement has been prepared.

Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation. These rules will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Therefore, the preparation of a federalism assessment is not required.

Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The proposed rules would have no preemptive effect and would not have any effect on existing federal laws or regulations; the proposed rules would apply only to EAJA applications filed with the Board after the rules became final and, thus, would have no retroactive effect. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

Review Under Equal Access to Justice Act, 5 U.S.C. 504(c)(1)

In accordance with the requirements of 5 U.S.C. 504(c)(1), the Department of Energy Board of Contract Appeals has consulted with the Office of the Chairman of the Administrative Conference of the United States concerning this rule.

Opportunity for Public Comment

These proposed rules have been reviewed under 501(c)(1) of the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and it has been determined that no substantial issue of fact or law exists and it is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses and therefore can be promulgated in accordance with 5 U.S.C. 553. Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposed rules set forth in this Notice. Comments should be submitted to the address for the Energy Board of Contract Appeals which is given in the beginning of this Notice. All comments received on or before the date specified in the beginning of this Notice

and all other relevant information will be considered by the Board before taking final action on the proposed rules.

List of Subjects in 10 CFR Part 1023

Administrative practice and procedure, Government contracts, Government procurement.

Issued in Washington, DC, on August 27, 1992.

E. Barclay Van Doren,

Chairman, Board of Contract Appeals.

For the reasons set forth in the Preamble, the Department of Energy proposes to amend part 1023 of title 10 of the Code of Federal Regulations as follows:

PART 1023—CONTRACT APPEALS

1. A new subpart C is proposed to be added as set forth below:

Subpart C—Procedures Relating to Awards Under the Equal Access to Justice Act

General Provisions

Sec.

Information Required From Applicants

Procedures for Considering Applicants

Subpart C—Procedures Relating to Awards Under the Equal Access to Justice Act

Authority: Sec. 644, Title VI, Pub. L. 95–91, 91 Stat. 599; 5 U.S.C. 504.

General Provisions

§ 1023.300 Definitions.

For purposes of these procedures:

Agency Counsel means the attorney representing the Department or other agency in a proceeding under this subpart.

Board means the Department of Energy Board of Contract Appeals.

Covered proceeding means an underlying proceeding as specified by paragraph (a) of § 1023.303.

Days means calendar days.

§ 1023.301 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to covered proceedings. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. These procedures describe the parties eligible for awards and covered Board proceedings. They also explain how to apply for awards and the procedures and standards that the Board will use to make them.

§ 1023.302 When the Act applies.

The Act applies to any covered proceeding pending or commenced before the Board on or after August 5, 1985. It also applies to any such proceeding commenced before the Board on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 1023.310 of this subpart, has been filed with the Board within 30 days after August 5, 1985, and to any such proceeding pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1023.303 Proceedings covered.

(a) The Act applies to appeals from decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) to the Board as provided in section 8 of that Act (41 U.S.C. 607).

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1023.304 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the covered proceeding for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in tis subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the Board determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actua. relationship between the affiliated entities. In addition, the Board may determine that financial relationships of the applicant, other than those described in this paragraph. constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1023.305 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the covered proceeding, the action or failure to act by the agency upon which the covered proceeding is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the agency's position was substantially justified is on the agency counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 1023.306 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys or expert witnesses even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the respondent agency or agencies pay expert witnesses. However, an award may also include the reasonable expenses of the attorney or witness as a separate item, if the attorney or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney or expert witness, the Board shall consider the following:

(1) If the attorney or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

§ 1023.307 [Reserved]

§ 1023.308 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Board and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Information Required From Applicants

§ 1023.310 Contents of application—overview.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). The applicant shall attach a net worth exhibit that satisfies the requirements of § 1023.311. However, an applicant may omit this statement and forego the attachment of the net worth exhibit if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought. The applicant must document fees and expenses as required in § 1023.312.

(d) The application may also include any other matters that the applicant wishes the Board to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 1023.311 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1023.304(f) of this subpart) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The presiding administrative judge may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit may submit that portion directly to the presiding administrative judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion for a protective order setting forth the grounds therefor. A protective order may be granted for good cause shown.

§ 1023.312 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate, itemized statement shall be submitted for each professional firm or individual whose services are covered by the application. The statement should show the hours spent in connection with the Contract Disputes Act appeal by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The presiding administrative judge may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed pursuant to § 1023.306 of this subpart.

§ 1023.313 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, or, with permission of the Board for good cause shown, when the applicant has prevailed in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) For purposes of paragraph (a) of this section, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable.

(c) If reconsideration of a decision is sought as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of a covered proceeding to a court, no decision on an application for fees and other expenses in connection with that proceeding shall be made until a final and unreviewable decision is rendered by the court on that appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1023.320 Filing and service of documents.

Any application for an award, or other pleading or document relating to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the underlying proceeding, except as provided in § 1023.311(b) for confidential financial information.

§ 1023.321 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Further extensions may be granted by the presiding administrative judge upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under 1023.325.

§ 1023.322 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1023.325.

§ 1023.323 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1023.324 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1023.325 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or, on his or her own initiative, the presiding administrative judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record as a whole, including the contracting officer Appeal File and supplements filed pursuant to Rule 4 of the Board's Rules of Practice, 10 CFR part 1023, which is made in the covered proceeding for which fees and other expenses are sought.

(b) A request that the presiding administrative judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 1023.326 Board decision.

The Board shall issue its decision on the application as expeditiously as is practicable after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make the award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1023.327 Reconsideration.

Either party may seek reconsideration of the decision on the fee application in accordance with 10 CFR 1023.20, Rule 27.

§ 1023.328 Judicial review.

Judicial review of a final Board decision on an application for an award may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1023.329 Payment of award.

An applicant seeking payment of an award shall submit to agency counsel a copy of the Board's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts. Agency counsel will

forward the submission to the appropriate disbursing official. The agency will pay the amount awarded to the applicant within 60 days.

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 509, 516, 528, 541, 543, 545, 552, 556, 558, 559, 561, 563, 563b, 563e, 567, 571, 579, and 580

[No. 92-352]

RIN 1550-AA60

Regulatory Review

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The President announced on January 28, 1992, a review of all Federal regulations and policies for the purpose of eliminating over-burdensome regulations that discourage economic growth. The Office of Thrift Supervision has reviewed its regulations and policies, heard testimony from industry officials and issued a request for public comment on our standards for savings associations. We propose today to modify or delete a number of regulations consistent with the President's program as a result of this review process.

DATES: Comments must be submitted on or before October 5, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention Docket No. [92-352]. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Deborah Kennedy, Project Manager, (202) 906-7324, Policy; Mary H. Gottlieb, Paralegal Supervisor, (202) 906-7135, Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, or Karen Solomon, Deputy Chief Counsel, (202) 906-7240, Regulations & Legislation Division, Chief Counsel's Office, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On January 28, 1992, the President announced a Regulatory Review Program for all Federal government agencies. The agencies were asked to "weed out unnecessary and burdensome government regulations, which impede economic growth." The Office of Thrift Supervision (OTS) has reviewed each of its regulatory programs and today is publishing a list of proposed changes conforming to the President's program.

A. Scope of this Rulemaking

This preamble will discuss changes we plan to make to OTS regulations at this time; other changes we anticipate making as a result of our review of regulations; and the comments OTS received in answer to our request for comment on all of our regulations, bulletins, procedures and policies.

Any proposed changes to OTS regulations must balance the benefits of striving to promote growth and reducing regulatory burden against the need to ensure a safe and sound thrift industry. In that light, we have reviewed each of our current and proposed regulations, looking, in particular, for regulations that are no longer necessary or are overly burdensome.

The staff identified a number of rules to delete or modify that fall within the guideliner of the President's program. While none of these changes alone will have a major impact on the industry, taken together these proposed changes will significantly reduce regulatory burden and clarify OTS regulatory requirements without compromising safety and soundness. The changes we are proposing today are described in Section B, below. They are in addition to the proposed and final rules that OTS has published since February 1992, which also meet the objectives of the President's program.

Earlier this year, OTS held public hearings and requested comments from the industry and the general public on any rule, bulletin or policy that may have a negative net effect on the economy. See 57 FR 5080 (Feb. 12, 1992). We received 58 comment letters and testimony from 19 savings associations, law firms and trade associations. The letters and testimony commented on almost every aspect of thrift operations and regulation.

The OTS staff review and public comments indicated several actions that OTS could take that do not specifically require regulation changes. These suggestions include reconsidering specifics of certain policies in light of the President's program, simplifying certain examination procedures and initiating projects to clarify complicated rules. The actions under consideration in response to these suggestions are described in section C, below.

We received comments on the entire spectrum of OTS regulations, bulletins, policies and procedures. Some comments dealt with specific regulations or bulletins and were considered along with initial staff recommendations. We are incorporating some of these comments into the changes we propose today; others will be incorporated into other rulemaking projects already underway.

Some of the comments were general in nature and did not lead to a specific regulation change but were nevertheless helpful in identifying areas for further attention. While we are proposing to adopt the suggestions that comport with the President's review program, a number of the suggestions are beyond the scope of this project. Other suggestions would remove restrictions necessary to insure that savings associations operate safely and, thus, are not included in our proposals. Specific comments are summarized in Section D; more general comments are described in Section E.

The staff review of OTS regulations identified a large number of regulations that could be deleted to eliminate duplication of statutory language, unnecessary definitions, or otherwise unnecessary language, but that would not substantially change the regulations. In general, these types of changes are not being proposed at this time. To do so could have delayed development of the more significant revisions being proposed today and might have caused unnecessary confusion.

We are, however, considering replacing specific regulations that set forth express and implied powers of Federal savings associations with a general regulation authorizing Federal savings associations to exercise: (1) All powers that are authorized by statute, and (2) all incidental powers convenient or useful to conducting the business of a savings association so long as such incidental powers are consistent with safety and soundness and the fiduciary responsibilities of the association's directors, managers and controlling persons. We request comment on whether the advantages of the flexibility afforded by such a change would outweigh any added uncertainty or confusion it might cause.

B. Changes Proposed in This Rulemaking

OTS today proposes to delete or modify the following regulations:

1. Restrictions on Operations

a. Liability Growth (563.131)

OTS proposes to delete the regulation that governs the liability growth of savings associations. The restriction is tied to a capital standard based on liabilities that was removed in 1989 when OTS implemented the capital standards required by the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). OTS has in place asset growth restrictions based on an association's financial health that more adequately address safety and soundness concerns. See Regulatory Bulletin No. 3a–1. Asset growth limits are also contained in both FIRREA and the Prompt Corrective Action provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

b. Appraisals (563.90, 571.1)

Our recently revised "Appraisals" regulation (part 564), published April 13, 1992, sufficiently covers the requirements for appraisals on all real estate related transactions. Savings associations will need only to obtain evaluations, not more costly appraisals, on real estate loans of $100,000 or less, regardless of location. We propose to delete 12 CFR 563.90, "Appraisals Outside Lending Area", and the Policy Statement at § 571.1, "Appraisal of Real Estate Securing Assets of Savings Associations" because they are no longer necessary.

c. Debt Securities (545.75)

OTS proposes to modify the section dealing with commercial paper and corporate debt securities by deleting the requirement that, at any one time, the average maturity of a Federal savings association's portfolio of corporate debt securities may not exceed six years. The capital rules and interest rate risk management policies adequately address safety and soundness concerns in this area and additional restrictions are unnecessary.

d. Service Corporation Secured Debt (556.7)

OTS proposes to delete its regulation limiting the amount of secured debt that can be incurred by service corporations of savings associations. FIRREA imposed capital requirements on thrifts and their service corporations on a consolidated basis, for the most part. Thus these secured debt limitations are unnecessary.

e. Limits on Real Estate Acquisition and Improvement Loans (545.36)

Section 545.36(d) contains a provision limiting real estate acquisition and improvement loans for one development project to 2% of assets. This limit is superseded by the statutory loan to one borrower limit, which is implemented at section 563.93. We therefore propose to eliminate the limit on acquisition and improvement loans in 545.36.

f. Flood Disaster Protection (563.48)

Section 563.48(e) requires that a savings association, as a condition to purchasing a loan secured by property in a flood hazard area, notifying the borrower in writing, at least 10 days before the closing of the purchase transaction, that the property securing the loan is in a special flood hazard area and whether Federal disaster relief would be available for the property in the event of damage caused by flooding in a Federally declared disaster. Compliance with this requirement is virtually impossible for a savings association because pursuant to most purchase contracts, if may not contact a borrower until the purchase transaction is closed. Moreover, the disclosure requirement is redundant because the regulation requires that a borrower receive an identical disclosure at the time the loan is originated. The OTS is eliminating this redundancy by revising § 563.48(e) to delete the requirement that a savings association make written flood hazard disclosures to a borrower in the case of a loan purchase. The OTS stresses that it is eliminating only the written notification requirement and that a purchased loan secured by property in a special flood hazard area must still be covered by an adequate flood insurance policy meeting the requirements of § 563.48(b).

2. Definitions

a. General Reserves (541.12)

The current definition of general reserves is obsolete. The term is no longer used in the asset valuation area. We therefore propose to delete it.

b. District Director (541.9)

Over the past two years, OTS has consolidated its operations, downsizing and regionalizing to operate more efficiently. As a result, delegations formerly flowing through the 12 former "District Directors" now pass through OTS's five Regional Directors, and the term "District Director" is no longer in use. Deleting the term "District Director" will help to eliminate confusion in our delegations process. A conforming change is also being made to § 563e.6.

c. Short-term Savings Account (541.24) and Deposit Broker (561.17)

The definitions of the terms "short-term savings account" and "deposit broker" are unnecessary and may be eliminated.

3. Definitions and Restrictions Related to Transactions With Affiliates and Insiders (561.5, 561.46, 561.22, 563.34, 563.43, 563.45)

OTS has proposed to adopt a new regulatory structure to govern insider transactions and conflicts of interest. The new rules are modeled on the banking statutes and regulations in this area. When OTS adopts, in final form, its proposed regulation titled "Loans to Executive Officer, Directors and Principal Shareholders of Savings Associations; Insider Transactions and Conflicts of Interest," ("Insider Transactions") a number of definitions and regulations dealing with affiliates and affiliated persons and entities will become obsolete.

We propose to delete the definition of the term "affiliated person" at 12 section CFR 561.5. The term "affiliated person" is a key concept in several OTS regulations and deleting it would require that another term denoting similar persons be substituted in those regulations. Therefore, the OTS seeks comment on whether the term "insider," as defined in OTS's recently proposed "Insider Transactions" regulation, 57 FR 12232 (April 9, 1992), is an appropriate standard to replace the term "affiliated person" in each implicated regulation. If commenters believe that the term "insider" is inappropriate, they should suggest an alternative concept consistent with the general principles of safety and soundness governing the implicated regulations.

OTS proposes to delete § 563.45, requiring certain savings associations to provide voting members with an annual notice disclosing certain information on transactions with affiliates (Form AR). Since OTS plans to adopt transactions with affiliates rules similar to those imposed on the banking industry, and because savings associations are now required by section 36 of the Federal Deposit Insurance Act to make publicly available an annual report on financial condition and management, we believe that Form AR is duplicative and obsolete. Because of the many exceptions in the regulation, only approximately 50 institutions completed the form in 1991, although many more associations were required to review transactions in every reporting period to determine if they needed to file.

4. Corporate Structure

a. Directors and Advisory Board (552.6–1, 545.123)

OTS proposes to change the number of directors necessary for a Federal savings association from seven to five, consistent with the required number of national bank directors. This change will allow savings associations to save money on directors' fees and associated costs without impinging on safety and soundness. Section 552.6–1, "Board of Directors", would be modified to make this change. In addition, we propose to delete § 545.123, "Advisory Boards and Committees", because it is unnecessary. Institutions may continue to use advisory boards or committees, but they need not reappoint members on an annual basis.

b. Savings Deposits (552.8)

OTS is proposing to delete § 552.b(b), "Terms of savings deposits; membership and voting rights." The section simply explains that after a conversion from a mutual to stock association, holders of savings deposits are not members of the savings association and do not have voting rights. The substance of this section is self-evident, and the section can be eliminated.

c. Upgrading of Approved Branch Offices (545.93)

OTS, at one point, provided for three types of branch offices. Upgrading from one type to another required an application. OTS no longer distinguishes among branch types, thus an application to upgrade is obsolete. OTS proposes to delete this section.

5. Corporate Title Advertising (543.1, 552.7, 563.27, 563.29)

Section 543.1 requires that a Federal mutual savings association must include the word "savings" in its corporate title, and in some way indicate that it is a Federal association. Section 552.7 requires Federal stock associations to label savings deposits with the words "a captial stock association" or similar description. Section 563.29 prohibits associations from using a name that includes the word "insured." Section 563.27 indicates that any advertisement by a savings association must indicate that it is in fact a savings association.

These restrictions on corporate title and name used in advertisements are not necessary for consumer protection and have become increasingly anachronistic since the bank and thrift insurance funds are governed under the same ground rules by the FDIC. OTS believes that the specific requirements of these rules are no longer needed and therefore proposes to eliminate them. OTS will, however, retain the prohibition against misrepresentation by a savings association of the nature of the institution or the services it offers. We invite comments on what types of titles or phrases could be potentially misleading.

6. Gold (545.79, 571.10, 571.17)

Section 545.79, Gold Transactions, generally prohibits Federal savings associations from engaging in gold-related transactions. The policy statements dealing with gold transactions further establish an OTS policy to carefully scrutinize and limit gold-related transactions at state-chartered associations. These specific rules and guidelines are obsolete, in light of statutory changes made in 1974; thus, we propose to delete them. OTS will, however, continue to consider speculative transactions in gold as an unsafe or unsound activity.

7. Consumer Protection

a. Nondiscrimination Requirements (528.6)

OTS proposes to delete § 528.6 dealing with monitoring information. Presently, all financial institutions regulated by OTS, whether or not they are subject to the Home Mortgage Disclosure Act as implemented by the Federal Reserve Board's Regulation C (12 CFR part 203), must maintain a loan application register for various loan types. This loan application register is more comprehensive than required by Regulation C. Although the additional register information is useful to examiners, that information is available to them by other means. Further, deleting this requirement would make OTS's regulations consistent with those of the banking regulators. Those OTS-regulated institutions subject to Regulation C would still have to maintain loan application registers in accordance with the format and content requirements of that regulation.

OTS would continue to require institutions to report the reason for a denial on their Regulation C registers. We request comment on whether it is advisable to retain regulatory text that sets forth this requirement.

OTS is also considering deleting the definitional provisions contained in § 528.1 (d), (e), (f), and (g). We request comment on whether those definitions continue to be necessary if § 528.6 is deleted.

Finally, all savings associations and subsidiaries would continue to be required to collect monitoring information on home loan applications in accordance with the Equal Credit Opportunity Act, as implemented by the Federal Reserve Board's Regulation B. 12 CFR part 202.

b. Fixed-Rate and Adjustable-Rate Mortgage Loan Disclosures (563.99)

OTS proposes to delete § 563.99(d) requiring the disclosure of additional information dealing with due-on-sale clauses, late charges and prepayment penalties, escrow payments, and the notice of maturity for non- or partially-amortizing loans. Home loan contracts typically contain provisions regarding these matters, and some of them are referenced in Truth in Lending disclosures. Commercial banks are not required to make these additional disclosures, and the deletion of this requirement will make OTS' regulations consistent with those of the other agencies.

c. Prepayment Penalties on Adjustable-Rate Mortgage (ARM) Loans (545.34)

OTS regulations generally permit a Federal association to impose a prepayment penalty on a loan secured by borrower-occupied property, if the loan contract provides for the penalty and if that provision is properly disclosed to the borrower. Under current regulations, however, a federal association may not impose a prepayment penalty on an ARM loan for the 90-day period that follows a notice to the borrower that the mortgage payment will adjust. This requirement is inconsistent with safety and soundness because it discourages institutions from taking steps to prudently manage interest rate risk exposure.

OTS proposes to delete this limitation. As a result, prepayment penalties will be subject to negotiation between lenders and borrowers, and federal associations will be on equal footing with national banks. Any penalty provisions must be provided for in the loan contract and properly disclosed to borrowers. This proposed action will not affect other limitations in OTS regulations on the assessment of prepayment penalties.

d. Sales Plans and Giveaways (545.21, 563.24)

OTS proposes to delete the regulations on sales plans and giveaways. With the repeal of statutory interest rate restrictions, these rules are outdated. A Federal savings association is restricted under § 545.21 from using giveaways in states that have a "reciprocal statutory provision" relating to State-chartered savings associations. OTS believes that only California has

such a statutory provision. Section 563.24 is similarly narrow and relates to the use of sales agents in giveaway programs intended to circumvent deposit interest rate restrictions that no longer exist. We will, however, in conjunction with the FDIC, prohibit circumventions of other applicable interest rate limitations, such as those contained in section 29 of the FDIA.

8. Conservatorships and Receivership Rules (Parts 558, 559, 579, 580)

OTS proposes to consolidate into one regulation four regulations on procedures for taking possession of federal and state savings associations for which OTS has appointed a conservator or receiver. OTS also proposes to delete unnecessary or outdated portions of the regulations, and to correct and update references in the retained portions of the regulations.

OTS may appoint the FDIC or the RTC as conservator for any savings association. The OTS is required by statute to appoint the RTC as receiver until October 1, 1993. Thereafter, the OTS is required to appoint the RTC as receiver if the OTS had previously placed the RTC in control of the institution. After September 30, 1993, OTS must appoint the FDIC as receiver.

OTS proposes to retain and consolidate the portions of its current conservatorship and receivership regulations relating to the procedures for taking possession by a conservator or receiver and for providing notice of the appointment of a conservator or receiver. It is no longer necessary to maintain specific regulations outlining the required functions of a conservator or receiver, since these functions are carried out by the RTC or FDIC.

9. Other Policy Statements (571.3, 571.16, 571.25, 571.26)

OTS proposes to delete several policy statements from our regulations. Policy statement 571.3, "Interest-rate Risk Management", is obsolete and may lead to confusion when read in conjunction with more recent guidance in this area. Institutions should rely instead on Thrift Bulletins 12 and 13, and the recently revised section on interest rate risk in the Thrift Activities Handbook.

Policy statement 571.16, "Mortgage-backed-securities Transactions", is also no longer necessary. The Federal Home Loan Bank Board issued this policy statement to curb abuses in the accounting for exchanges of mortgage backed securities. It established guidelines for sale and financing treatment in anticipation of specific GAAP guidance. Since the issuance of the policy statement, the American Institute of Certified Public Accountants (AICPA) has issued three statements of policy and significantly revised the audit and accounting guide for savings institutions to address the issue of sales versus financing treatment of transactions involving mortgage backed securities. OTS follows generally accepted accounting principles in this area.

Policy Statement 571.25, "Accepting Pooled Accounts,", is unnecessary in light of the FDIC's brokered deposit restrictions implementing section 29 of the Federal Deposit Insurance Act, which apply to savings associations. OTS, thus, proposes to delete the policy statement.

Policy statement 571.26, "Classification of Certain Assets", is unnecessary in that it simply summarizes a more complete discussion of asset classification guidance found in the Thrift Activities Handbook. OTS proposes to delete the policy statement. Institutions should rely instead on section 563.150 and the Handbook guidance.

10. Other Clarifying Changes (§§ 509.104, 516.1, 545.41, 545.132, 563.32, 563.93, 563.132, 563.192, 563b.3, 567.20)

Section 509.104 provides certain additional procedures in adjudicatory proceedings governed by the OTS Local Rules of Practice and Procedure in Adjudicatory Proceedings ("Local Rules").[1] OTS proposes to clarify this section.

We propose several technical amendments to filing procedures. Copies of all documents, papers, and motions required or permitted to be filed with the Office of Financial Institution Adjudication or the administrative law judge would also be required to be filed with the Director by filing copies with the Corporate Secretary. Copies of filings made after the submission of the proceeding to the Director for final review also would be made with the Corporate Secretary. Service upon the Director, in general, would be accomplished by filing with the Corporate Secretary.

We propose to add a new subsection to section 509.104 clarifying that the filing of papers with the Director must be made by filing with the Corporate Secretary.

A technical change to § 516.1 is being made to require the filing in Washington of two copies of any non-delegated application or notice.[2] This filing requirement will facilitate processing of applications that may need review and approval in Washington and will eliminate potential lengthy delays that could occur without readily available application materials.

Section 563.32 allows an association to pay a nominal fee to the trustee of a self-employed retirement trust during the period that the trust account is maintained in the association. OTS proposes to delete the section because it is redundant. Fees and compensation are adequately addressed in part 550, adopted after 563.32, which covers compensation for trust accounts.

We also propose to delete the section requiring specific bond coverage for sale deposit business conducted by savings associations. The existing requirements in part 568 sufficiently address both safety and soundness and security concerns.

Section 567.20 established procedures for savings associations operating under certain limited capital forbearance that were created by the Competitive Equality Banking Act of 1987 and were grandfathered under section 302 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. We believe that no savings associations currently are operating under these limited statutory forbearance and that the section is now obsolete and should be removed.

Section 545.41(a) contains references to regulations of the Department of Housing and Urban Development ("HUD") that are no longer in existence; this section therefore requires modification.

Section 5(c)(3)(B) of the Home Owners' Loan Act ("HOLA") authorizes a federal savings association to invest up to two percent of its assets in real property and loans located in "a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974." OTS' implementing regulation 23 CFR 545.41, was originally promulgated in 1984 and was intended to be consistent with the manner in which HUD was then administering Title I programs.

[1] The Local Rules apply to OTS administrative proceedings commenced subsequent to August 12, 1991. *See* 56 FR 38,302, 38,317 (Aug. 12, 1991) (codified at 12 CFR 509.104).

[2] Pursuant to its recent applications restructuring regulation to streamline the applications process, see 57 FR 14329 (April 20, 1992), the OTS will shortly, by OTS order, generally delegate the authority to approve and deny most applications to its Regional Offices. Under this order, only applications issues that raise significant issues of law or policy or other matters designated for Washington consideration would fall outside the general delegation. See 57 FR at 14330.

Numerous changes have since been made in the way Title I programs are administered. It is our understanding that HUD currently targets Title I assistance to specific population groups, rather than specific neighborhoods. As a result, it may be relatively rare for Title I assistance to be concentrated in an area or neighborhood.

In light of the foregoing, the OTS invites comment on how 12 CFR 545.41 should be amended. Commenters are specifically asked to address whether, given the way Title I is currently administered, there are meaningful ways to identify neighborhoods or areas receiving concentrated Title I assistance. If not, commenters are asked to address whether there are workable alternative standards that would be consistent with HOLA section 5(c)(3)(B).

In August, 1990, OTS removed § 545.132, governing the release of customer financial records by Federal savings associations. At that time, we announced that we intended to repropose a rule addressing this issue. Since then, OTS has determined that a Federal regulation governing the release of such information by savings associations would not significantly further OTS policies and would duplicate state law. We do not now anticipate reproposing a regulation on this issue. State law will continue to govern the activities of savings association in this area.

The OTS is proposing to amend 12 CFR 563b.3(i) to revise the requirements for acquisitions of control of recently converted associations. Section 563b.3(i) generally prohibits the offer to acquire or the acquisition of more than ten percent of any class of equity of a savings association that converted to stock form within the prior three years, without obtaining prior written approval for the OTS.

New subparagraph (vi) provides that the OTS will no longer require no application under § 563b.3(i), for acquisitions of stock of recently converted associations, provided that an application required to be filed under part 574 regarding a proposed acquisition addresses the criteria for approval under paragraph (i)(5) of § 563b.3(i), and the proposed transaction is not hostile, i.e., not opposed by the association. In addition, new subparagraph (vi) specifies that an application submitted under this exception generally would not be deemed a prohibited offer to acquire a recently converted institution under § 563b.3(i)(3)(i). Thus, in situations where proposed acquirors may utilize the exception, they will be permitted to enter into a binding acquisition agreement prior to submission of an application under part 574.

We are also making technical changes to § 563.93, the loans to one borrower rule, and 563.132, the finance subsidiary rule, to correct cross-references.

C. Other Actions Resulting From the 90-Day Regulation Review

In response to its request for comment published in February, OTS also received a number of requests for changes designed to foster a more pro-growth environment. OTS is considering the following suggestions.

1. Executive Compensation

Five commenters asked that OTS rescind or substantially change its bulletin on Executive Compensation, especially its applicability to non-problem associations. While OTS is concerned that some compensation schemes threaten savings associations' safety and soundness and warrant supervisory attention, we will generally defer to the Board of Director in compensation matters for healthy thrifts where safety and soundness issues do not arise, consistent with section 132 of FDICIA.

2. Loans-to-One Borrower

Two comments focused on the OTS loans to one borrower (LTOB) rule. One asked for OTS to allow associations to apply the LTOB rule to the "end users" of loans. For example, loans to builders for pre-sold homes would be considered loans to the individual home purchasers for LTOB purposes, provided the thrift independent checked the creditworthiness of each home purchaser. This suggestion would not require a rulemaking; we will, however, separately investigate whether the proposed modification in policy would be appropriate.

Finally, a commenter urged OTS to authorize an "untroubled association" to use its salvage powers to exceed LTOB limits in "selected circumstances, and as approved by its Board of Directors." OTS has this issue under active consideration at the present time, and expects to make a determination in the near future.

3. Manogement Questionnaire

One comment explained that an examination Management Questionnaire requires the number of shares of the institution's common stock held by each director, officer and employee of the institution. OTS will consider some limit on the number or types of individuals listed in the questionnaire.

4. Forward Commitments, Options and Futures

Two commenters pointed to inconsistencies in OTS regulations on forward commitments, options and futures (563.96, 563.173, 563.174, 563.175). OTS is considering substantial revisions to these regulations; in undertaking such revisions, we will consider allowing institutions meeting fully-phased-in capital requirements to participate in long-term futures contracts.

D. Summary of Specific Comments

1. Complionce

The most common specific comments centered on compliance with some consumer protection laws and regulations. Many commenters asked for relief from various provisions of the Bank Secrecy Act (BSA), Truth in Savings Act, Truth in Lending Act, the Flood Disaster Protection Act and the Expedited Funds Availability Act. Many of these comments urged OTS and the Congress to consider the relative costs and benefits of these rules and whether the costs were appropriately placed on financial institutions.

All of these compliance requirements are either implemented primarily by regulations of another agency or are mandated by statute. These regulatory requirements are being reviewed, however, in the Federal Financial Institutions Examination Council's (FFIEC) study of the regulatory burden under the FDICIA, which will determine, on an interagency basis, whether regulatory implementation of the statutory requirements can be streamlined or simplified.

2. Regulations and Policies in Process

Almost a third of the comment letters and testimony gave additional comments on proposed regulations or notices that have already been published for notice and comment. Comments on "Real Estate Appraisals," "Applications Restructuring", "Interstate Branching", "Fidelity Bonds", "Interest Rate Risk", "Leverage Ratio" and "Miscellaneous Capital Amendments", "Monthly Reporting Requirements", "Mutual Holding Companies", "Uniform Accounting Standards", "Supervisory Conversions" and "Transactions with Affiliates and Insiders" have been or will be considered as part of the rulemakings on those issues or considered in this process, as appropriate to the timing of the issue.

We also received a number of comments on issues on which we planned to propose regulations or issue

bulletins, including comments urging OTS to include core deposit intangibles in capital, to allow optional membership in the Federal Home Loan Bank System, to exempt covered assets from percentage of assets or capital limits, to streamline applications for minor merger transactions and to clarify recourse rules. We recently issued proposals on "Identifiable Intangibles" and "Membership in the Federal Home Loan Bank System" and will consider comments on these issues in connection with the preparation of those final rules. We will consider comments on the other issues mentioned as we develop proposed rules, bulletins or opinions in those areas.

3. Valuation Allowances

The ten comments on the OTS general valuation allowance (GVA) policy asked OTS to coordinate loan loss methods with the FDIC, to clarify the interplay between GVAs and capital calculations, or simply to change our current methods of calculating GVAs.

OTS staff has issued a Thrift Bulletin (TB 38–4, issued April 13, 1992) on the interplay between GVAs and capital for assets subject to the "deduction from regulatory capital" requirement. Separately, OTS staff is also developing more explicit guidance on the appropriate level of GVAs for savings associations. We plan to issue the guidance for public comment. Staff also has prepared guidance for associations and examiners on asset classifications. This guidance seeks to ensure that OTS policy is implemented in a uniform, consistent manner, one that comports with the November 7, 1991 Interagency Policy Statement on asset classification.

4. Qualified Thrift Lender (QTL) Test

Five commenters asked for relief from the Qualified Thrift Lender (QTL) test. Most see the statutorily-mandated test, even with FDICIA's recent liberalization, as overly-burdensome, costly and antiquated. Several highlighted that Congress has changed the test three times in the last four years and such changes are extremely costly. We recognize these concerns and intend to continue, through our implementing regulations, to keep the required changes to a minimum, consistent with our statutory responsibilities.

5. Directors' Responsibilities

Eight comments described problems obtaining and retaining directors. Institutions cited difficulties in obtaining blanket bond and director/officer insurance coverage due to mandatory formal enforcement actions against institutions with poor MACRO ratings. In response, we have initiated an interagency project to define more clearly the role of directors.

E. Summary of General Comments

Most commenters asked OTS to consider some general changes in the structure of thrift regulation such as decreasing the examination burden, adopting differential regulations based on size or health of association, providing relief from perceived excessive reporting, or insuring parity between thrifts and banks in their operations or reporting.

1. Examinations

The most common concern of the commenters is the overlap in examination and regulation by the OTS and the Federal Deposit Insurance Corporation (FDIC). Associations cited frustration with conflicting signals from the OTS and the FDIC and increased examination costs and inefficiency due to separate examinations. Institutions want the government to speak with one voice.

Under the authority granted by the FIRREA, the FDIC has examined all troubled, and many healthy, savings institutions, producing a separate examination report. This process initially served several constructive purposes. It has not always been carried out in the most efficient manner, however, sometimes resulting in increased costs and mixed messages to the industry and individual savings institutions.

The OTS and the FDIC recognize this problem and, on May 18, 1992, issued a Joint Agreement that will govern the conduct of examinations, supervisory and enforcement actions, and capital plan reviews in which the FDIC has an interest. The Joint Agreement clarifies the regulatory roles of the OTS and the FDIC, defines responsibilities, and establishes a conflict resolution process for the two agencies. We expect the agreement will result in joint OTS/FDIC examinations for most institutions that the FDIC wishes to examine, and that, generally, the OTS will be the only Federal regulator dealing directly with savings associations.

Some commenters stated that the interagency policies intended to address concerns over credit availability are not being followed by examiners. OTS has taken a number of steps to ensure that these policies are understood and implemented by the field staff. Senior examining personnel participated in the national conference of bank and thrift regulators, held in Baltimore, Maryland in December 1991. Regional conferences have been held in all OTS Regions to ensure that all examiners fully understand the existing policies. The examiner-in-charge of each OTS examination must confirm that these interagency policies have been used in the examination. Senior Regional review examiners must also confirm that each examination has followed these policies. Finally, thrift institutions may utilize the Supervisory Review Process established April 6, 1992 to seek senior level review of exam-related issues if they do not believe that these policies have been followed.

2. Differential Regulation by Health and Size

Many institutions asked OTS to consider health and size of institutions in implementing regulations. Well capitalized associations emphasized their relatively low risk of failure, and thus, low risk to the deposit insurance fund and, ultimately, the taxpayer. Several letters from small associations detailed the strains of consumer protection laws and interest rate risk reporting.

OTS has already adopted a policy of differential regulation based on capital strength and overall health of associations in many recent policies and regulations. The passage of FDICIA adds a Congressional mandate to continue this trend. OTS will consider a differential strategy to regulation when writing new regulations or revisiting existing regulations wherever feasible.

We are also aware of the large relative burden some regulations place on small institutions. Small institutions are exempted from Home Mortgage Disclosure Act (HMDA) filings for this reason. We are currently considering whether smaller healthy institutions should file an abbreviated Maturity and Rate (Schedule MR) report for interest rate risk calculations and whether we should reduce the independent audit burden for such institutions consistent with the FDIC's rule implementing section 112 of FDICIA.

OTS requests comments on other areas of thrift operations or reporting requirements that could benefit from a differential approach. We are particularly interested in comments identifying areas where recordkeeping requirements could be amended to reduce the burden on smaller associations while still supplying OTS with sufficient information to review the association's compliance with OTS regulations and policies.

3. Parity Between Savings Associations and Banks

Five commenters specifically requested that OTS recognize the disparity between bank and thrift reporting and regulation. Several other commenters mentioned specific requirements that apply to thrifts but not to banks. Most of these comments cited capital treatments that very between banks and thrifts, or regulations that take a "cookbook" approach, *i.e.*, regulation of specific business practices rather than establishing general safety and soundness parameters for operations. One commenter asked for OTS help to level the playing field among all financial service providers.

OTS has issued a number of final and proposed regulations over the past year that are the result of interagency agreements. Thus, banks and thrifts are operating under an increasingly similar set of regulations. This trend will continue. FDICIA has resulted in creation of over 20 interagency working groups to develop joint policies on a wide range of major issues. In addition, the OTS and the banking agencies recently announced the Regulatory Uniformity Project (RUP) chaired by the Chairman of the FDIC, to bring still greater uniformity to financial institution regulation. These efforts complement the traditional role of the FFIEC in encouraging interagency cooperation.

4. Uncertainty

Many commenters noted that their most difficult problem was creating a sound business plan in the face of ongoing regulatory uncertainty. Many of those testifying stressed the costs of retraining staff and recreating system to accommodate changing regulations.

We recognize that savings associations have been subject to three major pieces of legislation in five years. OTS is required to implement the standards required by legislation, and other rules necessary for safe and sound operations, on a timely basis. Responsible regulation requires that OTS take the time necessary to seek and respond to public comment, coordinate where possible, or where required, with the banking regulators, and consider the impact of new regulations on savings associations and the economy. Some issues are easily resolved; others, like interest rate risk, are complex and difficult. We strive for a reasonable, coherent framework of regulations through which to supervise savings associations. The changing requirements of legislation, however, have necessitated reconsidering and revising many rules already in place.

5. Rale of Bulletins

Five commenters asked that OTS clarify the difference between regulations and bulletins. Thrift Bulletin 1–2, "Enforcement of Bulletins," explains OTS's view of thrift and regulatory bulletins as follows:

> "Policies set forth in Bulletins represent the Agency's interpretation of regulations and what constitutes unsafe or unsound practices. These policies establish uniform and objective criteria by which the Agency's staff evaluate the practices and policies of thrift institutions. While Bulletins themselves are not directly enforceable, they represent the Agency's best judgment in interpreting regulations that will be used as the basis for enforcement action."

OTS will continue to use Thrift Bulletins to convey important supplemental guidance and define unsafe and unsound practices.

F. Comment Solicitation

In addition to the specific requests for comment that appear elsewhere in the Supplementary Information, OTS solicits comment on all aspects of today's proposal. Commenters are encouraged to address those issues where regulatory changes are proposed in this rulemaking. We have previously invited and received broad, general comments on our regulatory programs. At this stage of the regulatory review process, commenters are therefore urged to be as specific as possible in identifying any modifications to OTS regulations that they wish to suggest.

Executive Order 12291

The Office has determined that this regulation does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of smaller entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

List of Subjects

12 CFR Part 509

Administrative practice and procedures, Penalties.

12 CFR Part 516

Applications, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 528

Advertising, Civil rights, Credit, Fair housing, Mortgages, Reporting and recordkeeping requirements, Savings associations, Signs and symbols.

12 CFR Parts 541, 543, 556, 558, 559, 561, 579 and 580

Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

Subchapter A—Organization and Procedures

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 781.

2. Section 509.104 is amended by revising the first sentence of paragraph (b), paragraphs (d) and (f), by redesignating paragraph (g) as paragraph (i), and by adding new paragraphs (g) and (h) to read as follows:

§ 509.104 Additional procedures

* * * * *

(b) *Motions.* All motions shall be filed with the administrative law judge and with the Corporate Secretary; provided however, once the administrative law judge has certified the record to the Director pursuant to § 509.39 of this part , all motions must be filed with the Director, to the attention of the Corporate Secretary, within the 10 day period allowed for the filing of replies to exceptions. * * *

* * * * *

(d) *Notification of submission of proceeding to the Director.* Upon the expiration of the time for filing any exceptions, any replies to such exceptions or any motions and any ruling thereon, and after receipt of the certified record, the Office shall notify the parties within ten days of the submission of the proceeding to the Director for final determination. Subsequent to the submission of the proceeding to the Director for final determination, service of any document upon the Director shall be made by filing one copy with the Corporate Secretary.

* * * * *

(f) *Service upon the Office.* Service of any document upon the Office shall be made by filing with the Corporate Secretary, in addition to the individuals and/or offices designated by the Office in its Notice issued pursuant to § 509.18 of this part or such other means reasonably suited to provide notice of the person and/or office designated to receive filings.

(g) *Filing of papers with the Director.* One copy of any papers, documents and motions required or permitted to be filed with the OFIA or administrative law judge pursuant to subparts A and B of this part shall also be filed with the Corporate Secretary.

(h) *Filing and certification of record.* Concurrent with filing with and certifying to the Director for decision the record of the proceeding, the administrative law judge shall also furnish to the director a certified index of the entire record, together with a certified index of all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing. The index of the exhibits shall also include any post-hearing exhibits admitted into evidence and post-hearing exhibits introduced but not admitted into evidence after completion of the hearing.

* * * * *

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

2a. The authority citation for part 516 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

3. Section 516.1 is amended by adding a sentence to precede the last sentence of paragraph (c) introductory text to read as follows:

§ 516.1 Offices of the Office of Thrift Supervision; information and submittals.

* * * * *

(c) *Filings.* * * * Two additional conformed copies shall be filed with the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, of any application, notice or other filing that raises a significant issue of law or policy, as defined by OTS order or other OTS guidance. * * *

* * * * *

Subchapter B—Consumer-Related Regulations

PART 528—NONDISCRIMINATION REQUIREMENTS

4. The authority citation for part 528 is revised to read as follows:

Authority: 12 U.S.C. 1464, 2801 *et seq.*, 2901 *et seq.*; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

§ 528.6 [Removed]

5. Section 528.6 is removed.

Subchapter C—Regulations for Federal Savings Associations

PART 541—DEFINITIONS

6. The authority citation for part 541 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 541.9 [Removed]

7. Section 541.9 is removed.

§ 541.12 [Removed]

8. Section 541.12 is removed.

§ 541.24 [Removed]

9. Section 541.24 is removed.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

10. The authority citation for part 543 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 **et seq.**

§ 543.1 [Amended]

11. Section 543.1 is amended by removing the first sentence of paragraph (a).

PART 545—OPERATIONS

12. The authority citation for part 545 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.21 [Removed]

13. Section 545.21 is removed.

14. Section 545.34 is amended by revising the second sentence of paragraph (b) and the second sentence of paragraph (c) to read as follows, and by removing the last sentence of paragraph (c):

§ 545.34 Limitations for home loans secured by borrower-occupied property.

* * * * *

(b) * * * With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no later charge, regardless of form, shall be assessed or collected by a Federal savings association, unless any monthly billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed.

* * *

(c) * * * A Federal savings association may impose a penalty on the prepayment of a loan as provided in the loan contract.

§ 545.36 [Amended]

15. Section 545.36 is amended by removing the second and third sentences in paragraph (d).

§ 545.75 [Amended]

16. Section 545.75 is amended by removing and reserving paragraph (b)(5).

§ 545.79 [Removed]

17. Section 545.79 is removed.

§ 545.93 [Removed]

18. Section 545.93 is removed.

§ 545.123 [Removed]

19. Section 545.123 is removed.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

20. The authority citation for part 552 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

21. Section 552.6–1 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 552.6–1 Board of directors.

* * * * *

(b) *Number and term.* The board of directors shall consist of not fewer than five nor more than fifteen as prescribed in the bylaws. * * *

* * * * *

§ 552.7 [Removed]

22. Section 552.7 is removed.

§ 552.8 [Amended]

23. Section 552.8 is amended by removing and reserving paragraph (b).

PART 556—STATEMENTS OF POLICY

24. The authority citation for part 556 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1692–1693r.

§ 556.7 [Removed]

25. Section 556.7 is removed.

26. Part 558 is revised to read as follows:

PART 558—POSSESSION BY CONSERVATORS AND RECEIVERS FOR FEDERAL AND STATE SAVINGS ASSOCIATIONS

Sec.
558.1 Procedure upon taking possession.
558.2 Notice of appointment.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 558.1 Procedure upon taking possession.

(a) The conservator or receiver for a Federal or state savings association shall take possession of the savings association by taking possession of the principal office of the Federal or state savings association and in accordance with the terms of the Director's appointment.

(b) Upon taking possession, the conservator or receiver shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator or receiver by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian in the principal office of the savings association who appears to be in charge.

(3) Take possession of the savings association's books, records and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator or receiver knows to be holding or in possession of assets of the savings association, that the conservator or receiver has succeeded to all rights, titles, powers and privileges of the savings association.

(5) File with the Corporate Secretary a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and

(6) Post a notice on the door of the principal and other offices of the savings association is substantially the following form:

(i) For the appointment of a conservator:

The (name of Federal/state savings association) is in the hands of (name) as Conservator under appointment by the Director of the Office of Thrift Supervision.

Conservator _____

Date _____; or

(ii) For the appointment of a Receiver:

(a) During the period beginning on December 31, 1988 and ending on October 1, 1993:

The (name of savings association) is in the hands of the Resolution Trust Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.

Receiver _____

Date _____; or

(b) After October 1, 1993:

The (name of savings association) is in the hands of the Federal Deposit Insurance Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.

Receiver _____

Date _____

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer or director shall thereafter have or exercise any right, power, or privilege, or act in connection with any of the savings association's assets or property.

§ 558.2 Notice of appointment.

If the Director of the OTS appoints a conservator or receiver under this part, the Corporate Secretary shall mail a certified copy of the OTS's appointment to the savings association's address as it appears in the OTS's records, and notice of the appointment shall be filed immediately for publication in the Federal Register.

PART 559—POSSESSION BY RECEIVERS FOR FEDERAL SAVINGS ASSOCIATIONS [REMOVED]

27. Part 559 is removed.

Subchapter D—Regulations Applicable to all Savings Associations

PART 561—DEFINITIONS

28. The authority citation for part 561 is revised to read as follows:

Authority 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 561.5 [Removed]

29. Section 561.5 is removed.

§ 561.17 [Removed]

30. Section 561.17 is removed.

§ 561.22 [Removed]

31. Section 561.22 is removed.

§ 561.46 [Removed]

32. Section 561.46 is removed.

PART 563—OPERATION

33. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462(a), 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

§ 563.24 [Removed]

34. Section 563.24 is removed

§ 563.27 [Amended]

35. Section 563.27 is amended by removing paragraph (b)(2) and by redesignating paragraph (b)(1) as paragraph (b).

§ 563.29 [Removed]

36. Section 563.29 is removed.

§ 563.32 [Removed]

37. Section 563.32 is removed.

§ 563.34 [Removed]

38. Section 563.34 is removed.

§ 563.43 [Removed]

39. Section 563.43 is removed.

§ 563.45 [Removed]

40. Section 563.45 is removed.

§ 563.48 [Amended]

41. Section 563.48 is amended by removing from the first sentence of paragraph (e) the phrase "(including

purchasing)" and by inserting in lieu thereof the phrase "(but not including purchasing)".

§ 563.90 [Removed]

42. Section 563.90 is removed.

§ 563.93 [Amended]

43. Section 563.93 is amended by removing the phrase "as defined in paragraph (b)(13) of this section" from paragraphs (b)(6)(i) and (d)(3)(ii) and by adding in lieu thereof the phrase "as defined in paragraph (b)(11) of this section".

§ 563.99 [Amended]

44. Section 563.99 is amended by removing and reserving paragraph (d).

§ 563.131 [Removed]

45. Section 563.131 is removed.

46. Section 563.132 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 563.132 Securities issued through subsidiaries.

(a) * * *

(1) * * *

(ii) An operating subsidiary (as defined in § 545.81(b) of this chapter), a service corporation (as defined in § 561.45 of this subchapter), or any other subsidiary of a state-chartered savings association not organized in compliance with § 545.82 of this chapter, if any proceeds of such securities are remitted to a parent savings association (unless such a subsidiary demonstrates to the OTS that the purpose for such an issuance was totally for the subsidiary's reasonable corporate needs based on reasonable written projections of its financing requirements).

* * * * *

§ 563.192 [Removed]

47. Section 563.192 is removed.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

48. The authority citation for part 563b is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a; 15 U.S.C. 78c, 1–n, w.

49. Section 563b.3 is amended by adding a new paragraph (i)(4)(vi) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(i) *Acquisition of the securities of converting and converted savings associations* * * *

(4) *Exceptions.* * * *

(vi) No application under paragraph (i)(3)(i) of this section generally shall be required for any proposed acquisition that requires prior approval of, or clearance by, the OTS under 12 CFR part 574 *provided* that (A) the application required to be filed pursuant to part 574 addresses in specific detail how the proposed transaction will comply with the criteria for approval under paragraph (i)(5) of this section, and (B) the proposed acquisition is not opposed by the recently converted association subject to paragraph (i)(3)(i) of this section. Where, pursuant to this paragraph (i)(4)(vi), no separate application is required under paragraph (i)(3)(i), the prohibition on offers to acquire equity securities contained in paragraph (i)(3)(i) of this section, as defined in paragraph (i)(7)(ii) of this section, shall not apply.

* * * * *

PART 563e—COMMUNITY REINVESTMENT

50. The authority citation for part 563e is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 563e.6 [Amended]

51. Section 563e.6 is amended by removing the phrase "District Director" from the third, fifth, and sixth paragraphs of the sample Notice and adding in lieu thereof the phrase "Regional Director".

PART 567—CAPITAL

52. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 567.20 [Removed]

53. Section 567.20 is removed.

PART 571—STATEMENTS OF POLICY

54. The authority citation for part 571 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.1 [Removed]

55. Section 571.1 is removed.

§ 571.3 [Removed]

56. Section 571.3 is removed.

§ 571.10 [Removed]

57. Section 571.10 is removed.

§ 571.16 [Removed]

58. Section 571.16 is removed.

§ 571.17 [Removed]

59. Section 571.17 is removed.

§ 571.25 [Removed]

60. Section 571.25 is removed.

§ 571.26 [Removed]

61. Section 571.26 is removed.

Subchapter E—Regulations Applicable to State-Chartered Savings Associations

PARTS 579 AND 580—[REMOVED]

62. Parts 579 and 580 are removed, and subchapter E is removed.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92–21192 Filed 9–2–92; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–42–AD]

Airworthiness Directives; Beech Model 300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 89–22–12, which currently requires inspection of the upper aft cowling access door latches for proper tension and total engagement of the adjusting bolts and striker plates on certain Beech Model 300 airplanes, adjustment or modification if tension or engagement requirements are not met, and cowling door retention modification. A cowling door latch replacement kit has been developed and the Federal Aviation Administration (FAA) has determined that its proper installation provides a level of safety equivalent to the cowling door retention modification required by AD 89–22–12. The proposed action would retain the requirements of the previous AD but incorporate this new modification into the AD as a compliance option. The actions specified by this AD are intended to prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs.

DATES: Comments must be received on or before November 17, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel,

Attention: Rules Docket No. 92–CE–42–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4145; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–42–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–42–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 89–22–12, Amendment 39–6351 (54 FR 41438, October 10, 1989), currently requires the following on certain Beech Model 300 airplanes: (1) inspection of the upper aft cowling access door latches for proper tension and total engagement of the adjusting bolts and striker plates; (2) cowling door latch adjustment if improper tension is found; (3) modification if the adjusting bolts and striker plates do not totally engage; and (4) and modification of the cowlings to provide upper aft cowling access door retention. These actions are required to be accomplished in accordance with Beech Service Bulletin (SB) No. 2329, dated August 1989.

Since AD 89–22–12 has become effective, Beech has developed a cowling door latch replacement kit and the FAA has determined that its proper installation provides a level of safety equivalent to the cowling door retention modification required by AD 89–22–12.

In addition, Beech has revised Service Bulletin No. 2329 to include procedures for this cowling door retention modification as well as procedures for the inspection and modifications already required by AD 89–22–12.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken in order to prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Model 300 airplanes of the same type design, the proposed AD would supersede AD 89–22–12 with a new AD that would (1) retain the inspection and modifications of the aft cowling doors that are currently required by AD 89–22–12; and (2) allow a cowling door latch replacement kit to be installed in lieu of the cowling door retention modification required by AD 89–22–12. The proposed actions would be accomplished in accordance with Beech SB No. 2394, issued August 1989, revised February 1991.

The FAA estimates that 152 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 17 workhours per airplane to accomplish the proposed action if the operator chose to install the cowling door latch replacement kit (latch replacement option) or approximately 3 workhours per airplane to accomplish the proposed action if the operator accomplished the modification of the cowling to provide a more positive cowling door retention (cowling door retention option), and that the average labor rate is approximately $55 an hour. Parts for the cowling door latch replacement kit cost approximately $2,372 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $505,664 (latch replacement option) or $25,080 (cowling door retention option).

AD 89–22–12, which would be superseded by this AD, currently requires that the cowling door retention option be accomplished on the affected airplanes. The only difference between that AD and the proposed action is the choice of accomplishing either the latch replacement option or the cowling door retention option. Since the latch replacement option is not mandatory, the proposed action would not require any additional cost impact upon U.S. operators of the affected airplanes than that which is currently required by AD 89–22–12.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 89–22–12, Amendment 39–6351 (54 FR 41438, October 10, 1989), and by adding the following new airworthiness directive:

Beech: Docket No. 92–CE–42–AD. Supersedes AD 89–22–12, Amendment 39–6351.

Applicability: Model 300 airplanes (serial numbers FA–2 through FA–211 and FF–1 through FF–19), certificated in any category.

Compliance: Required as indicated, unless already accomplished (superseded AD 89–22–12).

To prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, inspect the upper aft cowling access door latches for proper tension and total engagement of the adjusting bolts and striker plates in accordance with Part I of the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) No. 2329, dated August 1989, revised February 1991.

(1) If improper tension is found, prior to further flight, adjust the cowling door latch in accordance with Beechcraft Super King Air 300 Maintenance Manual, Chapter 71–10.

(2) If the adjusting bolts and striker plates do not totally engage, prior to further flight, modify the cowling door in accordance with Beechcraft Safety Communique No. 300–75.

(b) Within the next 50 hours TIS after the effective date of this AD, accomplish one of the following:

(1) Modify the cowlings to provide upper aft cowling access door retention in accordance with Part II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2329, dated August 1989, revised February 1991; or

(2) Install cowling door latch replacement Kit No. 101–9052–1 S in accordance with Part III of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2329, dated August 1989, revised February 1991.

(c) If the requirements of paragraphs (a), (a)(1), (a)(2), and (b)(1) were previously accomplished (superseded AD 89–22–12) in accordance with Beech SB No. 2329, dated August 1989, then no further action is required by this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

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

(f) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment supersedes AD 89–22–12, Amendment 39–6351.

Issued in Kansas City, Missouri, on August 25, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–21220 Filed 9–2–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141, 142, 143, and 151

Invoice Requirements

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth specific requirements for the description of certain types of merchandise on commercial invoices submitted to Customs in connection with the importation and entry of such merchandise in the United States. The proposed amendments are intended to ensure that Customs has sufficient information to determine the tariff classification and admissibility of the merchandise with reference to the numerical scheme and product descriptions contained in the Harmonized Tariff Schedule of the United States.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Elliott Feldman, Office of Trade Operations (202–927–0236).

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1988, Customs published T.D. 89–1 (53 FR 51244) setting forth interim amendments to the Customs Regulations (19 CFR chapter I) to reflect the structure, language, and numbering of the Harmonized Tariff Schedule of the United States (HTSUS). The interim amendments (which took effect on January 1, 1989, to coincide with the implementation of the HTSUS as a replacement for the Tariff Schedules of the United States (TSUS)) included the replacement of TSUS numerical and organizational references with the new corresponding HTSUS references as well as the amendment of regulatory wording to reflect HTSUS terminology which differed from that of the TSUS. Included in the regulatory amendments was a revision of § 141.89(a), Customs Regulations (19 CFR 141.89(a)), which sets forth specific descriptive information which must be supplied on commercial invoices for approximately 50 classes of imported merchandise. The notice invited the public to submit comments on the interim amendments and, after an extension of time published on March 7, 1989 (54 FR 9429), the public comment period closed on March 21, 1989.

After the interim regulations went into effect and following the close of the public comment period, guidelines were drafted by the National Import Specialist (NIS) Division of Customs to assist the import community and Customs field personnel in the uniform application of criteria for accurate and complete invoices for various specific HTSUS headings and subheadings. These draft guidelines were sent to approximately 10,500 major importers, trade associations, and Customs officers between June 30 and July 15, 1989. After reviewing the comments received in response to the interim regulations and the draft guidelines on invoice requirements, Customs determined that it would be beneficial to obtain further information from the importing community relating to the invoice requirements under interim § 141.89(a) and the draft guidelines. Accordingly, on November 14, 1989, Customs published a notice (54 FR 47348) which (1) announced a series of public meetings to be held in New York from November 27 to December 8, 1989, to discuss invoice requirements with the importing community and (2) reopened the comment period of the interim regulations solely regarding the invoice requirements, with comments to be submitted on or before February 7, 1990.

On October 2, 1990, Customs published T.D. 90–78 (55 FR 40162) which adopted as a final rule, with some changes, the interim regulatory amendments previously published in T.D. 89–1 as discussed above. That final rule document noted that a large number of complex issues were raised in the numerous comments on invoice requirements received in response to interim § 141.89(a), the draft NIS Division guidelines, and the November 14, 1989, notice which reopened the comment period for invoice requirement purposes. In view of this, and in consideration of the significant impact which invoice requirements have on the trade community, Customs stated in T.D. 90–78 that further study was necessary before those invoice issues could be properly resolved. Even though interim § 141.89(a) was adopted as a final regulation without change in T.D. 90–78, the notice stated that all issues regarding invoice requirements would be dealt with as appropriate in a separate document at a later date. Accordingly, this document sets forth new proposals for dealing with all aspects of invoice product description requirements based on further study of this matter within Customs after the publication of T.D. 90–78.

Discussion of Proposals

It is first necessary to point out that 19 U.S.C. 1481(a)(3) and §§ 141.86(a)(3) and 142.6(a)(1), Customs Regulations (19 CFR 141.86(a)(3) and 142.6(a)(1)), contain the general requirement that each invoice of merchandise imported into the United States include a detailed or adequate description of the merchandise. Section 142.6(a) further states that the commercial invoice shall be furnished with the entry and before release of the merchandise is authorized. Thus, even though the Customs Regulations may prescribe specific invoice descriptive details for certain classes of merchandise (as is done, for example, in § 141.89(a)), all other merchandise nevertheless remains subject to the general statutory and regulatory requirement that the accompanying invoice contain a detailed or adequate description of the merchandise. Moreover, since the invoice descriptions are principally used by Customs officers to assist them in determining the tariff classification of the merchandise for admissibility, duty, and statistical reporting purposes, the absence of a sufficient invoice description will often result in a delay in the entry, release, and liquidation process.

Based on the comments submitted by the public and as a result of Customs internal review of this matter, Customs has determined that it would be preferable to reduce the regulatory burden on the public by limiting the specific, detailed, invoice description requirements in § 141.89(a) to the following three merchandise groups: (1) Textile and apparel products which are subject to quotas and visa requirements under the U.S. textile import program; (2) steel and steel products which until March 31, 1992, were subject to voluntary restraint arrangements; and (3) machine tools which until December 31, 1991, were subject to voluntary restraint arrangements. The need to have specific, detailed, mandatory invoice descriptions for those groups of products is derived from the fact that such information is necessary not only to ensure proper tariff classification but also (1) in the case of textile and apparel products, to ensure compliance with the special requirements and objectives of the textile import program and (2) in the case of the steel products and machine tools, to facilitate the monitoring of imports of these trade-sensitive products which may be the subject of future bilateral or multilateral trade agreements.

In connection with the proposed revision of § 141.89(a) as discussed below, Customs also proposes to amend the title of § 141.89 in order to reflect that the required information specified in the section is an elaboration of, rather than in addition to, the basic "detailed description" requirement in § 141.86(a)(3). Furthermore, in order to clarify the relationship between § 142.6(a)(1) and the product description requirements contained in part 141, Customs proposes to amend § 142.6(a)(1) by adding at the end "as provided for in part 141 of this chapter." In addition, to avoid overlap and to facilitate application of specific product description requirements within the regulations, Customs proposes to remove present § 151.62 (pertaining to wool and animal hair) and § 151.82 (pertaining to cotton), which are both titled "Information on invoices", and to transfer their contents, with some changes, to revised § 141.89(a) as descriptive requirements applicable to merchandise classified under HTSUS headings 5101–5105 and 5201, respectively.

With regard to the proposed revision of § 141.89(a) set forth in this document, the first sentence in the introductory paragraph replaces the introductory sentence in present § 141.89(a) and, in keeping with the proposed revision of the title of § 141.89 mentioned above, clarifies that the required information set forth therein is in addition to the "descriptive information specified" in § 141.86(a)(3) (for example, the name by which each item is known and the grade or quality, which must be provided under authority of § 141.86(a)(3) and thus do not require specification in revised § 141.89(a)). The second sentence in the introductory paragraph is intended to ensure that the required information will be submitted with reference to each specified HTSUS chapter, heading and/or subheading number which applies to the imported merchandise (and not with regard to the product descriptors that accompany those numbers, which are provided for ease of reference only and thus are not intended to have legal effect). Thus, for example, if both general chapter or heading and specific subheading descriptive requirements are set forth and the imported merchandise falls under that chapter or heading and subheading, the invoice must set forth all applicable information reflecting both the general descriptive requirements and the specific information required for that subheading, even if the merchandise under consideration is not specifically mentioned in the product descriptors appearing opposite those HTSUS numbers. The specific product description requirements in revised § 141.89(a) as set forth in this document have been derived from the relevant portions of present § 141.89(a), from the draft NIS Division guidelines, from the comments and suggestions received during the public comment periods discussed above, and from Customs further internal review of the product descriptions contained in the HTSUS. These product description requirements represent what Customs believes is the minimum information that normally must be present in order for Customs to carry out its statutory functions. It must be recognized that there may continue to be instances in which Customs determines that still further descriptive information must be requested from the importer or broker due to the circumstances of a particular importation. Customs believes it is in the interest of all parties to treat those instances on a case-by-case non-regulatory basis rather than to increase the overall regulatory burden by expanding the regulatory particulars to cover them.

With regard to those commodities not covered by the proposed revision of § 141.89(a), including certain products that are currently mentioned in § 141.89(a), Customs proposes to have no specific regulatory invoice description requirements other than

those in present § 141.86. Thus, while Customs will continue to require that invoices contain a sufficiently detailed description of the imported merchandise (except where the information is available from alternate sources as discussed further below), in the case of merchandise not specifically covered by regulatory provisions, the authority for requiring such information will remain the general statutory and regulatory provisions cited above.

The approach described above does not represent a fundamental change in the legal position of Customs regarding the need for invoice descriptions sufficiently detailed so that Customs may carry out its statutory duty to classify imported merchandise. The limitation of specific regulatory (and thus mandatory) requirements to only three categories of goods will provide the importing public and Customs officers with more flexibility in determining what information should be provided to Customs with regard to the far larger number of products not specified in regulatory texts. In this regard Customs recognizes that while a detailed invoice description may always be necessary for some types of products, in other cases the very name or nature of the imported product may speak for itself so as to obviate the need for a detailed invoice description. In such latter cases the imposition of specific, detailed, regulatory standards would represent an unnecessary burden on importers, would provide no particular benefit to Customs, and thus should be avoided whenever possible. Customs believes that the proposed revision of § 141.89(a) to cover only the three groups of products described above will assist in reaching this goal.

Customs should also point out that there are several alternative procedures which the trade community may use in order to reduce the need for complete, detailed product descriptions appearing directly on invoices. The preferred and most effective alternate methods are through a pre-entry classification decision or by means of a written, binding tariff classification ruling issued under Part 177, Customs Regulations (19 CFR part 177). The principal benefit derived from the pre-entry classification or part 177 ruling procedure is that the invoice description of the merchandise can be reduced to a minimum because detailed information was previously provided by the importer when the pre-entry review was conducted or when the part 177 ruling was requested. Another alternate method is to provide the information in advance to the responsible National Import Specialist for retention in his/her file, with copies to the field import specialists at those locations where the merchandise will be imported. In addition, where the invoice does not provide a sufficient description of the merchandise, Customs will allow the importer to provide the needed information on a separate sheet attached to the invoice (see present § 141.86(i)). It is important to remember, however, that these alternate procedures cannot be used in place of the specific invoice requirements set forth in § 141.89. Customs also proposes in this document (1) to amend § 141.86(a)(3) to clarify the availability of the preclassification/binding ruling and pre-approval procedures as alternatives to providing detailed product descriptions on invoices and (2) to amend § 143.36(c)(3) concerning electronic transmission of invoice data to clarify that the specific requirements set forth in § 141.89 are also mandatory in that context.

Where parties previously submitted relevant comments to Customs regarding merchandise covered by this proposed revision of § 141.89(a), those parties are hereby advised that they should resubmit those comments if they wish them to be considered in connection with this matter. In addition to the procedures discussed above, Customs will also consider any suggestions regarding other possible alternatives to providing Customs with detailed invoice descriptions in cases involving merchandise not covered by specific regulatory requirements.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed regulations amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely restate existing statutory and regulatory requirements and thus would not result in any increased economic impact. Accordingly, these proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in § 141.89(a). This information is required by Customs under 19 U.S.C. 1481(a)(3) and is used to determine the admissibility and tariff status of imported merchandise. The likely respondents are business organizations including importers, exporters, and manufacturers.

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

The estimated annual burden per respondent/recordkeeper varies from _____ minutes to _____ hours, depending on individual circumstances, with an estimated average of _____ hours.

Estimated number of respondents and/or recordkeepers: _____.

Estimated annual frequency of responses: _____.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Parts 141, 142 and 143

Customs duties and inspections, Imports, Invoice requirements.

19 CFR Part 151

Customs duties and inspections, Imports.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend parts 141, 142, 143 and 151, Customs Regulations (19 CFR parts 141, 142, 143 and 151), as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues in part to read as follows:

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

* * * * *

Subpart F also is issued under 19 U.S.C. 1481;

* * * * *

§ 141.86 [Amended]

2. Section 141.86(a)(3) is amended by replacing the semicolon at the end with a period and by adding thereafter the following: "Except in the case of merchandise covered by § 141.89 of this part, where a party either has obtained a preclassification/binding ruling number covering the merchandise being entered or is a participant in a pre-approval program, the preclassification/binding ruling number or appropriate pre-approval identifier may be used in place of a detailed description of the merchandise;".

3. The heading to § 141.89 is revised to read as set forth below.

4. Section 141.89(a) is revised to read as follows:

§ 141.89 Specific descriptive information for certain classes of merchandise.

(a) In addition to the descriptive information specified in § 141.86(a)(3), invoices covering imported merchandise classifiable under the following Chapters, headings, and subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) shall set forth at a minimum the descriptive information specified below. For purposes of this paragraph, the specified information shall be submitted according to each applicable HTSUS Chapter, heading and subheading numerical reference set forth below and without regard to the product descriptors set out with those numerical references which are provided for ease of reference only.

Heading/subheading	
	Chapter 39—Plastics and Articles Thereof
3921.12.11, 3921.12.15, 3921.12.19, 3921.13.11, 3921.13.15, 3921.13.19 and 3921.90.11 through 3921.90.29.	Plates, Sheets, Film, Foil, and Strip, of Plastics and Combined with Textile Material: 1. Identify the type of plastic used in the product. 2. State whether the plastic is cellular or compact or both. 3. Describe the construction of the product. 4. Specify the fiber content of the textile material by weight. 5. Provide the weights of the plastics and the textile materials as percentages of the total product weight. 6. Provide the total weight of the product in kilograms per square meter. 7. If the textile material is coated or laminated with plastics on one or both sides, so state. 8. If the product is made of woven polyethylene strips, indicate the color or tint of the strips and also the color of the plastic coating or laminating film. 9. Indicate how the product is shipped (for example, in rolls, bolts) and provide the overall dimensions of the materials.
	Chapter 42—Articles of Leather; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Animal Gut (Other Than Silkworm Gut)
4202.12.40 through 4202.12.80	Trunks, Suitcases, Vanity Cases, Attache Cases, Briefcases School Satchels and Similar Containers, With Outer Surface of Textile Materials: 1. Specify the fiber content by weight in the outer surface textile material. 2. State whether or not the textile material is of pile or tufted construction.
4202.22.35 through 4202.22.80	Handbags With Outer Surface of Textile Materials: 1. Specify the fiber content by weight in the outer surface textile material. 2. State whether or not the product is wholly or in part of braid. If so, indicate the location and use of the braid. 3. State whether or not the textile material is of pile or tufted construction.
4202.32.40 through 4202.32.95	Articles of a Kind Normally Carried in the Pocket or in the Handbag, With Outer Surface of Textile Materials: 1. Specify the fiber content by weight in the outer surface textile material. 2. State whether or not the textile material is of pile or tufted construction.
4202.92.15 through 4202.92.30	Travel, Sports and Similar Bags, With Outer Surface of Textile Materials: Specify the fiber content by weight in the outer surface textile material.
4202.92.60 and 4202.92.90	Other Containers, With Outer Surface of Plastic Sheeting or of Textile Materials: If the outer surface is of textile materials, specify the fiber content by weight in that outer surface.
	Chapter 50—Silk
5004 through 5006	Silk Yarn: 1. Specify the fiber content by weight. 2. State whether the yarn is filament silk yarn or yarn spun from silk waste. 3. Indicate whether or not the yarn is put up for retail sale.
5007	Woven Fabrics of Silk or of Silk Waste: 1. Specify the fiber content by weight. 2. Indicate the presence, and percentage by weight, of silk yarn, noil silk, and other waste silk. 3. Identify the type of weave.

Heading/subheading	
	4. Provide the fabric width in centimeters. 5. State whether or not the fabric is composed of yarns of different colors. 6. State whether or not the silk fabric is of a kind for use in the manufacture of neckties. If so, provide the number of warp yarns per centimeter.
Chapter 51—Wool, Fine or Coarse Animal Hair; Horsehair Yarn and Woven Fabric	
5101 through 5105	Wool and Animal Hair: 1. Identify the animal from which the wool or hair was obtained. 2. If known, identify the specific province or other subdivision of the country wherein the wool or hair originated. 3. If the product is wool: a. State whether or not the wool is unimproved (as defined in Additional U.S. Note 2(e) to Chapter 51, HTSUS); b. Specify the type symbol by which the wool is bought and sold in the country of origin; and c. Specify the grade for each lot of wool (for example, not finer than 40s, finer than 44s) in accordance with current standards promulgated by the Secretary of Agriculture. 4. State whether the wool or hair was shorn or pulled. 5. State whether the wool or hair is greasy (including fleece washed) or degreased. 6. State whether or not the wool or hair is carbonized. 7. State whether or not the wool or hair is carded or combed. If the product is combed wool, state whether or not it is tops or combed wool in fragments. 8. Describe any other processing applied to the wool or hair (for example, scouring, burr-picking, willowing, handshaking, beating, sorting). 9. If the wool or hair is subject to duty at a rate per clean kilogram under the HTSUS, provide the net weight of each lot of wool or hair in the condition in which it is shipped and provide the shipper's estimate of the clean yield (as defined in § 151.61(b) of this chapter) of each lot by weight or by percentage.
5106 through 5110	Yarns of Wool or Animal Hair: 1. State whether or not the yarn is carded or combed. 2. Specify the fiber content of the yarn by weight. 3. Identify the animal from which the wool or hair in the yarn was obtained. 4. State whether or not the yarn is put up for retail sale.
5111 and 5112	Woven Fabrics of Carded or Combed Wool or Fine Animal Hair: 1. Specify the fiber content by weight. 2. State whether the wool or fine animal hair is carded or combed and provide the percentage by weight of each. 3. Provide the fabric weight in grams per square meter. 4. Provide the fabric width in centimeters. 5. State whether or not the fabric is hand-woven. 6. State whether or not the fabric is tapestry or upholstery fabric. 7. If the fabric contains man-made fibers, identify the man-made fibers and provide the weights of filament and staple fiber separately.
5113	Woven Fabrics of Coarse Animal Hair or of Horsehair: 1. Indicate the type of weave. 2. Specify the fiber content by weight. 3. If the fabric contains animal hair, identify the animal (genus and species) from which the hair was obtained.
Chapter 52—Cotton	
5201	Cotton, Not Carded or Combed: 1. State that the cotton was not subjected to any processing operation or, if the cotton was processed, identify the processing. 2. For each lot of cotton, specify its staple length (as defined in § 151.81 of this chapter) by including from the following the statement which properly describes the product: a. This is harsh or rough cotton under 19.05 millimeters (¾ inch) in staple length; b. The staple length of this cotton is under 25.4 millimeters (1 inch) and the cotton is other than harsh or rough under 19.05 millimeters (¾ inch) in staple length; c. The staple length of this cotton is 25.4 millimeters (1 inch) or more but under 28.575 millimeters (1⅛ inches); d. This cotton is harsh or rough having a staple length of 29.36875 millimeters (1$\frac{5}{32}$ inches) or more but under 42.8625 millimeters (1$\frac{11}{16}$ inches) and white in color (except cotton of perished staple, grabbots and cotton pickings); e. This cotton has a staple length of 28.575 millimeters (1⅛ inches) or more but under 34.925 millimeters (1⅜ inches) and it is other than harsh or rough cotton white in color; f. This cotton has a staple length of 34.925 millimeters (1⅜ inches) or more but under 42.8625 millimeters (1$\frac{11}{16}$ inches) and it is other than harsh or rough cotton white in color; or g. The staple length of this cotton is 42.8625 millimeters (1$\frac{11}{16}$ inches) or more. 3. If known, identify the specific province or other subdivision of the country in which the cotton was grown. 4. Specify the variety of the cotton (for example, Karnak, Gisha, Pima, Tanguis).

Heading/subheading	
5202	Cotton Waste: 1. Provide the name by which the cotton waste is known (for example, yarn waste, garnetted waste, cotton card strips, cotton comber waste, cotton lap waste, cotton sliver waste, cotton roving waste, cotton fly waste). 2. State whether the length of the cotton staple forming any cotton card strips covered by the invoice is less than 3.016 centimeters (1 3/16 inches) or is 3.016 centimeters (1 3/16 inches) or more.
5204 through 5207	Cotton Sewing Thread and Cotton Yarn: 1. Specify the fiber content by weight. 2. State whether the product is of single or of multiple (folded) or cabled yarn. 3. State whether or not the product is put up for retail sale. 4. If the product is sewing thread, provide the weight put up on supports and state whether or not it is dressed and has a final "Z" twist. 5. If the product is not sewing thread, indicate: a. Whether the fibers are combed or uncombed; b. The metric number (nm) per single yarn; and c. Whether or not the yarn is bleached or mercerized.
5208 through 5212	Woven Fabrics of Cotton: 1. Provide the fabric width in centimeters. 2. Specify the fiber content by weight. 3. Specify the type of fabric (for example, poplin, duck, broadcloth). 4. If the fabric is unbleached, bleached, dyed, composed of yarns of different colors, and/or printed, so state. 5. Specify the number of single threads per square centimeter (all ply yarns must be counted in accordance with the number of single threads contained in the yarn). 6. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter. 7. Provide the fabric weight in grams per square meter. 8. Provide the average yarn number using the following formula: 100 × (total single yarns per square centimeter) ÷ (number of grams per square meter) 9. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn. 10. State whether or not the fibers are combed or carded. 11. State whether the fabric is napped or not napped. 12. Specify the type of weave (for example, plain, twill, sateen, oxford). 13. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby).
Chapter 53—Other Vegetable Textile Fibers; Paper Yarn and Woven Fabric of Paper Yarn	
5301 through 5305	Vegetable Fibers: 1. State whether the vegetable fiber is raw or retted, broken, scutched or otherwise processed. 2. If the vegetable fiber is waste, identify the type of waste (for example, tow, noils, yarn waste).
5306 through 5308	Yarns of Vegetable Fibers and Paper Yarn: 1. Specify the fiber content by weight. 2. State whether the yarn is single, multiple (folded) or cabled.
5309	Woven Fabrics of Flax: 1. Specify the fiber content by weight. 2. State whether the fabric is bleached or unbleached, dyed, printed, or composed of yarns of different colors. 3. Provide the fabric width in centimeters. 4. Identify the type of weave. 5. Provide the fabric weight in grams per square meter. 6. Indicate the number of single yarns per centimeter in the warp and the number of single yarns per centimeter in the filling. 7. Indicate the yarn size or sizes in both the warp and the filling, and state whether the yarns are single or plied. 8. State whether or not the fabric is napped.
5310	Woven Fabrics of Jute or Other Textile Bast Fibers (Other Than Flax, True Hemp and Ramie): 1. Specify the fiber content by weight. 2. State whether or not the fabric is unbleached. 3. Provide the fabric width in centimeters.
5311	Woven Fabrics of Other Vegetable Fibers or of Paper Yarn: 1. Specify the fiber content by weight. 2. Provide the fabric width in centimeters. 3. Identify the type of weave. 4. Provide the fabric weight in grams per square meter. 5. Indicate the number of single yarns per centimeter in the warp and the number of single yarns per centimeter in the filling. 6. Indicate the yarn size or sizes in both the warp and the filling, and state whether the yarns are single or plied. 7. State whether or not the fabric is napped.

Heading/subheading	
	Chapter 54—Man-Made Filaments
5401 through 5406	Man-Made Filament Yarn (Including Monofilament) and Strip: 1. For all products, specify the following: a. The filament and fiber content by weight; b. Whether the product is single or plied (multiple, folded or cabled); c. Whether or not the product is put up for retail sale (as defined in Note 4 to Section XI, HTSUS); d. Whether or not the product is sewing thread (as defined in Note 5 to Section XI, HTSUS); and e. Whether the product contains only filament or a combination of filament and spun staple fibers, and, if it contains such a combination, provide the percentages of filament and spun staple fibers by weight. 2. For products other than sewing thread, specify: a. Whether or not the product is high tenacity yarn; b. Whether the product is monofilament, multifilament or strip; c. Whether or not the product is texturized; d. The yarn number is decitex; e. Whether or not the product is twisted and, if so, the number of turns per meter; f. The cross-sectional dimension in millimeters (for monofilament only); and g. The width in millimeters (for strip only). This measurement must be of the strip in its folded or twisted condition, if so imported.
5407 and 5408	Woven Fabrics of Man-Made Filament Yarn (Including Monofilament) and Strip: 1. Provide the fabric width in centimeters. 2. If the fabric is unbleached or bleached, dyed, of yarns of different colors, and/or printed, so state. 3. Specify the textile content of the fabric by weight. If the fabric is composed of more than one material (textile or non-textile), list the percentage by weight of each material. In the case of man-made textile materials, treat them separately according to whether they are or staple fiber, even if they are of the same generic chemical composition. 4. State whether or not the yarns are high tenacity, and, if twisted, specify the number of turns per meter in each yarn. 5. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn. 6. Specify the type of weave (for example, plain twill, sateen). 7. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby). 8. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter. 9. Provide the fabric weight in grams per square meter. 10. Provide the average yarn number using the following formula: 100 × (total single yarns per square centimeter) ÷ (number of grams per square meter) 11. If the fabric contains staple fiber yarns, state whether or not the fibers are combed or carded. 12. If the fabric contains polyester filament yarns, state whether the polyester filament is textured or non-textured or both and specify the percentage by weight of each such filament in the fabric.
	Chapter 55—Man-Made Staple Fibers
5501 and 5502	Synthetic and Artificial Filament Tow: 1. Provide the length of the tow in meters. 2. Specify the twist (number of turns per meter). 3. Provide the filament measurement in decitex. 4. State whether or not the tow is drawn. 5. Provide the total measurement of the tow in decitex. 6. Specify the constituent filament(s) by name (for example, nylon, polyester, viscose rayon) and weight.
5503, 5504, 5506, and 5507	Man-Made Staple Fibers: 1. Specify the fiber content by weight. 2. State whether or not the fiber is carded, combed or otherwise processed for spinning.
5505	Waste of Man-Made Fibers: 1. Specify the fiber content by weight. 2. Identify the type of waste (for example, noils, rovings, yarn waste, garnetted stock), and indicate the intended use of the waste.
5508 through 5511	Yarn of Man-Made Staple Fibers: 1. Specify the fiber content by weight. 2. State whether the product is single or plied (multiple, folded or cabled). 3. State whether or not the product is put up for retail sale (as defined in Note 4 to section XI, HTSUS). 4. State whether or not the product is sewing thread (as defined in Note 5 to section XI, HTSUS). 5. State whether the product contains only spun staple fibers or is a combination of spun staple fibers and filament, and, if a combination of spun staple fibers and filament, specify the percentages of spun staple fibers and filament by weight.

Heading/subheading	
5512 through 5516	Woven Fabrics of Man-Made Staple Fibers: 1. Provide the fabric width in centimeters. 2. If the fabric is unbleached or bleached, dyed, of yarns of different colors, and/or printed, so state. 3. Specify the textile content of the fabric by weight. If the fabric is composed of more than one material (textile or non-textile), list the percentage by weight of each material. In the case of man-made textile materials, treat them separately according to whether they are artificial or synthetic and filament (or strip) or staple fiber, even if they are of the same generic chemical composition. 4. State whether or not the yarns are high tenacity, and, if twisted, specify the number of turns per meter in each yarn. 5. Indicate the yarn size or sizes in both the warp and the filling, including the number of plies in each yarn. 6. Specify the type of weave (for example, plain, twill, sateen). 7. Specify the type of machine on which the fabric was woven (for example, with jacquard, with swivel, with lappet, with dobby). 8. Specify separately the number of warp ends per centimeter and the number of filling picks per centimeter. 9. Provide the fabric weight in grams per square meter. 10. Provide the average yarn number using the following formula: 100×(total single yarns per square centimeter)÷(number of grams per square meter) 11. If the fabric contains staple fiber yarns, state whether or not the fibers are combed or carded. 12. If the fabric contains filament yarns, state whether they are textured or not textured.
Chapter 56—Wadding, Felt and Nonwovens; Special Yarns, Twine, Cordage, Ropes and Cables and Articles Thereof	
5601	Wadding and Articles Thereof, Textile Flock and Dust, and Mill NEPS: 1. Specify the fiber content by weight 2. State how the product is packed or packaged (for example, in rolls, in blister packs).
5602	Felt: 1. Specify the fiber content by weight. 2. Identify the construction of the product (for example, needleloomed or stitch-bonded, laminated). 3. If the felt is impregnated, coated, covered or laminated with a substance, so state and identify the substance. 4. If the felt is coated, covered or laminated with plastics or rubber, provide the weights of the textile portion and of the plastics or rubber portion. 5. If the felt is coated, covered or laminated with plastics or rubber, state whether these substances are compact or cellular and state whether the plastics or rubber is on one or both sides.
5603	Nonwovens: 1. Specify the fiber content by weight. 2. State whether the nonwoven material consists of filament or of staple fibers. 3. Indicate the method of manufacture of the nonwoven fabric (for example, thermal bonded, mechanical entanglement, wet or dry laid). 4. If the nonwoven fabric is impregnated, coated, covered or laminated with a substance, so state and identify the substance. 5. If the nonwoven fabric is coated, covered or laminated with plastics or rubber, state whether the substance is compact or cellular. If both types are used, so state, and indicate the order in which they occur in relation to the nonwoven fabric. 6. Indicate whether the coating, covering or laminating substance is on one or both sides of the nonwoven fabric.
5604	Rubber Thread and Cord, Textile Covered; Textile Yarn, and Strip and the Like of Heading 5404 or 5405, Impregnated, Coated, Covered or Sheathed with Rubber or Plastics: If the product is textile yarn or strip or the like, impregnated, coated, covered or sheathed with rubber plastics: 1. Identify the material used to impregnate, coat, cover or sheath the textile portion and provide its percentage of the total weight of the product; 2. Specify the fiber content of the product by weight; and 3. State whether or not the textile portion consists of high tenacity yarn.
5605	Textile Yarn or Strip or the Like of Heading 5404 or 5405, Combined or Covered with Metal (Metalized Yarn): 1. State whether or not the yarn is gimped. 2. State whether or not the yarn is reinforced with metal thread. 3. Specify the fiber content of the yarn by weight. 4. If the yarn is twisted, so state and specify the number of turns per meter.
5606	Gimped Yarn and Gimped Strip and the Like of Heading 5404 or 5405 (Other Than Gimped Metalized Yarn and Gimped Horsehair Yarn), Chenille Yarn and Loop Wale-Yarn: 1. State whether the product is gimped yarn or strip, chenille yarn, or loop wale-yarn. 2. Specify the fiber content by weight.
5607	Cordage, Ropes, Cables and Twine: 1. Specify the fiber content by weight.

Heading/subheading	
	2. State whether the construction is: a. Baler or binder twine; b. Stranded rope (3 or 8 strand); or c. Braided or plaited. 3. Specify the decitex for the product. 4. If made from strip, indicate the following: a. The width of the strip is centimeters; b. Whether the strip is fibrillated or non-fibrillated; and c. The weight of any non-fibrillated strip as a percentage of the total weight of the product. 5. If made of coir, indicate the number of plies. 6. If the product is binder or baler twine: a. Identify the type of twist in the twine (S or Z). b. State whether or not the twine is coated with oil or treated with repellant to resist rot, insects or rodents. c. Provide the minimum breaking force of the twine in decanewtons. d. Provide the minimum knot breaking force of the twine in decanewtons.
5608	Netting and Nets: 1. Specify the construction and size of the mesh. 2. Specify the stretch mesh size. 3. Specify the fiber content by weight. 4. Specify the size or thickness of the yarns used in the netting or net. 5. State the intended use of the product. 6. State whether the product is netting material or a finished net.
5609	Other Articles of Yarn, Strip or the Like of Heading 5404 or 5405, Twine, Cordage, Rope or Cables: 1. State the intended use of the article. 2. Provide a breakdown of the component materials of the article by weight.
	Chapter 57—Carpets and Other Textile Floor Coverings
5701	1. Specify the fiber content by weight. 2. Indicate whether the product is hand- or machine-knotted or hand-hooked. 3. Indicate whether the product is of pile or flat construction. 4. Indicate whether or not the product incorporates a pre-existing base.
5702	1. Specify the fiber content by weight. 2. Indicate whether the product is hand- or machine-woven. 3. Indicate whether the product is of pile or flat construction. 4. If the product is hand-loomed chenille, so state.
5703	1. Specify the fiber content by weight. 2. Indicate whether or not the product is hand-hooked. 3. Specify the area of the product in square meters. 4. Indicate whether or not the product incorporates a pre-existing base.
5704	1. Specify the fiber content by weight. 2. Indicate whether or not the product is tufted or flocked.
5705	1. Specify the fiber content by weight. 2. Indicate whether or not the product incorporates a pre-existing base.
	Chapter 58—Special Woven Fabrics; Tufted Textile Fabrics; Lace; Tapestries; Trimmings; Embroidery
5801 and 5802	Woven Pile Fabrics and Chenille Fabrics, Other Than Fabrics of Heading 5802 or 5806: 1. Identify the type of pile (warp or weft). 2. Provide the fabric width in centimeters. 3. Specify the fiber content by weight in the pile and in the ground fabric (separately broken out). 4. State whether the pile is cut or uncut. 5. Provide the fabric weight in grams per square meter.
5803	Gauze (Other Than Narrow Fabrics of Heading 5806): 1. Specify the fiber content by weight. 2. Provide the width of the gauze in centimeters. 3. Describe how the gauze is woven (type of weave).
5804	Tulles and Other Net Fabrics (Not Including Woven, Knitted or Crocheted Fabrics), and Lace in the Piece, in Strips or in Motifs: 1. Specify the fiber content by weight. 2. State whether the product is a tulle or other net fabric, mechanically made lace, or hand-made lace. 3. If the product is a tulle or other net fabric, indicate the type of net construction (for example, tulle, bobinot, plain filet net, mechelin net) and the type of machine used to produce the net. 4. If the product is mechanically made lace, indicate the type of lace (for example, needle point, bobbin, crochet) and the type of machine used to make the lace (for example, leavers, nottingham, bobinet jacquard).
5805	Hand-Woven and Needle-Worked Tapestries: 1. Specify the fiber content by weight.

Heading/subheading	
	2. Indicate whether hand-woven or needle-worked.
5806	Narrow Woven Fabrics (Other Than Goods of Heading 5807) and Narrow Fabrics Consisting of Warp Without Weft Assembled by Means of an Adhesive (Bolducs): 1. If the product is a narrow fabric consisting of warp without weft assembled by means of an adhesive (bolduc), so state. 2. If the product is other than a bolduc: a. Specify the fiber content by weight. b. Provide the fabric width in centimeters. c. State whether or not the fabric has woven selvages or false selvages (for example, cut with a hot knife, gummed edges). d. State whether or not the fabric has a pile construction. e. Specify the amount of elastomeric yarn or rubber thread by weight in the fabric, if any f. If the product is a ribbon, so state and state whether the ribbon is suitable for the manufacture of typewriter or similar machine ribbons of heading 9612.
5807	Labels, Badges and Similar Articles: 1. Indicate how the article is used. 2. If the article is in the piece, so state. 3. If the article is cut to shape or size, indicate whether it has hemmed or finished edges. 4. State whether the article is woven or not woven. 5. Specify the fiber content by weight.
5808	Braids and Ornamental Trimmings, Tassels, Pompons and Similar Articles: 1. Specify the fiber content by weight. 2. If the product is a trimming, state where and how it is to be used and state whether it is in the piece or cut to size.
5809	Woven Fabrics of Metal Thread and Woven Fabrics of Metalized Yarn of Heading 5605 of a Kind Used in Apparel, as Furnishing Fabrics or for Similar Purposes: 1. Specify the fiber content by weight, reporting metalized yarn as a single textile material the weight of which is to be taken as the aggregate of the weights of its components. 2. Provide the fabric width in centimeters. 3. Indicate the end use of the fabric (for example, wearing apparel, home furnishings).
5810	Embroidery: 1. State whether or not there is a visible ground fabric on the front or back. 2. Describe the ground fabric if visible (for example, knit, woven, narrow) and, if the product is other than a label, badge, emblem or motif, provide the weight and width of the ground fabric. 3. Provide the weight of the product in grams per square meter. 4. If the product is an embroidered label, badge or emblem, provide the following additional information: a. The dimensions of the product in centimeters; b. The percentage of embroidery by area; and c. Whether the item has a heat seal backing.
5811	Quilted Textile Products in the Piece: 1. Describe the construction of each fabric layer or component. 2. Specify the fabric content by weight. 3. State how the product is put up (for example, in rolls, flat-folded, cut to a specific size for a particular use).

Chapter 59—Impregnated, Coated, Covered or Laminated Textile Fabrics; Textile Articles of a Kind Suitable for Industrial Use

5901	Textile Fabrics Coated With Gum or Amylaceous Substances, Tracing Cloth, Prepared Painting Canvas, and Buckram and Similar Stiffened Textile Fabrics: 1. Identify the composition of the coating substance. 2. Describe the fabric construction and specify the fiber content by weight.
5902	Tire Cord Fabric of High Tenacity Yarn of Nylon or Other Polyamides, Polyesters or Viscose Rayon: 1. Specify the fiber content of the yarns by weight. 2. Describe the construction of the fabric.
5903	Textile Fabrics Impregnated, Coated, Covered or Laminated With Plastics, Other Than Those of Heading 5902: 1. Describe the fabric construction and specify the fiber content by weight. 2. Identify the type of plastics used. 3. Provide the respective weights of plastics and textile. 4. Provide the weight of the product per square meter. 5. If the textile fabric is coated or covered on one or both sides, so state. 6. State whether the plastics is compact or cellular. 7. If both compact and cellular plastics are used, so state and specify in what order to the textile. 8. If the textile fabric is made of woven polyethylene strips, indicate the color or tint of the strips and the color of the plastic coating or laminating film. 9. State how the product is shipped (for example, in rolls or bolts) and provide the length, width and, where applicable, thickness of the product in metric units.
5905	Textile Wall Coverings: 1. State how the product is put-up. 2. Specify the width in centimeters.

Heading/subheading	
	3. Describe the construction of the product. 4. If the product is backed with permanently affixed paper, so state. 5. If the back of the product has been treated or coated with any substance to permit pasting, so state and identify this substance.
5906	Rubberized Textile Fabrics, Other Than Those of Heading 5902: 1. Provide the product width in centimeters. 2. Describe the construction of the textile portion (for example, knitted, woven). 3. Specify the fiber content by weight. 4. Identify the rubber (natural or synthetic-type) used in the product. 5. Provide the weight of the product in grams per square meter. 6. Provide the respective weights of the textile and rubber portions. 7. If the rubber is on one or both surfaces of the product or in the middle, so state. 8. State whether the rubber is compact or cellular.
5907	Textile Fabrics Otherwise Impregnated, Coated, Covered or Laminated, and Painted Canvas (Theatrical Scenery, Studio Back-Cloths or the Like): 1. Describe the construction of the base fabric. 2. Specify the fiber content by weight. 3. Indicate the end use of the product. 4. Identify the impregnation, coating, covering or laminate. 5. If the coating substance (for example, flock) forms a design or covers the entire surface, so state. 6. Provide the respective weights of the textile and non-textile materials.
5910	Transmission or Conveyor Belts and Belting of Textile Material: 1. State whether the product is belting material or a finished belt (that is, closed loop, endless, fitted with linking devices or cut to exact length). 2. Indicate the cross-section shape of the belt or belting (for example, trapezoidal-V-, flat, round). 3. If the belt or belting will be used as a conveyor, so state. 4. If the belt or belting will be used in power transmission, so state. 5. State whether or not the belt is synchronous. 6. Identify the type of device, machine or engine in which the belt or belting will be used. 7. Describe the composition and construction of the belt or belting in terms of the following: a. The identity and weight of each textile fiber; b. The identity of any non-textile material; c. The respective weights of the textile and non-textile component materials; d. The number of plies and the order in which they appear; and e. The overall thickness and the width in centimeters.
5911	Textile Products and Articles for Technical Uses: 1. Indicate the end use of the product. 2. Describe the construction of the product and specify the fiber content by weight. 3. State whether the product is in the piece, endless, fitted with linking devices, cut-to-size, or made up. 4. If used in, or in conjunction with a machine, state the type and use of such machine. 5. If the product is a fabric or felt of a kind used in papermaking or similar machines, provide the weight of the product is grams per square meter.

Chapter 60—Knitted or Crocheted Fabrics

6001	Pile Fabrics, Knitted or Crocheted: 1. Specify by weight the fiber content of the pile and the fiber content the ground fabric, broken out separately. 2. Indicate the type of pile construction (for example, long, looped, terry). 3. Provide the fabric weight in grams per square meter.
6002	Other Knitted or Crocheted Fabrics: 1. If knitted, state whether the fabric is of warp or weft knit construction. 2. Identify the specific construction of the fabric (for example, raschel, tricot, rib, jersey). 3. Specify the fiber content by weight. 4. Provide the fabric width in centimeters. 5. Specify the percentage by weight of elastomeric yarn or rubber thread contained in the fabric, if any.

Chapter 61—Articles of Apparel and Clothing Accessories, Knitted or Crocheted

General Requirements

1. Indicate the style number, the gender of the wearer, the common and commercial designation, and the sizing of the garment or clothing accessory. All articles and components thereof, including lining, trim, and interlining, must be identified as to composition (including fiber content by weight), construction, individual and aggregate weights, and location on the product. For garments with an outer shell of more than one construction or material (textile or non-textile), give the relative weight, percentage value, and visible surface area of each component. For outer shell components which are blends of different materials, give the relative weight of each material in the component.

2. For two or more garments which are imported together and sold as a unit, indicate whether all components are of the same fabric construction, style, color, and composition and of corresponding or compatible size. Indicate if any material appears on one component and not on another component.

3. For garments which cover the upper torso, identify the area of the body which is covered, and indicate the presence or absence of sleeves or an opening at the neck, the type (full or partial) and location of the opening and the means of closure (for example, zipper, buttons, snaps).

4. For each garment, indicate the type of knit construction (for example, jersey, rib, jacquard) and specify any specialized fabric (for example, napped, pile, terry).

5. For garments which cover the upper torso, indicate the stitch count per centimeter in both the horizontal and vertical directions and the stitch count per two centimeters in the horizontal direction.

Additionol Requirements for Specific Merchandise

Suits ond suit-type jockets: Indicate the jacket construction with respect to the number of panels (exclusive of the sleeves, facing and collar), their location, as well as the location and direction of the seams joining them.

Garments mode from fobrics hoving an applicotion of rubber or plastics: Identify the rubber or plastic substance on the fabric and the portion(s) of the garment made from that fabric.

Coats ond jackets: Indicate the garment length (for example, hip-length, three-quarter length). Indicate whether the garment has a lining, and if so, specify the type of lining.

Gorments with bibs: Indicate the height of the front bib rise, noting its extension upwards above the natural waistline. Where the bib rise is not uniform, provide all bib measurements in centimeters.

Parts of playsuits: Indicate the use of the garment (for example, as a shirt). Describe the means of physical attachment to the complementary garment imported as parts of playsuits and identify the complementary garment (for example, shorts).

Bobies' gorments and clothing occessories: Indicate whether the articles are for young children 0 to 24 months of age and whether the wearer has a body height not exceeding 86 centimeters.

Men's and boys' swimwear: Indicate whether the garment has a full liner and specify its fiber content. State whether the article has an elasticized waistband and a functional drawstring.

Shirts ond blouses: Indicate the presence or absence of pockets below the waist, a ribbed waistband or other means of tightening at the bottom of the garment, and whether the garment has a neckline opening. Indicate the direction of the closure (left over right or right over left).

Tonk tops: Indicate the width of the shoulder straps in centimeters, and if the garment has neck openings, pockets, or any belt treatment, so state.

T-shirts: Indicate whether the garment is all white or colored. Describe the construction of the sleeves, neckline and bottom. Indicate whether the garment has pockets, trim, embroidery, or pieced fabric construction. (See also heading 6109.)

Sweatshirts: Indicate the presence or absence of a snug fitting waist and cuffs.

Tops: Indicate the extent of the body coverage.

Sweoters: Indicate the presence or absence of a lining and the type of lining.

Heading/Subheading	
6108.21 and 6108.22	Women's or Girls' Briefs and Panties: Indicate whether or not the garments are disposable after one-time use.
6109.10.0007	T-Shirts, Singlets, Tank Tops and Similar Garments, Knitted or Crocheted:
6109.10.0009	State whether the men's or boys' singlet is white.
6109.10.0037	Identify the specific type of garment.
6109.90.1047	Identify the specific type of garment and specify its color.
6109.90.1510	Identify the garment as a thermal undershirt.
6109.90.1530	Indicate whether or not the garment is underwear with long sleeves.
6113.00.0005, 6113.00.0010 and 6113.00.0012.	Garments, Made Up of Knitted or Crocheted Fabrics, Having an Outer Surface Impregnated, Coated, Covered, or Laminated With Rubber or Plastics Which Completely Obscures the Fabric: Provide the generic names of both the rubber or plastics and textile material present in the shell.
6115.11.00	Panty Hose and Tights: Provide the single yarn measurement in decitex.
6115.20.00	Women's Full- or Knee-Length Hosiery Measuring Per Single Yarn Less Than 67 Decitex: Provide the single yarn measurement in decitex.
6115.92 through 6115.99	Other Hosiery, Including Stockings For Varicose Veins, and Footwear Without Applied Soles: Indicate the presence or absence of net or lace on the hosiery.
6116.10.18 and 6116.10.45	Gloves, Mittens and Mitts, Knitted or Crocheted: 1. Describe the construction and method of manufacture of the article. 2. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 3. If the article is impregnated, coated or covered on the palm only, so state.
6116.10.70	Specify the percentage by weight of plastics or rubber in the article.
6116.10.90	1. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 2. If the article is impregnated, coated or covered on the palm only, so state.
6116.91.00	Identify the type of animal hair of which the article is made.
6116.92.60	State whether or not the article has fourchettes.
6116.92.90	State whether or not the article is seamless.
6116.93.60 and 6116.93.90	State whether or not the article has fourchettes.
6117.10	Shaws, Scarves, Mufflers, Mantillas, Veils and the Like: Provide the dimensions in centimeters.
6117.80	Other Made Up Clothing Accessories: When the use of the article is not evident from the name of the article as it would be in the case of items such as earmuffs or belts, describe how it is used (for example, wrapped around the head, pinned to a dress).
6117.90	Parts of Garments or Clothing Accessories: Name the garment or accessory of which they are a part (for example, parts of sweaters, shirts, trousers).

Chapter 62—Articles of Apparel and Clothing Accessories Not Knitted or Crocheted

General Requirements

1. Indicate the style number, the gender of the wearer, the common and commercial designation, and the sizing of the garment or clothing accessory. All articles and components thereof, including lining, trim, and interlining, must be identified as to composition (including fiber content by weight), construction, individual and aggregate weights, and location on the product. For garments with an outer shell of more than one construction or material (textile or non-textile), give the relative weight, percentage value, and visible surface area of each component. For outer shall components which are blends of different materials, give the relative weight of each material in the component.

2. For two or more garments which are imported together and sold as a unit, indicate whether all components are of the same fabric construction, style, color, and composition and of corresponding or compatible size. Indicate if any material appears on one component and not on another other component.

3. For each garment, identify the area of the body which is covered, and indicate the presence or absence of sleeves or an opening at the neck, the type (full or partial) and location of the opening and the means of closure (for example, zipper, buttons, snaps).

Additional Requirements For Specific Merchandise

Suits and suit-type jackets: Indicate the jacket construction with respect to the number of panels (exclusive of the sleeves, facing and collar), their location, as well as the location and direction of the seams joining them.

Women's and girls' woven blouses, shirts and shirtblouses: Indicate the presence or absence of pockets below the waist and a ribbed waistband or other means of tightening at the bottom of the garment. Indicate the direction of the closure (left over right or right over left).

Garments made from fabric having an application of rubber or plastics: Identify the rubber or plastic substance on the fabric and the portion(s) of the garment made from that fabric. In the case of garments entered as water resistant, specify the water resistance rating of the fabric.

Coats and jackets: Indicate the garment length (for example, hip-length, three-quarter length). Indicate whether the garment has a lining and if so, specify the type of lining.

Garments with bibs: Indicate the height of the front bib rise, noting its extension upwards above the natural waistline. Where the bib rise is not uniform, provide all bib measurements in centimeters.

Parts of playsuits: Indicate the use of the garment (for example, as a shirt). Describe the means of physical attachment to the complementary garment imported as parts of playsuits and identify the complementary garment (for example, shorts).

Babies' garments and clothing accessories: Indicate whether the articles are for young children 0 to 24 months of age and whether the wearer has a body height not exceeding 86 centimenters.

Woven cotton and man-made fiber shirts, blouses, dresses, nightdresses, nightshirts and pajamas: State whether or not the fabric is dyed or printed.

Men's woven shirts: Indicate whether the garment has an opening at the neckline and if so, whether it is full or partial.

Men's and boys' swimwear: Indicate whether the garment has a full liner and specify its fiber content. State whether the article has an elasticized waistband and a functional drawstring.

Tops: Indicate the extent of body coverage.

Heading/Subheading	
6201.12.10, 6201.13.10, 6201.92.10, 6201.93.10, 6202.12.10, 6202.13.10, 6202.92.10, and 6202.93,10.	Down Garments: 1. Specify the total weight of the garment. 2. Specify the total weight of feathers, if any. 3. Specify the total weight of the down.
6210.10	Garments of Felt or Nonwoven Fabrics: 1. Specify where the garment is to be used (for example, in hospitals, in asbestos plants). 2. State whether or not the garment is disposable.
6210.20.1010, 6210.20.2010, 6210.30.1010, 6210.30.2010, 6210.40.1010, 6210.40.2010, 6210.50.1010, and 6210.50.2010.	Garments Having an Outer Surface Impregnated, Coated, Covered, or Laminated With Rubber or Plastics Material Which Completely Obscures the Underlying Fabric: Provide the generic names of both the rubber or plastics and the textile.
6211.20.10	Down Ski-Suits: 1. Specify the total weight of the garment. 2. Specify the total weight of feathers, if any. 3. Specify the total weight of the down.
6212.10.10	Brassieres Containing Lace, Net or Embroidery: 1. Indicate the type of lace used, if any. 2. Indicate whether certain areas of the bra are embroidered.
6213	Handkerchiefs: Provide the dimensions in centimeters.
6214	Shawls, Scarves, Mufflers, Mantillas, Veils and the Like: Provide the dimensions in centimeters.
6216.00.12 and 6216.10.18	Gloves, Mittens and Mitts: 1. Indicate which fabric portions of the article are impregnated, coated or covered with plastics or rubber. 2. Describe the construction and method of manufacture of the article. 3. Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article. 4. If the article is impregnated, coated or covered on the palm only, so state.
6216.00.28	Specify the percentage by weight of plastics or rubber in the article.
6216.00.32	Specify the percentage by weight of plastics or rubber in the impregnated, coated or covered portion of the article.
6216.00.39	State whether or not the article has fourchettes.
6216.00.52	State whether or not the article has fourchettes.
6217.10	Other Made Up Clothing Accessories: When the use of the article is not evident from the name of the article as it would be in the case of items such as earmuffs or belts, describe how it is used (for example, wrapped around the head, pinned to a dress).
6217.90	Parts of Garments and Clothing Accessories: Identify the article of which the product is a part.

Heading/Subheading	
	Chapter 63—Other Made Up Textile Articles; Needlecraft Sets; Worn Clothing and Worn Textile Articles; Rags
6301	Blankets and Traveling Rugs: 1. Specify the fiber content by weight. 2. Provide the dimensions in meters. 3. State whether or not the article is woven. 4. If the article is an electric blanket, so state.
6302	Bed, Table, Toilet and Kitchen Linen: 1. Describe the construction of the article (for example, woven, knitted or crocheted, pile, tufted). 2. Specify the fiber content by weight. 3. If the article is bed linen: a. State whether or not it is printed; b. Identify the presence of any embrodiery, lace, braid, edging, trimming, piping or applique work; and c. State whether it is napped or not napped.
630.	Curtains, Blinds and Valances: 1. Identify the fabric construction of the product. 2. Specify the fiber content by weight.
6304	Bedspreads and Other Furnishing Articles: 1. Identify the fabric construction. 2. Specify the fiber content by weight. 3. If the article is a bedspread, state whether or not it contains embroidery, lace, braid, edging, trimming, piping or applique work.
6306.22.1000	Backpacking Tents: 1. Identify the tent by specific type (for example, 4-person dome tent, 2-person A-line, wall). 2. Identify each material component of the tent and its location (for example, net windows or doors, woven nylon walls). 3. Provide the net weight of each component. 4. Provide the total net weight of the tent and all accessories necessary to pitch the tent. If the tent is incomplete (for example, a shell only without poles), provide both the weight of the imported articles and the total net weight of the tent plus all accessories necessary to pitch it when it is complete. 5. Provide the open dimensions of the tent and its shape (for example, 5 feet by 7 feet by 40 inches, A-line). If the tent is other than rectangular, provide the measurements necessary to compute the square footage (for example, for a hexagonal dome, provide the diameter point-to-point and side-to-side and the length of the sides). 6. Indicate the shape (for example, cylindrical) and dimensions of the tent as it will be carried. If other than cylindrical, provide the measurements necessary to compute cubic inches.
6307	Other Made-Up Textile Articles: 1. State how the article is used. 2. Specify the fiber content by weight.

Chapter 64—Footwear, Gaiters and the Like; Parts of Such Articles

Explonotion of Certoin Terms Used in Heoding 6406 Invoicing Requirements

The explanations set forth below, although accurately reflecting the position of the Customs Service, are not intended to reflect the full tariff meaning of those terms. If further explanation of these or other terms used in the invoicing requirements for heading 6406 is necessary, or if their application to a particular product is not clear, the exporter or the importer of record should contact Customs for clarification prior to entry of the merchandise.

Composition leather is made by binding together leather fibers or small pieces of natural leather. It does not include imitation leathers not based on natural leather.

Externol surface means the surface which will be seen in the finished footwear when it is worn.

Leather refers to the tanned skin of any animal from which the hair or fur (if any) has been removed. Tanned skins coated with rubber and/or plastics are "leather" only if the coating is less than .15 millimeter thick.

Reloted items include: Removable insoles and heel cushions, hose protectors, and similar articles; and gaiters, spats, puttees, leg warmers, leggings, and similar articles. They do not include: tights, socks, or stockings, or anything in general which covers most of the foot; special insoles, arch supports or other orthopedic appliances made to measure for one individual; simple protectors or devices which are designed to reduce pressure on certain parts of the foot and which are usually attached to the foot itself (for example, bunion pads); shin-guards and similar protective sports articles; or knee or ankle supports made of elastic fabric.

Rubber ond/or plostics includes any textile material whose external surface is coated or covered with rubber or plastics if this coating or covering can be seen with the naked eye with no account being taken of any resulting change of color. Examples include woven and non-woven fabrics coated with polyvinyl chloride or polyurethane which are embossed to look like grain leather.

Textile materials include fabrics of cotton, other vegetable fiber, wool, hair, silk, or man-made fiber, and any such fabrics coated or covered with rubber or plastics if the rubber or plastics cannot be seen with the naked eye with no account being taken of any resulting change in color.

Upper refers to the part which covers the foot (and leg) whether or not affixed to an inner sole or another sole component (but without an outersole). Boot liners are, therefore, essentially parts of (linings of) uppers.

Heading/subheading	
6406.10	Uppers and Parts Thereof (Except Stiffeners): 1. If the product is an upper or a part thereof which will be visible in the finished footwear when worn, specify the percentage of external surface area (excluding accessories and reinforcements) which is: Leather ..... a. ____% Composition Leather ..... b. ____% Rubber and/or Plastics ..... c. ____% Textile Materials ..... d. ____% Other (Specify: ____) ..... e. ____% Total: 100% 2. If the product incorporates any accessories or reinforcements, so state and identify each by type and constituent material. 3. If any leather identified at a. under 1. above is coated or laminated with rubber and/or plastics, so state and, if coated: a. If the coating is less than 0.1 millimeter in thickness, so state; or b. If the coating is 0.1 millimeter or more in thickness, specify the thickness of the coating to the nearest hundredth of a millimeter. 4. If the product is an upper, state whether or not it has a mostly closed bottom (a layer of material between most of the bottom of the foot and the ground). If it does have a mostly closed bottom: a. State whether or not the upper has been shaped by lasting, molding or otherwise but not by simply closing at the bottom; and b. If the upper has been shaped by lasting, molding or otherwise, describe the shaping performed. 5. State whether or not the shipment includes matching heel pads or other parts of the footwear into which any uppers covered by the shipment will be incorporated, and identify any such parts. 6. If the product is an upper and is of textile materials (that is, the percentage at d. is the largest percentage specified under 1. above), then specify: a. The percentage or external surface area (including any leather, rubber or plastics accessories and reinforcements) which is textile materials: ____%; b. The percentage of external surface area (including any leather accessories and reinforcements) which is leather: ____; and c. The percentage by weight of the textile material(s) constituting the external layer which is: Cotton ..... ____% Wool or fine animal hair ..... ____% Man-made fibers ..... ____% Other (Specify: ..... ____% Total: 100% 7. If the product is an upper and is of rubber or plastics (that is, the percentage at c. is the largest percentage specified under 1. above), then specify the percentage of external surface area (including all accessories and reinforcements) which is rubber or plastics: ____%.
6406.99	Other Footwear Parts and Related Items: 1. Specify the percentage by weight of the product which is: Leather ..... a. ____% Composition Leather ..... b. ____% Rubber and/or Plastics ..... c. ____% Textile Materials ..... d. ____% Wood ..... e. ____% Metal ..... f. ____% Other (Specify: ____) ..... g. ____% Total 100% For the above weight breakdown, include as "textile materials" all pieces cut from sheets of textiles laminated to, coated with, or impregnated by rubber or plastics on one side (but not both sides) of the materials unless the textile is present merely for reinforcement. 2. If the textile materials is present merely in order to reinforce a rubber or plastics materials, so state and identify each part or item containing any such textile material. 3. If the textile materials weight specified at d. under 1 above is over 25 percent, specify the percentage by weight of the textile materials which is: Cotton ..... ____% Wool or fine animal hair ..... ____% Man-made fibers ..... ____% Other (Specify: ____) ..... ____% Total: 100% 4. If any leather identified at a. under 1. above is coated or laminated with rubber and/or plastics, so state and, if coated: a. If the coating is less than 0.1 millimeter in thickness, so state; or b. If the coating is 0.1 millimeter or more in thickness, specify the thickness of the coating to the nearest hundredth of a millimeter. 5. If the product is a leg warmer, so state. 6. State whether or not the product will cover all or most of the foot.

Heading/subheading	
Chapter 65—Headgear and Parts Thereof	
6505	Hats and Other Headgear, Knitted or Crocheted, or Made Up From Lace, Felt or Other Textile Fabric, In the Piece; Hair-Nets: 1. Provide a component materials breakdown by weight. 2. Describe the construction of the product and state whether or not it contains braid.
Chapter 70—Glass and Glassware	
7019 ..	Glass Fibers (Including Glass Wool) and Articles Thereof: General Requirements: 1. State whether the product is glass fibers (including glass wool) or is an article thereof. 2. If the product consists of glass wool, specify the silica content by weight and, if the silica content is less than 60 percent, specify the alkaline oxide and boric oxide content by weight. 3. If the product is an article, specify the form or commercial designation of the product (for example, thin sheet, web, mat, mattress, board, curtain, drapery). 4. State whether the product is woven or nonwoven.
7019.10.10 and 7019.10.20	Yarns of Glass Fiber: State whether the yarns are colored or not colored.
7019.10.30 through 7019.10.60	Shopped Strands, Rovings and Slivers of Glass Fibers: Specify whether the product is chopped strands, rovings, or slivers.
7019.20.10 through 7019.20.50	Woven Fabrics of Glass Fibers: 1. Provide the fabric width in centimeters. 2. If of a width not exceeding 30 centimeters, state whether or not the fabric has selvages or false selvages (fast edges) on both sides. 3. State whether the fabric is made up of colored or not colored yarns.
Chapter 72—Iron and Steel	
7206 through 7229	Iron and Nonalloy Steel, Stainless Steel and Other Alloy Steel, in Primary Forms, and Semifinished Products and Principal Products Derived Directly Therefrom: 1. Identify the product by name or type (for example, bar, strip, angle, T section, wire, rod). 2. Identify each element in the product in terms of percentage by weight. 3. Describe the process by which the product is made (for example, flat-rolled, cold-rolled, extruded, centered, drawn). 4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, grinding, polishing, turning, perforating, coating, plating, heat treating, embossing, cladding). 5. Provide all measurements of the product in metric units (for example, width, thickness, length, diameter, cross-sectional area). 6. If the product is in coil form, state whether it is in coils of successively superimposed layers or in spirally oscillated coils or in irregularly wound coils, and state whether or not it is wound on a spool or on a reel. 7. For flat-rolled products, indicate the minimum yield point. 8. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications.
Chapter 73—Articles of Iron or Steel	
7301 and 7302	Sheet Piling; Welded Angles, Shapes and Sections; Railway or Tramway Track Construction Material: 1. Identify the product by specific name (for example, sheet piling, rails, cross-ties, switch blades, sole plates). 2. Identify each element in the product in terms of percentage by weight. 3. Describe the process by which the product is made (for example, hot-rolled, cold-rolled). 4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, welding two or more pieces together, perforating, heat treating). 5. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications.
7303 through 7307	Tubes, Pipes and Hollow Profiles; Tube or Pipe Fittings: 1. Identify the product by name (for example, tubing, line pipe, casing, elbow, flange). 2. Identify each element in the product in terms of percentage by weight. 3. Describe the process by which the product was made (for example, cast, hot-rolled, hot-extruded, cold-drawn, cold-rolled) and, in the case of pipes and tubes, state whether they are welded or seamless. 4. Describe any subsequent manufacturing or finishing processes to which the product was subjected (for example, threading, threading and coupling, coating, machining, drilling). 5. Provide all measurements of the product in metric units (for example, inside diameter, outside diameter, wall thickness). 6. For pipes and tubes, indicate the yield strength. 7. Describe the intended use of the product. 8. Indicate any industry standards or specifications to which the product was made, such as ASTM or API specifications.
7308	Structures (Except Prefabricated Buildings of Heading 9406) and Parts of Structures:

Heading/subheading	
	Identify the type of metal (for example, stainless steel, carbon steel), and state where and how the product is used.
7312	Stranded Wire, Ropes, Cables, Plaited Bands, Slings and the Like, Not Electrically Insulated: General Requirements: 1. Identify each element in the product in terms of percentage by weight. 2. Indicate any industry standards or specifications to which the product was made, such as ASTM specifications. 3. Describe the construction of the product and provide its dimensions in metric units. 4. Identify all coverings, fittings and attachments, if any. 5. Describe the intended use of the product.
7312.10.1050 and 7312.10.3020	Other Stranded Wire: 1. Specify the length of the lay or twist. 2. Specify the strand diameter.
7313	Barbed Wire; Twisted Hoop or Single Flat Wire, Barbed or Not, and Loosely Twisted Double Wire, of a Kind Used for Fencing: 1. State whether the product is made or iron or of steel. 2. Describe the construction of the product and list all its dimensions. 3. Describe the intended use of the product.
7314	Cloth, Grill, Netting and Fencing; Expanded Metal: 1. Identify each element in the product in terms of percentage by weight. 2. Indicate any industry standards or specifications to which the product was made. 3. For all products except expanded metal, describe the construction of the product and provide its dimensions in metric units (including the cross-sectional dimension of the wire and the mesh size of the product). 4. Identify all coverings, coatings and attachments, if any. 5. Describe the intended use of the product.
7317	Nails, Tacks, Drawing Pins, Corrugated Nails, Staples and Similar Articles: 1. Identify each element in the product in terms of percentage by weight. 2. Indicate any industry standards or specifications to which the product was made. 3. Describe the construction of the product and specify its length and diameter in millimeters. 4. State whether or not the product is made of round wire and, if made of another material, identify that other material and describe the manufacturing process.
Chapter 84—Nuclear Reactors, Boilers, Machinery and Mechanical Appliances, and Parts Thereof	
8458 through 8465	Machine Tools, Machining Centers, Unit Construction Machines, Multistation Transfer Machines, and Lathes: Indicate the specific type of machine (for example, external cylindrical grinder, vertical machining center, horizontal lathe).
8456 through 8462	State whether or not the machine is equipped with a CNC (Computer Numerical Control) or the facings (electrical interface) for a CNC.
8457 through 8463	State whether or not the machine is used or rebuilt.
8456.30.10	Electro-Discharge Machines: State whether or not the machine is a traveling wire (wire cut) type
8457.10	Machining Centers: 1. State whether or not the machining center has an ATC (Automatic Tool Changer). 2. If the machining center has an ATC and is a vertical-spindle machine, specify the y-axis travel in millimeters.
8458.11.0030 through 8458.11.0090	Horizontal Single Spindle Numerically-Controlled Lathes for Removing Metal: Specify the continuous rated HP or kW rating of the main spindle motor.
8466.93 and 8466.94	Parts of Machines of Headings 8456–8463: Indicate the specific type of machine of which the product is a part.
Chapter 85—Electrical Machinery and Equipment and Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles	
8547.90	Other Insulating Fittings; Electrical Conduit Tubing and Joints Therefor, of Base Metal Lined With Insulating Material: Identify the material(s) of which the product is made, including any insulating lining material.
Chapter 96—Miscellaneous Manufactured Articles	
9612.10	Ribbons for Typewriters and Similar Machines: 1. Describe the type of ribbon, its specific function, and where and how it is used. 2. State whether or not it is put in a plastic or metal cartridge. 3. Provide the ribbon width in millimeters. 4. State whether or not the ribbon is woven of man-made fibers.

PART 142—ENTRY PROCESS

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

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

§ 142.6 [Amended]

2. Section 142.6(a)(1) is amended by removing the period at the end and by adding, in its place, the words "as provided for in part 141 of this chapter."

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.36 [Amended]

2. Section 143.36(c)(3) is amended by removing the words "In appropriate cases" and by adding, in their place, the words "Except in the case of information required under § 141.89 of this chapter, in appropriate cases".

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 continues in part to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624. Subpart A also issued under 19 U.S.C. 1499. Subpart D also issued under Additional U.S. Notes to chapter 26, HTSUS. Subpart E also issued under Additional U.S. Note 2(f) to chapter 51, HTSUS. Subpart F also issued under Additional U.S. Notes to chapter 52, HTSUS.

* * * * *

2. The authority citation for part 151 is amended by removing the authority citations for sections 151.62 and 151.82.

§§ 151.62 and 151.82 [Removed and reserved]

3. Sections 151.62 and 151.82 are removed and reserved.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 13, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-21037 Filed 9-2-92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[FI-61-91]

RIN 1545-AQ82

Notice of Allocation of Allocable Investment Expense; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that propose to adopt as final regulations that portion of the temporary regulations under § 1.67-3T(a) through (e), relating to reporting requirements under section 67 with respect to REMICs.

DATES: The public hearing will be held on Monday, November 9, 1992, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Monday, October 19, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [FI-61-91], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations that propose to adopt as final regulations that portion of the temporary regulations under § 1.67-3T(a) through (e). These regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, October 19, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-21155 Filed 9-2-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI-61-91]

RIN 1545-AQ82

Allocation of Allocable Investment Expense

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 9, 1988, the Internal Revenue Service issued temporary regulations [T.D. 8186] under section 67 of the Internal Revenue Code relating to reporting requirements with respect to Real Estate Mortgage Investment Conduits (REMICs) that were published in the Rules and Regulations portion of the **Federal Register** (53 FR 7504). These regulations propose to adopt as final regulations that portion of the temporary regulations under § 1.67-3T(a) through (e) (as contained in the CFR edition revised as of April 1, 1992), relating to reporting requirements under section 67 with respect to REMICs. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests to speak (with outlines of oral comments) at the public hearing that is scheduled for November 9, 1992, must be received by October 19, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to speak at the public hearing, and outlines of oral comments, to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attn: CC:CORP:T:R (FI-61-91), room 5228.

FOR FURTHER INFORMATION CONTACT: James W.C. Canup, 202-622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1988, temporary regulations [T.D. 8186] under section 67 were published in the **Federal Register** (53 FR 7504). Section 1.67-3T(f) of those regulations was amended on September 7, 1989, [T.D. 8259] (54 FR 37098). Section 1.67-3T(f) of those regulations was also revised on September 30, 1991 [T.D. 8366] (56 FR 49512). In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing final regulations under § 1.67-3(f). These regulations propose to adopt as final regulations that portion of the temporary regulations under § 1.67-

3T(a) through (e) (as contained in the CFR edition revised as of April 1, 1992).

Section 132 of the Tax Reform Act of 1986 (the 1986 Act) added to the Internal Revenue Code section 67, which disallows certain miscellaneous itemized deductions in computing the taxable income of an individual to the extent that the aggregate of those deductions does not exceed two percent of the individual's adjusted gross income. Section 67(c) directs that regulations be issued to prohibit the indirect deduction through pass-through entities of amounts that are not allowable as a deduction if paid or incurred directly by an individual. Section 67(c) also directs that regulations provide any necessary reporting requirements. The regulations under section 67 that are contained in this document fulfill the requirements of section 67(c) as it applies to REMICs.

Explanation of Provisions

In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The regulations under section 67 require notice of income and other information to be provided to REMIC investors and the Internal Revenue Service.

Treatment of Allocable Investment Expenses

Section 1.67–3T(a)(1) requires a REMIC to allocate to each of its pass-through interest holders the holder's proportionate share of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter. In general, a pass-through interest holder (as defined in § 1.67–3T(a)(2)(i)(A)) is an holder of a residual interest that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as would an individual, or a pass-through entity, interests in which are owned by either an individual or a person that computes its taxable income in the same manner as would an individual.

The term "pass-through entity" includes, pursuant to § 1.67–2T(g), a grantor trust, a partnership, an S corporation, a common trust fund, a nonpublicly offered regulated investment company, and a REMIC. It does not include an estate, a nongrantor trust, a cooperative, a real estate investment trust, or other entities such as a qualified pension plan, an individual retirement account, or an insurance company holding assets in a separate asset account to fund certain variable contracts. The term "allocable investment expenses" (as defined in § 1.67–3T(a)(3)) means the aggregate amount of the expenses paid or accrued in the calendar quarter for which a deduction is allowable under section 212 in determining the taxable income of the REMIC for the calendar quarter.

Pursuant to § 1.67–3T(b)(1) a pass-through interest holder is treated both as having received or accrued income and as having paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company) in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC.

Under § 1.67–3T(b)(1)(i), a pass-through interest holder whose taxable year is the calendar year or ends with a calendar quarter takes into account the amounts in those calendar quarters that fall within the holder's taxable year. Separate inclusion rules apply under § 1.67–3T(b)(1)(ii) to a holder whose taxable year does not end with a calendar quarter. An interest holder in a REMIC that is not a pass-through interest holder does not take into account in computing its taxable income any amount of its proportionate share of allocable investment expenses. Under § 1.67–3T(c)(1), a REMIC generally computes a pass-through interest holder's proportionate share of its allocable investment expenses by determining the daily amount of such expenses and allocating this daily amount to the pass-through interest holder in proportion to its respective holdings on that day. Generally, a pass-through interest holder's proportionate share of the daily amount of the allocable investment expenses is determined by taking into account all holders of REMIC residual interests, whether or not those holders are pass-through interest holders.

Single-Class REMICs

In the case of a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)), the term "pass-through interest holder" is defined more broadly to include any regular or residual interest holder that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as would an individual, or a pass-through entity, interests in which are owned by certain types of holders. Under § 1.67–3T(c)(3), a single-class REMIC allocates its investment expenses for a calendar quarter to each holder in proportion to the amount of income that accrues to the holder for that quarter.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests to Appear at the Public Hearing

Before this proposed regulation is adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held on November 9, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of the proposed regulation is James W.C. Canup, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

Proposal of Regulations

The portion of the temporary regulations (T.D. 8186) under § 1.67–3T(a) through (e), (as contained in the CFR edition revised as of April 1, 1992), is hereby also proposed as final regulations under section 67 of the Internal Revenue Code of 1986.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–21154 Filed 9–2–92; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 749, Reference Notice No. 581]

RIN 1512-AA67

Grape Variety Names for American Wines

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing for public comment a notice of proposed rulemaking containing lists of approved grape variety names which may be used as type designations for American wines. ATF published a similar notice of proposed rulemaking, Notice No. 581, on February 4, 1986. That notice proposed the establishment of approved lists of names of grape varieties which may be used as varietal designations for American wines. It also proposed a method by which names of additional grape varieties could be added to approved lists in the future. A final rule was not issued.

AFT is reopening comment on this subject for several reasons. A lengthy period of time has elapsed since publication of that notice, and new information about certain grape varieties is now available. Due to the numerous comments submitted in response to Notice No. 581, AFT has decided to modify certain proposals made at that time. Also, new grape varieties have been developed or introduced into the United States which merit consideration as approved names. Consequently, ATF is reopening the subject for comment, and incorporating several substantive changes from the original proposal.

ATF believes the listing of approved names of grape varieties for American wines will help standardize wine label terminology and prevent consumer confusion by reducing the large number of synonyms for grape varieties currently used for labeling American wines.

DATES: Written comments must be received by October 5, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; Notice No. 749.

Copies of written comments in response to this notice and to Notice No. 581 will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, or James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director, ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product.

Regulations which implement the provisions of section 105(e) as they relate to wine are set forth in title 27, Code of Federal Regulations, part 4 (27 CFR part 4).

Wine Varietal Labeling

Under § 4.34, still grape wine may be designated by labeling the wine with the predominant grape(s) from which the wine is produced. Since 1983, labeling rules at § 4.23a have provided for the use of a grape variety name as the type designation of the wine if not less than 75% of the wine is derived from the labeled grape variety (less in the case of wine made from certain *Vitis labrusca* grapes), and if the wine is labeled with an appellation of origin. Wine may also be labeled with the names of two or three grape varieties if all of the grapes used to make the wine are of the labeled varieties, and the percentage of wine derived from each variety shown on the label.

In recent years, ATF has noted a trend among domestic and foreign wineries to label wines using a grape variety designation. Increasing use of hundreds of grape variety names and synonyms prompted ATF to examine the correctness of using these names in order to insure that grape variety names used were truthful, accurate, and not misleading.

Winegrape Varietal Names Advisory Committee

In 1982, ATF established the Winegrape Varietal Names Advisory Committee (referred to as the "Committee") to conduct an examination of the hundreds of grape variety names and synonyms in use (47 FR 13623, March 31, 1982). According to its charter, the Committee was to advise the Director of the grape varieties and subvarieties which are used in the production of wine, to recommend appropriate label designations for these varieties, and to recommend guidelines for approval of names suggested for new grape varieties. Their recommendations were restricted to grape names used in the production of American wines. The Committee's final report was presented to the Director in September 1984. This report contained the Committee's findings regarding use of the most appropriate names for domestic winegrape varieties. ATF announced that the Committee's report was available to the public in Notice No. 548 (49 FR 44049), published on November 1, 1984.

Notice No. 581

On the basis of the recommendations contained in the Committee's final report, ATF issued Notice No. 581 on February 4, 1986 (51 FR 4392). This notice proposed the addition of Subpart J, American Grape Variety Names, to part 4. Within this proposed subpart, § 4.91 contained the list of prime grape names which the Committee had found to be the most appropriate names for grape varieties. Sections 4.92 and 4.93 contained alternative names which could be used in conjunction with the prime name (§ 4.92), or for five years, in lieu of the prime name (§ 4.93). Section 4.94 contained guidelines for adding new grape variety names to the list of prime names.

In addition to the recommendations included in the Committee report, Notice No. 581 contained other proposals. One was to prohibit the modification of grape variety names with color or style descriptive terms or with proprietary names. This proposal would prohibit use of names such as "White Zinfandel", "Cabernet Blush", "Zinfandel Nouveau", and so forth. Notice No. 581 also proposed to make obsolete certain IRS and ATF rulings relating to grape wine designations.

The comment period for Notice No. 581 was extended until July 7, 1986, by the publication of Notice No. 589, April 8, 1986 (51 FR 11944).

Written Comments in response to Notice No. 581

ATF received 156 comments from 146 different respondents prior to the end of the comment period. Comments were received from: 76 consumers; the American Wine Society; 38 American wineries; the Wine Institute; the

Association of American Vintners; the Washington Wine Institute; six grape growers; the California Farm Bureau Federation; the California Association of Winegrape Growers; the North Carolina Grape Growers Association; the Oregon Winegrowers Association; two United States Congressmen; the Embassy of France; the Embassy of the Federal Republic of Germany; four foreign wine producing or exporting companies or associations; the publication *Wine East*; a wine writer; four persons involved in academic research or classification of wine; and four members of the Winegrape Varietal Names Advisory Committee.

Comments Favoring Notice No. 581

Eleven respondents commented generally in favor of Notice No. 581, and the proposal to establish a list of wine grape variety names and for domestic use. The American Wine Society stated that the proposal would make wine labels less confusing for the consumer. Other respondents commented that the Committee had carefully researched the issue of grape variety names.

Comments Opposing Notice No. 581

A large number of respondents opposed the concept of establishing a list of grape varieties, while many objected to specific proposals such as the elimination of certain varietal names, or the proposal to prohibit use of color or style descriptors in conjunction with grape variety names. ATF could identify 54 respondents opposed generally to rulemaking in this area; in addition, nearly every one of the 146 respondents expressed opposition to some issue raised by Notice No. 581.

Conclusion

ATF has decided to reopen for public comment the subject of wine grape variety names through the issuance of this notice of proposed rulemaking. This notice incorporates most proposals from Notice No. 581, but it contains a number of significant changes as well.

Summary of Significant Changes From Notice No. 581

One List of Alternative Names

ATF has reduced the two proposed lists of alternative grape variety names to a single list. The remaining list contains alternative names which would be phased out by January 1, 1996. A few of the alternative names originally proposed have been accepted as prime names, or as synonyms for prime names.

Synonyms for Prime Names

The proposed list of prime names of grape varieties contains more synonyms for prime names than proposed in Notice No. 581. These synonyms, such as "Fumé blanc" (a synonyms for Sauvignon blanc), would be equally acceptable as prime names and can stand alone on a label as the wine designation.

Additional Grape Variety Names

ATF is proposing several additional grape names for inclusion on the list of prime names. These names represent newly developed varieties as well as some Old World grapes introduced into viticultural use in the United States.

Changes to the List of Prime Names

ATF has made certain changes to the list of prime names, through the deletion of names which are not the true names of grape varieties, and through the addition of certain grape names which were proposed as alternative names.

Approval of New Grape Names

ATF is proposing slight changes to the method of approving new grape names, primarily to provide more flexibility for breeders in naming new grape varieties.

Gamay Beaujolais

ATF is not proposing any action on Gamay Beaujolais at this time. This will be the subject of future rulemaking. Domestic wineries and bottlers may continue to use Gamay Beaujolais as a designation on wine labels in the interim.

Color and Style Descriptors

ATF is eliminating the proposal to prohibit the use of descriptive terms with grape variety names.

Type Designations of Varietal Significance

This notice proposes a new type designation for American wines having a varietal basis, but not composed of a single grape variety, such as Muscatel which may be produced using any Muscat grapes.

List of Prime Names, Section 4.91

The final report of the Winegrape Varietal Names Advisory Committee contained a list of "prime names" of grape varieties. They defined the prime name as "The name by which the grape variety is accepted as being the most appropriate and able to appear alone on a label." The Committee recommended inclusion of two additional names which were synonyms so widely accepted that they could be used alone on a label.

In Notice No. 581, ATF proposed a list of prime names at § 4.91. In response, we received many comments directed both at the establishing of any list, and at specific names appearing, or not appearing, on the list.

On the basis of all comments received, ATF has decided to repropose the list of prime grape names at § 4.91. This list has been modified due to the comments received in response to Notice No. 581. These comments are discussed below and elsewhere in this notice. The proposed list of prime names contains a number of synonyms and variant spellings which appear in parentheses. These synonyms and variant spellings may be used without qualification in lieu of the prime name appearing on the list.

Thompson Seedless and Sultanina

ATF proposed the use of both Thompson Seedless and Sultanina as prime names, with either synonym permitted without qualification. In doing so, ATF cited the Committee's findings that either name is equally valid, but that they are seldom used in wine labeling although Thompson Seedless is well known to consumers as a table grape.

Three respondents concurred with this proposal. ISC Wines of California noted that neither is commonly used as a wine designation and that no purpose would be served by restricting either name. Geyser Peak Winery stated that Thompson Seedless is well known as a table grape, but that a better name should be available for use in winemaking.

Three other respondents opposed the inclusion of both names in § 4.91. *Wine East* commented that the Thompson Seedless reputation is notorious and has no place in wine production; if ATF allowed wineries to use Sultanina without qualification, consumers would be misled since they would otherwise avoid Thompson Seedless wine. These respondents favored either dropping Sultanina or requiring it to be qualified with Thompson Seedless when used as a wine designation.

ATF has decided to propose inclusion of both names in the list of prime names. ATF finds that both names are equally valid for this grape variety. It is irrelevant whether or not Thompson Seedless conveys certain connotations to consumers regarding its suitability in wine production. The purpose of the list of grape names in § 4.91 is to provide accurate identification of wine. The listing of a grape name does not denote "quality," it merely reflects recognition of the grape variety.

Gewürztraminer and Traminer

Both Gewürztraminer and Traminer were included in proposed § 4.91.

Heublein Wines and the Wine Institute commented that by the inclusion of both names on the list, ATF was giving the impression that they were distinct grape varieties, when in fact, the names are used interchangeably for the same variety.

It is ATF's understanding that Gewürztraminer and Traminer are two separate varieties; consequently, both are proposed as prime names at § 4.91. ATF welcomes comment on this name issue.

Sauvignon Musque

On the basis of two comments to Notice No. 581, Sauvignon musque no longer appears as a proposed name in § 4.91. Ventana Vineyards and Susan Nelson-Kluk of the Foundation Seed and Plant Materials Service (FPMS), Universiy of California at Davis, both stated that the French ampelographer Pierre Galet has positively identified so-called "Sauvignon musque" samples as Sauvignon blanc. Furthermore, they noted there is no reference to Sauvignon musque in Italian or French ampelographies, and that no proper documentation exists for this name. Based on these comments, ATF has deleted Sauvignon musque from the proposed list of prime names.

Mataro and Mourvèdre

Mataro was proposed as a prime name at § 4.91, while Mourvèdre did not appear as a prime name or synonym. Although no comments were received during the comment period, ATF has since received several letters on the issue. Additionally, many applications for certificates of label approval for a varietal Mourvèdre wine have been submitted and approved.

Due to the widespread usage of the name, and the fact that Mourvèdre is a recognized synonym for this grape, ATF is now proposing to list Mourvèdre as a synonym for Mataro in § 4.91.

Alternative Names for Grape Varieties

Background

The final report of the Committee acknowledged that many grape varieties are known by more than one name, some by several names. As part of its deliberations, it selected the preferred "prime name" for each variety. In addition to these prime names, the Committee considered alternative names and synonyms. After considering the merits of the continued use of these other names, it recommended two lists of alternative names. Both lists were proposed as separate sections in Notice No. 581.

The first list contained synonyms which, if used on a label, would be required to appear in direct conjunction with the prime name of the grape. The Committee report noted that these alternative names refer to some older European grape varieties which are known by local or regional names. Some of these names have been used on labels of American wines and have received a degree of consumer acceptance. Furthermore, the Committee noted that these 16 alternative names, due to their regulatory precedent and commercial history, should be the exception to the general finding that, whenever possible, synonyms should be eliminated in the shortest practical period. Proposed § 4.92 did not contain a termination date for use of these names.

The Committee report also noted that some grape varieties have been misnamed or incorrectly identified, but that these names have received a degree of consumer acceptance. In order to prevent economic hardship to growers and winemakers, the Committee recommended these names be phased out over a five-year period. This second list at § 4.93 contained 52 alternative names. It was proposed to phase out the use of these names five years after adoption of final regulations.

General Written Comments

ATF received many comments on this proposal, both on whether alternative names should be permitted, and on the use of specific alternative names. Dr. Edward J. Wawszkiewicz commented that ATF should not permit the use of any alternative names of wine grape varieties, and that use of the names in §§ 4.92 and 4.93 should not be permitted for more than one year. He pointed to ATF's statutory mandate under the FAA Act to prohibit deception of the consumer, and to provide the consumer with adequate information as to the identity of the product. Dr. Wawszkiewicz argued that authorization of alternative names would be inconsistent with this mandate.

The Oregon Winegrowers Association endorsed retaining both lists of alternative names on a temporary basis, but with the eventual aim of phasing out all alternative names. They further recommended adoption of an additional list of alternative names consisting of prime names approved for temporary use until horticulturally correct names for these varieties were determined. The Association emphasized that this list would stress the temporary nature of these names, including Burger, Grey Riesling, Napa Gamay, Pinot Saint George, Early Burgundy, Sauvignon vert, and Charbono.

Thirty-eight other respondents favored eliminating both proposed lists and including all of the alternative names in the list of prime names. These respondents, including consumers, four wineries, an importer, and the Wine Institute, requested that ATF permit any legitimate synonym for a varietal name without restriction. The primary reason given was that alternative names are well known, are clearly understood by consumers to designate a particular wine, and that to require a change of these names would be confusing to consumers. For the names proposed in § 4.92, the Wine Institute commented that requiring both the prime and alternative name to appear would be redundant and result in label clutter.

Other respondents noted there were no consumer complaints concerning confusing varietal names and that their use is not deceptive. A few cited costs involved with changing existing labels, advertisements, and records to reflect prime grape names. De Loach Vineyards commented "Use of commonly employed commercial wine names with which the consumer is familiar is just as important as the use of botanically accurate varietal names." These respondents generally rejected the concept of requiring use of "the most correct proper name" over an alternative varietal name which is better known. Wineries presented the argument that they should have more flexibility in using varietal names.

One List of Alternative Names

On the basis of all comments, ATF has decided to propose a single list of alternative names, those names to be phased out in the future. ATF believes that it is important to standardize wine grape names and eliminate incorrect or misnamed varieties. Because of current commercial use, ATF is proposing to permit the continued use of certain names until January 1, 1996. Use of the alternative variety names proposed at § 4.92 would not require use of the prime name on the label as well. Most of the alternative names proposed in Notice No. 581 at § 4.93 now appear in the proposed list at § 4.92.

Alternative Names From Proposed § 4.92

ATF is not proposing a second list of alternative names corresponding to those listed at § 4.92 in Notice No. 581; i.e., names which could only appear as a designation in conjunction with the prime name. ATF believes it is redundant to require two names to appear on a label, and this requirement

could result in label clutter. Consequently, ATF proposes to deal with these 16 names on a case-by-case basis, either by adding them as prime names or synonyms in § 4.91, by including them in § 4.92 as alternative names to be phased out, or by eliminating their use altogether.

Saint Emilian

ATF is not proposing to retain Saint Emilion either as a prime or alternative grape name. ATF is instead proposing use of Trebbiano as a prime name for this grape. See the discussion under "Grape Variety Names Similar to French Appellations of Controlled Origin."

Franken Riesling

Franken Riesling is included in the list of alternative names in § 4.92, to be phased out by 1996. See the discussion under "Riesling Issues."

Pineau de la Loire

Pineau de la Loire, an alternative name for Chenin blanc, is proposed for inclusion in § 4.92 to be phased out by 1996. ATF finds that this grape is not a true Pinot and that its use could be misleading.

Fumé Blanc

Notice No. 581 proposed both Fumé blanc and Blanc Fumé as alternative names for Sauvignon blanc in § 4.92. Many respondents addressed this issue.

Comments were mixed. John W. McConnell, University of California Library at Davis, commented that Fumé blanc is used to denote a Sauvignon blanc wine having a smoky or flinty taste made in the Pouilly-sur-Loire region of France. McConnell stated that this taste is not typical of Sauvignon blanc wines produced elsewhere, and that ATF should not authorize its use as an alternative name simply because it is permitted in France.

Livermore Valley Cellars noted that "Fumé" means "smoky" in many European languages. They commented that there is not reason to restrict its use only to Sauvignon blanc, but that "Fumé" should be permitted as a descriptive term to indicate the style of any wine. The American Association of Vintners supported this position and suggested that "Fumé" would provide better consumer understanding of the production style of any varietal wine, i.e., "Seyval Fumé."

Five respondents commented in favor of allowing Fumé blanc as an alternative to Sauvignon blanc. Most stated that both names are equally valid, that Fumé blanc should be allowed to stand alone on a label and that Fumé blanc has a well established consumer understanding.

ATF believes that Fumé blanc is an acceptable synonym for a wine made from Sauvignon blanc grapes. Thus, ATF is proposing Fumé blanc as a synonym in § 4.91. No evidence was introduced that "Blanc Fumé" is a widely used synonym, and ATV is not proposing its continued use either as a prime name or an alternative name. ATF further notes that the term "fumé" may be used as a descriptive term for any grape variety.

Other Alternative Names

ATF has considered the remaining names from proposed § 4.92. Based on written comments and current usage, ATF proposes to list the following names as synonyms for prime grape names in § 4.91: Black Muscat (Muscat Hamburg); Cinsaut (Black Malvoisie); Durif (Petite Sirah); Muscat Canelli (Muscat blanc); and Shiraz (Syrah).

ATF is proposing that the following names be added to the list of alternative names in § 4.92 to be phased out by 1996: Bastardo (Trousseau); Chevrier (Sémillon); Muscadelle (Sauvignon vert); Refosco (Mondeuse); Ruländer (Pinot gris); and Muscat Frontignan (Muscat blanc). ATF believes that these names are not widely used on American wine labels and that the prime names for these grapes are better known to consumers.

Alternative Names From Proposed § 4.93

Limberger and Lemberger

Limberger was proposed as a prime grape name in § 4.91, while Lemberger was listed as an alternative name in § 4.93 which could stand alone on a wine label, but which would be phased out.

Two Washington State wineries and the Oregon Wine-growers Association commented that this variety should be listed as Lemberger. They noted that either spelling, with an "e" or with an "i," is acceptable in Germany and that this variety is not known by this name elsewhere. The Oregon Winegrowers further noted that Limberger may be associated with cheese of that name in the United States, and that this name is not suitable for a wine.

Due to the current use of Lemberger on wine labels in the United States, ATF is proposing to permit either spelling for this variety. Both spellings appear in § 4.91.

Meunier and Pinot Meunier

Meunier was proposed as a prime name in § 4.91, while Pinot Meunier was listed as an alternative name in § 4.93, to be phased out in five years.

Three wineries, the Wine Institute and the Oregon Winegrowers Asssociation requested that Pinot Meunier be permitted as a prime name or as a synonym for this grape variety. Eyrie Vineyards stated that they were the only U.S. winery to bottle this variety, and that it had been labeled Pinot Meunier for 16 years. The Oregon Winegrowers Association further commented that this grape is a true Pinot, and that the French ampelographer Pulliat listed this variety as Pinot Meunier.

Based on the fact that this grape is a true Pinot, and that Pinot Meunier has been used on wine labels for some time, ATF believes that this grape is known to consumers as Pinot Meunier, and that use of this name would not be misleading. Therefore, ATF is proposing both Meunier and Pinot Meunier as synonyms in § 4.91.

Chardonnay and Pinot Chardonnay

Chardonnay was proposed as a prime grape variety name in § 4.91, while Pinot Chardonnay was listed as an alternative name in § 4.93. The Wine Institute requested that Pinot Chardonnay be retained as a prime name or an acceptable synonym.

While Pinot Chardonnay has been used as a synonym in the past, ATF notes that Chardonnay is not a true Pinot grape, and the current nomenclature is to use simply Chardonnay. Therefore, ATF is proposing the use of Pinot Chardonnay as an alternative name in § 4.92 to be phased out by 1996.

Diamond and Maore's Diamond

The Committee considered the nomenclature of certain older American varieties and, in the final report, recommended standardizing names and eliminating synonyms. One such variety is Moore's Diamond which they proposed be simplified as Diamond, with a five year phase out period. *Wine East* requested authorization of Moore's Diamond as an acceptable synonym. ATF has, however, decided to propose phasing out use of the name Moore's Diamond by including it in the list at § 4.92.

Colombard and French Colombard

French Colombard was proposed as an alternative name at § 4.93. The Committee report noted that the true Colombard grape was mistakenly named French Colombard over 40 years ago in order to distinguish it from an unknown variety which previously had been incorrectly identified in California as Colombard. In the intervening time

French Colombard has become the most widely planted white wine grape in California. The Committee further acknowledged that individual opinions existed on whether French Colombard should be phased out, and if so, how long a time period should be granted. In Notice No. 581, ATF included French Colombard in the list of alternative names to be phased out in five years, but acknowledged that some Committee members believed 15 years or more should be provided.

Two respondents favored phasing out use of the French Colombard name in five years. They noted that Colombard is the proper name for the grape variety, and that eliminating "French" would not only promote use of the proper grape name, but would eliminate use of a foreign place name. Dr. Edward J. Wawszkiewicz concurred, but suggested a one-year phase out period. Two other respondents concurred with the proposal to phase out French Colombard, but suggested that a longer time period of 15 or 20 years be provided.

Nineteen respondents opposed the proposal to phase out French Colombard, and they uniformly rejected the idea that Colombard should be used as the prime varietal name. These respondents noted that French Colombard is the most widely planted white wine grape in California, that this grape has been known as French Colombard since at least the 1940's, and that it has never been sold as Colombard in California. E. & J. Gallo Winery stated that it has always been referred to in scientific literature as French Colombard, and that the European Economic Community accepts French Colombard as a varietal designation for wines exported to Europe.

Many respondents commented that there is no benefit to consumers of the industry by requiring a name change. The California Farm Bureau Federation stated "the primary purpose of a label is to identify the product and impart useful and unambiguous information to the consumer." They further maintained that forcing a change to Colombard might provide the correct scientific name on the label but would not benefit consumers. On the other hand, it would be costly for the industry to change labels, advertising, and so forth. Three consumers stated that the term French Colombard is not a source of confusion and that consumers do not believe that the wine is in any way associated with France.

On the basis of the evidence presented in the Committee's final report and in written comments, ATF has decided to propose that French Colombard be accepted as a synonym for Colombard. Thus, French Colombard is proposed as a synonym in § 4.91.

Gamay Issues

Background

The committee's final report noted that there are substantial plantings in California of two grape varieties which include the name "Gamay," the Napa Gamay and the Gamay Beaujolais. It stated that neither of these varieties is correctly named, and that neither is related to the Gamay grape (or one of its clones) grown in Europe. For years, ATF has permitted the use of Gamay Beaujolais on labels as a varietal designation. This resulted from the identification in the 1940's of a grape growing in Napa County as the Gamay grape native to the Beaujolais region of France. During the 1960's, the University of California at Davis determined that the grape known as Napa Gamay was the French Gamay, while the grape previously identified as Gamay Beaujolais was actually a clone of Pinot noir. Since then, wine made both from the Napa Gamay and from the clone of Pinot noir has been permitted to be labeled "Gamay Beaujolais." More recent studies have disclosed that the Napa Gamay grape is not related to the Gamay grape from France.

Napa Gamay

The Committee report recommended that Napa Gamay be proposed as an alternative name to be phased out when the grape's true identify was established. Notice No. 581 proposed Napa Gamay as a prime grape name, but noted that work was underway to establish the true identify of this grape. Until its identity was confirmed, wine made from this grape could be labeled Napa Gamay, or during the five year transition period, could be labeled Gamay Beaujolais if this appeared in direct conjunction with the variety name Napa Gamay.

Written Comments

Beringer Vineyards, ISC Wines of California, Dr. Edward J. Wawszkiewicz, and the Oregon Winegrowers Association, concurred with the proposal to include Napa Gamay in the list of prime names in § 4.91, at least until this grape is positively identified. The Oregon Winegrowers conceded that use of the name Napa Gamay is a practical compromise until the grape's true identity is determined. Three respondents commented that the grape identified as Napa Gamay may actually be the French grape Valdiquié or Valdiguié.

Recent ampelographic studies have disclosed that the grape called Napa Gamay is actually the French grape Valdiguié. On this basis, ATF is proposing Valdiguié as the prime name for this grape. However, due to the longstanding use of the name Napa Gamay, ATF is proposing Napa Gamay as a synonym for Valdiguié in § 4.91. ATF especially welcomes comments on whether Napa Gamay should be retained as a synonym for Valdiguié, or whether Napa Gamay should be phased out in the future.

Gamay Beaujolais

The Committee's findings were that Gamay Beaujolais is not the valid name of any grape variety, but that the grape identified as Gamay Beaujolais is actually a clone of Pinot noir. Its recommendation was to allow wine to be labeled as Gamay Beaujolais if the wine was made from this Pinot noir clone and if Pinot noir appeared in direct conjunction with Gamay Beaujolais. Their final report noted that some members recommended removing Gamay Beaujolais from the list of varietal names and according it semigeneric, non-varietal status. The Committee did not act on this suggestion since it was outside of their charter on varietal designations.

In Notice No. 581, ATF proposed Gamay Beaujolais as an alternative name in § 4.93 for use for five years; it could appear on a label only in direct conjunction with the actual grape variety used in its production, either Pinot noir or Napa Gamay.

Written Comments

The Gamay Beaujolais issue proved to be controversial.

Three respondents concurred with ATF's proposal to phase out use of the term Gamay Beaujolais. ISC Wines of California and the Oregon Winegrowers Association endorsed the five-year phase out period while Dr. Wawszkiewicz suggested no more than one year be permitted because it is not a grape variety.

Twenty-seven respondents objected to the proposal. Six growers of Napa Gamay grapes stated that if the term Gamay Beaujolais were eliminated, it would jeopardize the market and depress the price for their grapes. They noted that consumer recognition of wine labeled as Gamay Beaujolais is good, but that there is limited consumer market for Napa Gamay wine. Louis P. Martini stated that elimination of this term would remove this wine from the

market, and cause severe economic hardship on growers and wineries. Sebastiani Vineyards stated they produce over 100,000 cases of Gamay Beaujolais wine each year and that its removal would cause disruption for growers. The E.&J. Gallo Winery also cited the economic impact stemming from this proposal. Several consumers commented that consumer recognition of Gamay Beaujolais is good, that the wine is popular, that consumers know what they are buying, and that elimination of the term would serve no consumer purpose.

The California Farm Bureau Association, one consumer and six wineries commented that ATF should adopt Gamay Beaujolais as a semigeneric designation. The consensus of these respondents was that Gamay Beaujolais is well known to consumers as a light red, young, fruity wine and that consumers do not view it as a varietal wine. Ellendale Vineyards stated that the label should describe the finished product as well as the grapes used to make it. This vineyard noted that they produce several wines from Pinot noir grapes, and that each is labeled differently to indicate the style of wine (such as Pinot noir rosé). Gamay Beaujolais would be another style of wine made from Pinor noir. One consumer stressed that the term Gamay Beaujolais is necessary to distinguish between Pinot noir made in a Burgundy style, and Pinot noir made in the Beaujolais style; i.e., the varietal designation Pinot noir does not adequately inform the consumer about the wine. Most respondents stated they would not object if ATF required the grape variety to appear on the label of a semigeneric Gamay Beaujolais wine.

Conclusion

At this time, ATF does not believe it has sufficient information to propose eliminating use of the term Gamay Beaujolais, or to authorize its continued use on a permanent basis. In the near future, ATF will solicit additional comment on this issue through rulemaking.

In the interim, ATF will permit domestic wineries to use Gamay Beaujolais as a designation for grape wine, until resolution of rulemaking on this issue. Such wine must derive at least 75% of its volume from Pinot noir, from Napa Gamay, or from a mixture of these grapes.

Gamay

The Committee recommended that the wine variety Gamay be included as a prime name in anticipation that wine from the true Gamay grape would be produced in the United States in the future. Gamay was proposed as a prime name in § 4.91.

The Oregon Winegrowers Association commented that the prime name should be listed as Gamay noir. They noted that this name is shortened from Gamay noir jus blanc, and use of this name would serve to distinguish it from Gamay grape imposters.

ATF concurs with their comment. In view of the past misuse of the term "Gamay," ATF believes that use of the name Gamay noir will help distinguish the true Gamay grape from other grapes which were labeled "Gamay" in the past. Thus, the prime name proposed for this grape in § 4.91 is Gamay noir.

Riesling Issues

Riesling, White Riesling and Johannisberg Riesling

One aspect of the committee report focused on Riesling issues. It noted that Johannisberg Riesling has long been recognized as an American term in order to distinguish the White Riesling from other grape varieties which are not true Rieslings. The Committee recommended that both White Riesling and Johannisberg Riesling be permitted as equal synonyms for this grape variety. Furthermore, it recommended that the term Riesling not be permitted to stand alone as the name of a United States grape variety. In Notice No. 581, ATF proposed both White Riesling and Johannisberg Riesling as equally acceptable prime names in § 4.91; Riesling was not proposed as a prime or alternative name in that notice.

ATF received 14 comments on this issue. Five respondents, including three wineries, a German wine shipper, and the Stabilisierungsfonds fuer Wein ("SFW"), a quasi-government German agency, concurred with the ATF proposals. These respondents commented that this wine is well known in the United States both as White Riesling and as Johannisberg Riesling.

Six respondents requested that ATF permit simply "Riesling" to be used as the name for White Riesling or Johannisberg Riesling. The Embassy of the Federal Republic of Germany and the Oregon Winegrowers Association commented that the actual variety name is Riesling, and that ATF should not prohibit its use, or that ATF should require its use.

Six respondents favored the proposal to allow use of White Riesling. Most noted the term is more acceptable than Johannisberg Riesling because it does not include a foreign term. The Oregon Winegrowers Association noted that White Riesling is acceptable because it is a translation of the German botanical term "Weisser Riesling."

The greatest controversy concerned the continued use of Johannisberg Riesling as a synonym for White Riesling. Although five respondents agreed with the ATF proposal to permit its use, seven objected to it. These respondents commented that its elimination would remove a foreign place name; some noted that the American wine industry should rid itself of European terms. Two of these respondents suggested that ATF phase out Johannisberg Riesling over a period of time in favor of Riesling or White Riesling.

The comments support the proposal that both Johannisberg Riesling and White Riesling are terms well known to consumers, and that these terms have been used for many years to denote the Riesling grape in the United States. Therefore, ATF is proposing that both names appear in the list of prime grape names in § 4.91, as equally acceptable synonyms.

Riesling is not proposed as a prime grape name in § 4.91. By proposing its elimination, ATF wishes to create a clear distinction between those grapes which, in the past were labeled "Riesling" but which were not true Rieslings, from the true White Riesling. Since this proposal affects labeling of domestic wines only, it will not affect the labeling of wines from Germany or other countries which are made from the White Riesling grape.

Grey Riesling

The final Committee report stated that this variety has not been conclusively identified but that it is not a true Riesling. It recommended that ATF permit its continued use since there is no accepted alternative, but that it should be replaced with its horticulturally correct name in the future. In Notice No. 581, ATF proposed Grey Riesling as a prime name in § 4.91.

Louis P. Martini Winery, Beringer Vineyards, ISC Wines of California, E. & J. Gallo Winery and the Wine Institute all favored retaining Grey Riesling as a prime name. Louis P. Martini Winery commented that this variety has been grown in California for over 100 years and has received wide public acceptance. They further noted that Grey Riesling is preferable to an unknown European grape variety name with no recognition. The Wine Institute requested that either spelling, "Grey" or "Gray," be permitted. Five other respondents commented that Grey Riesling is not the true White Riesling and that its use should be prohibited or

phased out within a specified time period.

Recent ampelographic study, and a submission by the Oregon Winegrowers Association have identified the grape known as Grey Riesling as actually being Trousseau gris. Because ATF is interested in the use of the correct grape name whenever possible, and because this grape is not a true Riesling, ATF is proposing that Trousseau gris be listed as the prime grape name in § 4.91. However, due to long use of the name Grey Riesling, ATF proposes that the name Grey Riesling be accepted as synonym for Trousseau gris in § 4.91. ATF welcomes comments on whether Grey Riesling should be retained as a synonym for Trousseau gris, or whether the name Grey Riesling should be phased out in the future. Only the more common spelling "Grey Riesling" (as opposed to "Gray Riesling") appears in proposed § 4.91.

Missouri Riesling

This grape variety has been cultivated in the United States for over a century and has always been known as Missouri Riesling. It is not a Riesling, but is a native American grape. Due to the lack of an alternative name, the Committee report recommended Missouri Riesling be included in the list of prime names. The report did, however, recommend eventual elimination of varietal names such as Missouri Riesling which contain place names.

In Notice No. 581, ATF proposed that Missouri Riesling be listed as a prime name in § 4.91. Three respondents concurred. These respondents noted its long history of cultivation and use in the United States. Five other respondents objected to continued use of the name Missouri Riesling. The Embassy of Germany noted that since it is not a true Riesling, its labeling is misleading; they suggested the name "Missouri grape." The Oregon Winegrowers Association commented that only one winery uses this varietal designation, and its discontinuation would cause little disruption. They suggested that winegrowers and the Committee devise a new name for this grape. Dr. Edward J. Wawszkiewicz suggested the name "So-called Missouri Riesling."

Since this grape has always been known as the Missouri Riesling, and due to the lack of any alternative name, ATF is proposing Missouri Riesling as a prime name in § 4.91.

Emerald Riesling

The Committee report noted that Emerald Riesling is widely planted, but that it is a crossbred variety and not a true Riesling. In the absence of an accepted alternative name, the Committee recommended its continued use as a prime name.

Two wineries concurred with the ATF proposal to list the Emerald Riesling as a prime name in § 4.91. Dr. Edward J. Wawszkiewicz commented that this grape is a cultivar derived from Riesling, and therefore, should be permitted to be labeled Emerald Riesling.

Four other respondents objected to inclusion of this name in the list of prime names on the basis that it is not a true Riesling and should not be so labeled. The Embassy of Germany and the SFW recommended use of the name "Emerald grape." The Oregon Winegrowers Association suggested that winegrowers and the Committee devise a new name for this grape. Emerald Riesling could then be phased out in a specified time period.

Based on the comments and the fact that no alternative name exists, ATF proposes to list Emerald Riesling as a prime name in § 4.91.

Franken Riesling

In its final report, the Committee noted that Riesling has erroneously been used as a designation for Sylvaner grapes. It recommended elimination of this usage in favor of the correct name, Sylvaner. Notice No. 581 included Franken Riesling as an alternative name in § 4.92, to be used only in conjunction with the prime name Sylvaner.

Three United States wineries agreed with the proposal to retain Franken Riesling as an acceptable alternative name, or as a prime name. Five other respondents objected to its listing. All of these respondents noted that there is no such grape as the Franken Riesling, that this grape is the Sylvaner, and that the variety should be called by its correct name. The Oregon Winegrowers Association suggested authorizing Franken Riesling as an alternative name for a five year period and then phasing it out.

On the basis of the written comments and the Committee's recommendation, ATF is proposing to phase out the name Franken Riesling in favor of Sylvaner. Therefore, Franken Riesling is proposed as an alternative name in § 4.92, to be phased out by 1996.

Wälschriesling and Welschriesling

The Committee recommended that both spellings should be equally acceptable for this grape. consequently, both were listed as alternate spellings of prime names in § 4.91.

ATF received eight comments. One consumer and two wineries commented that the variety could be spelled either way. Dr. Edward J. Wawszkiewicz commented that the only correct spelling is Wälschriesling. Several other respondents noted that this grape is not the White Riesling, but that it is grown extensively throughout Europe where it is known as Italian Riesling, Welsch Rizling, and by other names. The Embassy of Germany, the SFW and H. Sichel Söhne stated this grape variety is primarily a European problem, and all recommended that it be named Welsch Rizling, a common European designation for this grape. The Oregon Winegrowers Association suggested that grapegrowers and the Committee devise a new name for this variety.

ATF does not believe the consumer is familiar with the term "Welsch Rizling." Therefore, ATF is proposing that either spelling Wälschriesling or Welschriesling be accepted as alternate spellings in § 4.91.

Other Riesling Names

The final Committee report noted that some other grape varieties include the name Riesling. Since they are not true Rieslings, it recommended that these other names be eliminated, and specified Okanagon Riesling and Siegfried Riesling as misleading names for grapes which are not Rieslings. As a consequence, ATF did not propose these names or any other grape variety names which include the term Riesling as prime grape names in Notice No. 581.

Two wineries and the Oregon Winegrowers Association concurred with the proposal to eliminate other varieties named Riesling. Mount Baker Vineyards objected to the proposal to eliminate Okanagon Riesling and stated this action would have a major impact on their wines.

ATF finds that these other varieties called Riesling are not true Riesling grape varieties. The "Siegfried Riesling" was released in 1958 under the name Siegfried, which appears in the list of prime names. The Okanagon Riesling is not believed to be widely grown in the United States. Consequently, ATF is not proposing these two or any other Riesling varieties as prime or alternative grape names in §§ 4.91 or 4.92.

Grape Variety Names Similar to French Appellations of Controlled Origin

Included in the proposed lists of grape varieties were nine names which four respondents identified as being similar to or identical to French Appellations of Controlled Origion ("AOC"). The Embassy of the Republic of France, the Institute National des Appleations D'Origine des Vins et Eaux-de-Vie, the Fédération des Exportateurs de Vins et Spiritueux de France, and one other

respondent commented on the similarity of the proposed names to French controlled appellations, and requested that these names not be permitted for United States grape varieties. The Agricultural Attachè to the French Embassy commented that Appellations of Controlled Origin have been recognized and protected by French decrees for more than 50 years. The nine grape varieties proposed in Notice No. 581 and the French Appellations of Controlled Origin identified by respondents as being similar are as follows:

Wine grape variety	French Appellation
Aligoté	Bourgogne Aligote.
Fumé	Blanc Fumé de Pouilly.
Gamay Beaujolais	Beaujolais.
Muscat Frontignan	Muscat de Frontignan.
Rosette	Rosette.
Pinot Saint George	Saint-Georges Saint-Emilion.
Saint Emilion	Saint-Emilion.
Saint Macaire	Cotes de Bordeaux Saint-Macaire.
Vivant	Romanee Saint-Vivant.

In 1986 ATF considered the issue of foreign nongeneric names of geographic significance used in the designation of wine. Two **Federal Register** notices of proposed rulemaking proceeded the issuance of Treasury Decision ATF–296 on April 30, 1990 (55 FR 17960). As part of that final rule, ATF added a new part 12, Foreign Nongeneric Names of Geographic significance Used in the Designation of Wine, to title 27, CFR. Section 12.21 of this part contains lists of foreign nongeneric names of geographic significance. Section 12.31 contains lists of foreign nongeneric names which are distinctive designations of specific grape wines.

Some foreign nongeneric names listed in part 12 contain names which are by themselves or include the names of grape varieties. Specific examples listed in part 12 include: Muscat de Frontignan, Rosette, Beaujolais, Pouilly Fumé, Romanee Saint-Vivant, Saint-Emilion, Lambrusco Reggiano, Barbera del Monferrato, Barbera d'Alba, Barbera d'Asti, Dolcetto d'Alba, Nebbiolo d'Alba, Brunello di Montalcino, Merlot Bujstine, Porecki Merlot, Vrsacki Rizling.

In Notice No. 657 (53 FR 12024, April 12, 1988), ATF proposed that foreign denominations of origin that are similar to American grape varietal designations not be published as examples of nongeneric names (e.g., Muscat de Frontignan, Valdepenas). It made an exception for Saint-Emilion which has been recognized in § 4.24(c) as a nongeneric distinctive designation for more than 50 years.

After consideration of all comments to Notice No. 657, ATF concluded in T.D. ATF–296 that names of bona fide geographically demarcated areas used to designate a wine from a particular country should be recognized as nongeneric, even if they are similar or identical to grape variety names. ATF further concluded that the potential for consumer confusion concerning the origin of the wine is obviated due to the fact that wine labeling regulations at § 4.23a provide that the names of grape varieties may be used as a type designation for wine only if the wine is also labeled with an appellation of origin. ATF stated that any questions concerning the potential for consumer confusion as to the identity of wine which may arise when a foreign nongeneric name is similar or identical to a varietal name would be resolved by ATF on a case-by-case basis. Some nongeneric names similar to or containing the name of grape varieties were published in part 12.

Thus, ATF does not believe there is any reason to deny use of a grape variety name to American winemakers simply because that name bears a resemblance to a foreign name of geographic significance. The requirement that grape names may be used as a type designation only when appearing in direct conjunction with the appellation of origin should eliminate any consumer confusion over the origin of the wine. ATF does not believe consumers will be confused between a French AOC wine, and a wine labeled with a similar grape variety name together with an appellation of origin.

Consequently, ATF is proposing listing the following names as prime grape names in § 4.91: Aligoté, Fumé blanc (as a synonym for Sauvignon blanc), Pinot Saint George, Rosette, Saint Macaire, and Vivant.

Muscat Frontignan was proposed in Notice No. 581 not as a prime name but as an alternative name for Muscat blanc. In the time since this notice was published, most domestic producers have shifted to use of the Italian name Muscat Canelli for wine made from this grape. Since this grape variety has a well understood and commonly accepted name, ATF has decided to propose phasing out the name Muscat Frontignan in favor of Muscat blanc or Muscat Canelli. ATF is proposing to list Muscat Frontignan in § 4.92 as an alternative name for Muscat blanc or for Muscat Canelli. Its use would be phased out by 1996.

ATF proposes to eliminate use of the name Saint Emilion entirely as a grape variety name. ATF does not find that the name Saint Emilion is commonly used as a grape variety designation on domestic wine labels. This grape has many synonyms, and ATF finds that other names are equally or better known to consumers. Thus, ATF proposes to list as equally acceptable synonyms both Ugni blanc and Trebbiano as prime names in § 4.91. Saint Emilion is not proposed as a prime or alternative name in §§ 4.91 or 4.92.

Attributes of Color

In its final report, the Committee noted that some variations of varietal names consist of the variety name with or without color descriptors such as "noir" or "blanc." In these cases, the Committee recommended simplication of names by phasing out alternative names applied to the same variety. It recommended listing Chancellor as a prime name, rather than Chancellor noir since the "noir" is superfluous, there being no "blanc" Chancellor grape. It also recommended listing Cayuga White as the prime name rather than Cayuga since examination of the release notice showed Cayuga White to be the correct name. Notice No. 581 incorporated these recommendations in the proposed lists of names in §§ 4.91 and 4.93. No comments addressed the Chancellor and Chancellor noir proposal and ATF is proposing Chancellor as the prime name in § 4.91.

Seyval Blanc and Seyval

Seyval was proposed as the prime name in § 4.91, while Seyval blanc appeared as an alternative name in § 4.93. to be phased out. Three eastern United States wineries and the publication *Wine East* commented in favor of retaining Seyval blanc as a prime name. Meredyth Vineyards noted that almost all of Seyve-Villard 5–276 is labeled Seyval blanc rather than Seyval. Alba Vineyards stated that Seyval blanc is one of the few eastern winegrape varieties which is receiving recognition nationally, and that a change to Seyval would confuse consumers who know of this variety. Merritt Estate Winery commented that a change to Seyval would adversely impact the wine market. The Association of American Vintners commented that ATF should permit the use of the term "Blanc Seyval" to designate a dry white wine made from Seyval. In this case, "Blanc Seyval" would not actually be an alternative name for the grape variety, but would be the variety name used with the descriptive term "Blanc."

ATF finds that Seyval blanc has received widespread usage, and a large number of American wineries have labeled their varietal wine as Seyval blanc. ATF also believes that Seyval blanc has good consumer recognition, and that its use as a varietal designation would not be misleading to consumers. Accordingly, ATF is proposing Seyval blanc as a synonym for the prime name Seyval in § 4.91. Seyve-Villard 5–276 remains as an alternative name in proposed § 4.92 to be phased out by 1996.

Cayuga and Cayuga White

On the basis of the Committee's report which found Cayuga White to be the true name of this grape variety, ATF proposed in Notice No. 581 that Cayuga White should be the prime name in § 4.91, and Cayuga should be in alternative name to be phased out. In response to that notice, the Association of American Vintners commented that there is little possibility of a consumer being confused if the absolutely correct name, Cayuga White, were not used in favor of the name Cayuga.

ATF is proposing Cayuga White as the prime name in § 4.91. In addition to the fact that Cayuga White is the correct name for this grape variety, ATF also believes that use of the full variety name will avoid any possible confusion between the grape variety, Cayuga White, and the American viticultural area, Cayuga Lake. Cayuga is listed as an alternative name in § 4.92 to be phased out by 1996.

Muscadine—Vitis Rotundifolia

Background

Vitis rotundifolia is a native American grape which grows throughout the southeastern United States. It is differentiated from other grape species in that its fruit grow in clusters of individual grapes, rather than in bunches. *Vitis rotundifolia* grapes may be further differentiated into bronze or green grapes, and black grapes. "Muscadine" is a term commonly applied to the species *Vitis rotundifolia*.

Early colonial settlers made Scuppernong wine from *Vitis rotundifolia* grape vines growing in or collected from the wild. The term "Muscadine Wine" is often applied to wine made from black skinned varieties of this species, while "Scuppernong Wine" is applied to wine made from bronze grapes. In recent years, many new varieties have been developed from *Vitis rotundifolia* grapes.

Revenue Ruling 54–528, 1954–2 C.B. 584, held that wine derived from Scuppernong grapes, a white (bronze) variety of Muscadine, could be labeled "Scuppernong Wine," "Muscadine Wine," or "White Muscadine Wine." It also held that wine made from Muscadine grapes could not be labeled "Red Scuppernong Wine." ATF Ruling 87–2, A.T.F.Q.B. 1987–2, 93, revoked Revenue Ruling 54–528 as obsolete.

Notice No. 581

This notice proposed 30 different variety names as prime names in § 4.91 for Muscadine or *Vitis rotundifolia* grapes. Under § 4.23a(b), use of these grape varieties on a label would mean the wine is composed of not less than 75% of that grape variety. Thus, a wine labeled "Scuppernong" would require that at least 75% of its volume be derived from Scuppernong variety grapes. The notice further stated that Revenue Ruling 54–528 would become obsolete with adoption of the proposed regulations, and it solicited comment on this issue, since this would prohibit wine made from Scuppernong grapes from being labeled "Muscadine Wine."

Written Comments

ATF received comments from Canandaigua Wine Company, the North Carolina Grape Growers Association and Dr. Robert M. Pool of the New York State Agricultural Experiment Station in Geneva, N.Y. These respondents stated that even though Scuppernong is a variety of *Vitis rotundifolia*, a varietal Scuppernong containing 75% Scuppernong grapes is not produced today, nor is it capable of being produced. According to Dr. Pool, commercial "Scuppernong" vineyards are grape patches which contain mixed varieties of wild origin. Canandaigua noted that "the name Scuppernong has been used since the colonial days to include all bronze type muscadine grapes and wine" and that "through American history Scuppernong is used synonymously with Muscadine grapes." The North Carolina Grape Growers stated that wineries have used the "Scuppernong" on labels which are not sold as varietals because Southerners call any white Mucadine a "Scuppernong."

No comments were received concerning any of the other proposed variety names for *Vitis rotundifolia* grapes.

Discussion and Proposals

ATF believes that Scuppernong is the valid name of a grape variety which has been used to make American wine for hundreds of years. However, due to the unique nature of the grape vines traditionally used to produce "Scuppernong Wine," ATF questions whether consumers associate Scuppernong wine with a specific grape variety, or simply associate it with all bronze Muscadine grapes.

Thus, ATF is proposing to establish a new category for American wine type designations of varietal significance. Under this new category at proposed § 4.28, Scuppernong wine would be defined as American wine which derives at least 75% of its volume from bronze Muscadine (*Vitis rotundifolia*) grapes. Grapes used could be Scuppernong variety or any other bronze Muscadine grapes, and mixtures of these grapes. As a result, Scuppernong does not appear in the proposed list of prime grape names in § 4.91 since the term would no longer describe a varietal wine.

Similarly, ATF is proposing Muscadine as another American wine type designation of varietal significance. Under proposed § 4.28, Muscadine wine is defined as American wine which derives at least 75% of its volume from any *Vitis rotundifolia* grapes. Under new proposed § 4.34(b)(2), the use of Muscadine or Scuppernong as a label designation would require an appellation of origin to appear in direct conjunction with the type designation.

ATF welcomes comment on the proposed American wine type designations, and the removal of Scuppernong as a grape variety name.

Muscatel

No standard of identity exists for this wine, although § 4.21(a)(3) permits a wine to be designated "Muscatel" if it has the taste, aroma and characteristics generally attributed to Muscatel, and if it contains over 14% alcohol by volume. Although there is no "Muscatel" grape, the term implies a varietal origin since Muscatel wine is made from Muscat grapes of many varieties.

Revenue Ruling 56–430, 1956–2 C.B. 1059, holds that the Aleatico grape is a variety of Muscat and is suitable for Muscatel production. Revenue Ruling 54–424, 1954–2 C.B. 583, holds that a wine may be labeled "Red Muscatel" if it is produced from Black Muscat grapes, Port and white Port wine. In accord with regulations existing at the time, these rulings required that at least 51% of the volume of the wine be derived from the Muscat grapes used.

ATF is proposing to make Muscatel an American wine type designation of varietal significance. Since current regulations require that at least 75% of a varietal wine be derived from the named grape variety, the proposal at § 4.28 defines Muscatel wine as wine which derives at least 75% of its volume from

any Muscat grapes. ATF requests comments on whether proposed § 4.28 should specifically list all Muscat grape varieties, and whether any other grape varieties are suitable for Muscatel production.

Other Grape Varieties

Respondents to Notice No. 581 requested inclusion of many grape variety names in the list of prime names. Several European varieties, including Cortese and Brunello, were requested. However, insufficient data was received concerning the cultivation and commercial significance of these grapes in the United States and they are not included in proposed § 4.91.

Trebbiano

Cypress Valley Winery requested inclusion of the Italian grape variety Trebbiano. This grape, known in France as Saint Emilion, is also called Ugni blanc. Trebbiano vines are available from the Foundation Plant Materials Service, University of California at Davis.

ATF is proposing Trebbiano as the prime name for this grape variety. As discussed previously, ATF believes that Saint Emilion has limited consumer recognition as a grape variety. Consequently, ATF believes that Trebbiano would be a preferred prime grape name and it is proposed at § 4.91 along with Ugni blanc as an equally accepted synonym.

Primitivo

Cypress Valley Winery requested that Primitivo de Gioia be included in the list of prime names. They stated that this variety has been grown in Texas for over 13 years, and is commercially available from different nursery sources. This grape is used in Italy to produce wine, and Cypress Valley has produced a varietal wine in Texas using this grape. Primitivo vines are available from the Foundation Plant Materials Service.

ATF is proposing Primitivo as a prime name in § 4.91 since it meets the criteria for approval of a grape variety name. Although several different clones or regional names are used for this grape in Italy, ATF is proposing simply Primitivo for domesic labels in order to remove foreign place names from grape variety names used in the United States. Information available to ATF at this time indicates that Primitivo and Zinfandel are separate grape varieties, and as such, may not be used as interchangeable grape names on wine labels.

Other Varieties

Since publication of Notice No. 581, a number of grape varieties have been approved by ATF for use on American wine labels. These varieties, which include Marsanne, Melody, Kay Gray, LaCrosse, Blanc Du Bois, St. Croix, Sangiovese, Lambrusco, and Viognier, are proposed as prime names in § 4.91.

ATF requests comment on whether other grape varieties should be considered for inclusion as prime grape names in § 4.91. Some names in which ATF is particularly interested include "Early Muscat," "Sereksia," and "Crimson." Respondents possessing information on these grapes should submit information concerning their cultivation and use in winemaking in the United States.

ATF also solicits information on the use or nonuse of some older grape varieties (for example Fredonia) which may longer be in use for wine production in the United States. Should some grape variety names appearing in proposed § 4.91 be removed from the list due to decline in cultivation or nonuse in wine production?

Terminology of French Hybrids

The final Committee report noted that there exist a large number of interspecific hybrids known by the name of the originator plus the seeding or selection number. Some of the more useful varieties have received commercial names by the hybridizer, the French Ministry of Agriculture, or by the Finger Lakes Wine Growers Association. In order to standardize the names used for some of these grape varieties, the Committee recommended the establishment of one prime name for these varieties, and the phasing out of synonyms within five years.

Ravat 51 and Vignoles

Ravat 51 is the name given to a hybrid of native American grapes with *Vitis vinifera* grapes. Notice No. 581 proposed use of the prime name Vignoles, a name given by the Finger Lakes Wine Growers Association in 1970 with Ravat 51 as an alternative name to be phased out in five years.

Wine East and Keuka Spring Vineyard both commented that this the prime name should be standardized as Ravat rather than Vignoles. Keuka Spring stated that no other Ravat hybrid has the commercial awareness or acceptance of this variety, and that Ravat has become synonymous with Ravat 51 in the consumer's mind. They stated that a change to Vignoles would seriously damage the market for this wine. *Wine East* stated that it would be acceptable to approve Ravat for permanent use in direct conjunction with Vignoles. They noted that the other two Ravat hybrids are no longer commercially important.

On examination of labels in use, ATF finds that both Ravat and Vignoles are frequently used as a grape variety designation, with Vignoles appearing more frequently in recent years. Consequently, ATF believes that it would not be misleading to permit both names to be used as synonyms for this grape variety; however, ATF does not believe that Ravat should be permitted to stand alone because of the existence of other varieties bearing this name, including Ravat 34 and Ravat noir, both of which are listed in § 4.91. Therefore, ATF is proposing that Ravat 51 be added to the list of prime names in § 4.91 as a synonym for Vignoles.

ATF also seeks comment on the name "Ravat blanc" which appears on a number of currently approved labels as the grape designation. ATF wishes to know if this designation as used on labels refers to the Ravat 51 grape (Vignoles) to which vineries have attached the descriptive term "blanc," or if this designation is being used for the "Ravat 6" grape, for which the synonym is Ravat blanc, a grape name not included in the list of prime names.

Vidal

Proposed § 4.91 included the prime name Vidal blanc. *Wine East* stated that Vidal blanc is more commonly sold and referred to as Vidal. They requested that both names be permitted as prime names.

Based on the Committee's recommendation, ATF is proposing only the name Vidal blanc as a prime name in § 4.91. Vidal 256 appears as an alternative name in § 4.92, to be phased out by 1996. The name Vidal is not proposed as a prime or alternate name. ATF welcomes comment on this issue.

ATF Ruling 74–25 "Cabernet"

ATF Ruling 74–25, 1974 ATF C.B. 48, permits the labeling of wine as "Cabernet" if 75% of its volume (51% prior to T.D. ATF–53 (43 FR 37672, August 23,1978) effective January 1, 1983) is derived from Cabernet Sauvignon grapes. This ruling was intended to prevent consumer deception through the use of less expensive grapes such as Ruby Cabernet in a wine labeled "Cabernet" which most consumers associate with Cabernet Sauvignon. Notice No. 581 proposed to make this ruling obsolete, thus precluding the labeling of Cabernet Sauvignon wine as "Cabernet." Notice

No. 581 specifically requested comment on this issue.

ATF received two comments. Ridge Vineyards objected to eliminating the ruling since it would necessitate label redesign in some cases. Heublein Wines stated it had no objection to the proposal.

ATF is now proposing to make ATF Ruling 74–25 obsolete, but to incorporate "Cabernet" as a synonym for Cabernet Sauvignon in § 4.91. Certificates of label approval for a "Cabernet" wine will continue to be qualified that at least 75% of the wine must be derived from Cabernet Sauvignon grapes.

Approval of Future Variety Names

Background

One part of the Winegrapes Varietal Names Advisory Committee charter was to recommend guidelines which the wine industry and ATF could follow in determining the appropriateness of names suggested in the future for new grape varieties. The Committee included their recommendations in its final report, and these recommendations were incorporated in § 4.94, Approval of new grape variety names.

As proposed, a lettershead application to the Director would be sufficient to request approval of a new grape variety name. Evidence regarding the name, its use in winemaking, and its cultivation in the United States would be submitted as part of the application. Supporting evidence such as plant patent, acreage information, and scientific references would also be required.

In addition to outlining the procedure for applying for a grape variety name, the Committee made recommendations regarding suitability of new names. In proposed § 4.94, a new grape variety name could not contain words of geographical significance; could not have been previously used for another variety; could not contain foreign words; could not contain misleading names; and could not contain "Riesling" as part of the name.

Written Comments

Two U.S. wineries and the Wine Institute opposed the proposed guidelines. DeLoach Vineyards stated the guidelines would stifle creativity in naming new varieties. Mt. Baker Vineyards noted that it is unnecessary for foreign vintners to use this procedure to gain approval of variety names and that ATF should allow use of foreign names. The Wine Institute commented that the guidelines are restrictive and inflexible. They also opposed the prohibition of foreign terms, and stated that marketing should allow for consumer demand or acceptance in determining new grape variety names.

Four respondents agreed with the proposal to prohibit use of the term "Riesling" for new grape varieties, while three respondents disagreed. Two of these respondents stated that "Riesling" should be permitted as part of a name for a new variety if a hybrid is derived from the White Riesling grape.

Conclusion and Proposal

Proposed § 4.93 contains the procedure for approval of new grape variety names. Paragraph (a) gives the procedure used to petition the Director for approval of a grape variety name. This procedure applies in the case of newly-developed grape varieties as well as existing varieties which come into use for wine production the United States.

Paragraph (b) sets forth evidence necessary to document a newly-developed grape variety.

Section 4.93(c) sets forth mandatory standards for the approval of any grape name. Names will not be approved if they have previously been used for a different grape variety, if they are misleading under § 4.39, or if they contain the word "Riesling." At the recommendation of the Committee, ATF does not wish to consider for approval any new grape varieties using the term Riesling, regardless of whether they have White Riesling parentage. ATF also solicits comment on whether the prohibition on using the term "Riesling" in naming new grape varieties should be extended to preclude the use of the terms "Chardonnay," "Cabernet," "Pinot" and "Pineau."

In consideration of the comments received regarding the need for creativity in naming, ATF is proposing to give the Director the authority to make a case-by-case determination whether a particular named variety would present a misleading impression. Thus, proposed § 4.93(d) gives the Director authority to make the determination whether grape variety names containing words of geographic significance, place names, or foreign words, are misleading under § 4.39. Variety names found to be misleading would not be approved by the Director.

It is not the intent of this proposed section to prohibit the use of established grape variety names which may contain terms of geographic significance, place names, or foreign words, but rather to discourage the use of these kinds of terms in naming new grape varieties. Therefore, proposed § 4.93(d) applies to grape varieties developed in the United States, but does not apply to existing grape varieties growing in foreign countries and which are introduced into viticultural use in the United States.

New paragraph (e) in § 4.93 provides that the Director will publish the list of approved names annually in the **Federal Register**. This publication will inform consumers and wineries of periodic changes to the list of approved names without formally amending § 4.91 every time a name is added or removed. From time to time, ATF will incorporate changes made to the list into § 4.91.

Proprietary Names and Descriptive Terms

Background

In the "Statement of Principles" section of its final report, the Committee noted that certain wines, which to the uninformed would appear to be varietal wines, are in fact, labeled with registered proprietary names. The Committee suggested that ATF should decline to approve such labels in the future, and should phase out existing approvals of these labels.

Notice No. 581 noted that under the proposed grape variety labeling regulations, currently approved proprietary variations of varietal names would no longer be permissible on wine labels. Under that notice, only the approved variety name could be used as the varietal designation without modification. Proprietary names and color designations could, however, be shown separately on the label. This proposal would have prohibited the use of a designation such as "White Zinfandel," but would have permitted labeling such as "Zinfandel" on one line with another line reading "A White Wine Made From Zinfandel Grapes." Examples of names which would be prohibited include "White Zinfandel," "Cabernet Blush," or "Zinfandel Nouveau."

Written Comments

Ninety-five respondents objected to this proposal, and this proved to be the most controversial aspect of Notice No. 581. Respondents included 23 wineries, 65 consumers, the Wine Institute, the Association of American Vintners, the Oregon Winegrowers Association, the California Association of Winegrape Growers, and the California Farm Bureau Federation. The vast majority of comments addressed the use of color descriptors with a varietal designation; i.e. color descriptors used primarily for wines made in the style of white wine but from grapes traditionally used to make red wine.

Color and Style Descriptors

Consumers and wineries alike commented that the use of color or style descriptors is a significant aid to consumers in selecting wines. Qualifiers such as "White," "Blush," "blanc," "noir," "Novueau," or "Rosé" describe the style of wine and enable consumers to differentiate between wines of the same varietal origin but produced in different styles; i.e., the qualifier together with the varietal name tells consumers what kind of wine is in the bottle when the grape variety name alone does not.

Respondents stressed that use of color or style descriptors facilitates the identification of wines when the consumer cannot see the bottle, such as on a wine list or at a State liquor store. Heublein Wines commented that if Zinfandel is sold in a green bottle, it is visually impossible to distinguish between a red and a "blush" Zinfandel. As proposed, a consumer would need to search the small print to determine the style of wine. Heublein noted that descriptive terms aid wholesalers and retailers in ordering wine and taking inventory.

Wineries cited the economic importance of "blush wines" and the costs associated with removal of descriptive terms from labels. Sebastiani Vineyards stated that all blush wines [in 1985] exceeded $100,000,000 in gross sales. Bargetto Winery commented that "White Zinfandel" accounted for 30% of their varietal wine production, while Joseph E. Seagram & Sons stated that the production of "White Zinfandel" and "Cabernet blanc" wines amounted to more than a half million cases for their subsidiary wineries in less than six months time. Heublein Wines stated that more than 100 wineries produce blush wines.

Geyser Peak Winery stated that adoption of the ATF proposal would severely damage the market for Zinfandel grapes. As a consequence, the proposal would have a far reaching and devastating impact on grapegrowers, wineries and consumers. According to the Oregon Winegrowers Association, more than 20% of currently approved varietal labels in Oregon would require revision if descriptive terms were prohibited.

Finally, several respondents cited the lack of need or justification for this proposal. Many respondents stressed the lack of consumer confusion over use of such terms. The Wine Institute noted that Notice No. 581 failed to indicate the reasons behind the proposal to prohibit descriptive terms. One consumer stated the proposal seeks to "protect" people who don't need protecting from something they are not threatened by. Another consumer stated that academic snobbery to achieve the "most correct proper name" will not lead to enlightenment or reduce confusion. Two committee members, Louis P. Martini and Vincent E. Petrucci, also opposed the proposal to prohibit proprietary variations of varietal names.

Other Comments

Bargetto Winery commented that a dot or dash between a descriptive term and varietal name would be acceptable; for example "White-Zinfandel."

Wine World, Beringer Vineyards and Joseph E. Seagram & Sons all recommended that ATF develop a list of descriptive terms which could be used with varietal designations. These terms would describe a winemaking style or color, and would be the only terms permitted for use in direct conjunction with the varietal designation.

ATF received no comments favoring the proposal in Notice No. 581 to prohibit color or style descriptors in conjunction with varietal names.

Comments Regarding Other Proprietary Names

Three respondents favored continuation of the use of strictly proprietary names with varietal designations. These proprietary names, unlike descriptive terms, consist of a registered name used to differentiate that varietal wine from similar wines made by other winemakers. Examples are "Monterey Riesling" or "Cypress Chardonnay."

Bargetto Winery commented in favor of permitting proprietary names, but stated that a dot or dash between the proprietary name and varietal name would be acceptable, such as "Cypress-Chardonnay." Freemark Abbey Winery opposed prohibiting the use of well established proprietary names. They stated that discontinuation would result in serious economic hardship for wineries which have invested in those brands.

The Association of American Vintners commented that the strict use of varietal names, as proposed by ATF, gives preference to winemakers who produce wines in traditional European styles, and penalizes winemakers who produce innovative styles of wine made from these same varieties. They cited as an example "Cabernet Kiss" which a winemaker might use to denote a Cabernet Sauvignon having a certain taste sensation. They further stated that the ATF proposal would remove from industry the ability to manipulate varietal terminology in a way to appeal to the consumer better.

Beringer Vineyards, Wine World and the California Farm Bureau Federation supported the proposal to prohibit use of these types of proprietary names.

Conclusion

In view of the preponderance of comments opposing the prohibition on the use of descriptive terms in conjunction with varietal designations, ATF has decided no to pursue this proposal. Therefore, descriptive terms and proprietary names will continue to be permitted for use with varietal designations. ATF will, however, take the position that label terms are misleading if their use results in consumer deception.

Miscellaneous Issues

Revenue Ruling on Varietal Names

Revenue Ruling 56–460, 1956–2 C.B. 1059, requires that wine be designated by its true varietal name, and not by other names which may be locally applied to a particular grape variety. This ruling will become unnecessary and thus will be superseded when these proposed regulations become final.

Although Revenue Ruling 56–460 also applies to imported wines, ATF believes that grape variety names are adequately controlled by § 4.25a. Under this section, imported wines must be designated in accordance with the laws and regulations of the country of origin.

Spelling, Capitalization and Punctuation

ISC Wines of California, *Wine East*, Heublein Wines, and the Wine Institute commented that ATF should permit use of varietal names, either capitalized or in lower case, at the option of the winery. These respondents stated that permitting latitude in capitalization would afford wineries maximum flexibility in type styles when designing labels.

ATF policy is that wine variety names may appear either capitalized or in lower case, and in any style or type which is conspicuous and meets the minimum type size requirements. This policy is incorporated in the text of proposed § 4.91.

The Wine Institute also requested that wineries be given the discretion to use other recognized spellings of certain varietal names. ATF does not agree. The intent of this rulemaking is to standardize grape variety names to the maximum extent possible. In those cases in which a variant spelling is recognized, that spelling will be listed with the prime name; for example, Limberger and Lemberger. Other variant

spellings will not be permitted unless approved by the Director. In the case of variety names containing an umlaut, bottlers may use the alternative spelling "ue" or "ae" when the variety name is spelled without the umlaut; for example, "Münch" or "Muench."

Three respondents noted that certain grape variety names should be spelled with umlauts, accent marks, hyphens, or tildes. All grape variety names are listed in §§ 4.91 and 4.92 with umlauts, accent marks, hyphens, or tildes, as applicable. These hyphens and diacritic marks may or may not be used on labels at the option of the bottler, and this policy is incorporated into proposed § 4.91.

Proposed Effective Dates

ATF proposes that effective January 1, 1994, the name of a grape variety may not be used as a type designation for an American wine unless it is approved by the Director.

Grape variety names appearing on the list of alternative names at § 4.92 may be used as the type designation for American wines bottled before January 1, 1996. American wines bottled on or after January 1, 1996, may not use those names as the type designation for wine.

The procedure proposed at § 4.93 for petitioning the Director to approve additional grape variety names would become effective 30 days after publication of a final rule. Interested parties may at any time petition the Director to approve grape variety names.

Bottlers may continue to use Gamay Beaujolais as a type designation for American wine until the completion of rulemaking on that subject.

Public Participation

ATF requests comments from all interested persons concerning the proposals contained in this notice. ATF especially solicits information concerning grape varieties used in making American wines which are not listed in § 4.91.

All comments submitted in response to Notice No. 581 will be considered by ATF in relation to the proposals set out in this notice, and respondents need not resubmit any of those comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments will be disclosed to the public. Any material which a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, record-keeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms; with copies to the Chief, Information Programs Branch, room 3110, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The collection of information in this regulations is in the following section: 27 CFR 4.93. This information is required by the Bureau of Alcohol, Tobacco and Firearms in order to determine what grape varieties have been newly-developed or recently introduced for use in winemaking. ATF uses this information to determine whether a grape variety name is appropriate for use as a type designation for American wine, and whether that name should be authorized for use in labeling wine.

The likely respondents are businesses and other for-profit institutions, non-profit institutions, and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 4 hours. Estimated total annual burden per record-keeper: 2 hours. Estimated number of respondents: 2 Estimated annual frequency of responses: 1.

Drafting Information

The principal author of this document is Charles N. Bacon, Wine and Beer Branch, Compliance operations, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, it is proposed to amend 27 CFR Part 4, Labeling and Advertising of Wine, as follows:

PART 4—[AMENDED]

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

Authority: 27 U.S.C. 205.

Par. 2. Section 4.23 is revised to read as follows:

§ 4.23 Varietal (grape type) labeling.

(a) *General.* The names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin as defined in § 4.25a.

(b) *One variety.* Except as provided in paragraph (c) of this section, the name of a single grape variety may be used as the type designation if not less than 75 percent of the wine is derived from grapes of that variety, the entire 75 percent of which was grown in the labeled appellation of origin area.

(c) *Exceptions.* (1) Wine made from any *Vitis labrusca* variety (exclusive of

hybrids with *Vitis labrusca* parentage) may be labeled with the variety name if:

(i) Not less than 51 percent of the wine is derived from grapes of the named variety;

(ii) The statement "contains not less than 51 percent (name of variety)" is shown on the brand label, back label, or a separate strip label, (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(2) Wine made from any variety of any species found by the Director upon appropriate application to be too strongly flavored at 75 percent minimum varietal content may be labeled with the varietal name if:

(i) Not less than 51 percent of the wine is derived from grapes of that variety;

(ii) The statement "contains not less than 51 percent (name of variety)" is shown on the brand label, back label, or a separate strip label (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the names variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(d) *two or three varieties.* The names of two or three grape varieties may be used as the type designation if:

(1) All of the grapes used to make the wine are of the labeled varieties;

(2) The percentage of the wine derived from each variety is shown on the label (with a tolerance of plus or minus 2 percent); and

(3)(i) If labeled with a multicounty appelation of origin, the percentage of the wine derived from each variety from each county is shown on the label; or

(ii) If labeled with a multistate appellation of origin, the percentage of the wine derived from each variety from each state is shown on the label.

(e) *List of approved variety names.* Effective January 1, 1994, the name of a grape variety may be used as a type designation for an American wine only if that name has been approved by the Director. A list of approved grape variety names appears in subpart J of this part.

§ 4.23a [Removed]

Par. 3. Section 4.23a is removed.

Par. 4. Subpart C is amended by adding § 4.28 to read as follows:

§ 4.28 Type designations of varietal significance.

The following are type designations of varietal significance for American wine. These names may be used as type designations for American wines only if the wine is labeled with an appellation or origin as defined in § 4.25a.

(a) *Muscadine.* An American wine which derives at least 75 percent of its volume from *Vitis rotundifolia* grapes.

(b) *Muscatel.* An American wine which derives its predominant taste, aroma, characteristics and at least 75 percent of its volume from any Muscat grape source, and which meets the requirements of § 4.21(a)(3).

(c) *Scuppernong.* An American wine which derives at least 75 percent of its volume from bronze *Vitis rotundifolia* grapes.

Par. 5. Section 4.34 is amended by revising the second sentence of paragraph (a) and paragraph (b)(1); by redesignating paragraphs (b) (2), (3), and (4), as paragraphs (b) (3), (4), and (5), respectively, and adding a new paragraph (b)(2) to read as follows:

§ 4.34 Class and type.

(a) * * * In the case of still grape wine there may appear, in lieu of the class designation, any varietal (grape type) designation, type designation of varietal significance, semigeneric geographic type designation, or geographic distinctive designation, to which the wine may be entitled. * * *

(b) * * *

(1) A varietal (grape type) designation is used under the provisions of § 4.23;

(2) A type designation of varietal significance is used under the provisions of § 4.28;

* * * * *

Par. 6. Immediately after § 4.80, the following new subpart J is used to read as follows:

Subpart J—American Grape Variety Names

Sec.

Subpart J—American Grape Variety Names

§ 4.91 List of Approved prime names.

The following grape variety names have been approved by the Director for use as type designations for American wines. When more than one name may be used to identify a single variety of grape, the synonym is shown in parentheses and listed in alphabetical order. Alternate spellings of prime grape names are shown in parentheses. Grape variety names may appear on labels of wine in upper or in lower case, and may be spelled with or without the hyphens or diacritic marks indicated in the following list.

Agawam
Albermarle
Aleotico
Alicante Bauschet
Aligaté
Alvarelhaa
Aurore
Bacchus
Baco blanc
Baca noir
Barbera
Beacon
Beclan
Bellandais
Beta
Black Malvaisie (Cinsault)
Black Muscat (Muscat Hamburg)
Black Pearl
Blanc Du Bois
Blue Eye
Bonorda
Bauntiful
Burdin 4672
Burdin 5201
Burdin 11042
Burgaw
Burger
Cabernet (Cabernet Sauvignon)
Cabernet franc
Cabernet Pfeffer
Cabernet Sauvignan (Cabernet)
Calzin
Campbell Early
Canada Muscat
Captivatar
Carignane
Carmine
Carlos
Carnelian
Cascade
Castel 19–637
Catawba
Cayuga White
Centurian
Chombaurcin
Chancellar
Charbana
Chardonnay
Chasselas daré
Chelais
Chenin blanc
Chief
Chowan
Cinsout (Black Malvaisie)
Clairette blanche
Clintan
Colombard (French Colombard)
Calabel
Cancord
Conquistadar
Couderc noir
Cowart
Creek
Cynthiana
Dearing
De Chaunac
Delaware
Diamond
Dixie
Dolcetto
Doreen
Dulcet
Durif (Petite Sirah)
Dutchess
Early Burgundy
Edelweiss

Eden
Ehrenfelser
Ellen Scott
Elvira
Emerald Riesling
Feher Szagos
Fern Munsan
Flome Tokay
Flora
Florental
Folle blanche
French Calambard (Calambord)
Fry
Fumé blanc (Sauvignan blanc)
Furmint
Gomay nair
Gorronet
Gewürztraminer
Gladwin 113
Glennel
Gold
Golden Muscat
Grand Nair
Grey Riesling (Trousseau gris)
Green Hungarian
Grenache
Grignolina
Grilla
Helena
Herbemont
Higgins
Horizon
Hunt
Iona
Isabella
Ives
James
Jewell
Joannes Seyve 12–428
Joannes Seyve 23–416
Johannisberg Riesling (White Riesling)
Kerner
Kay Gray
Kleinberger
LaCrosse
Lake Emerald
Lambrusca
Landal
Landot nair
Lenair
Léon Millot
Limberger (Lemberger)
Madeline Angevine
Magnolia
Magoon
Malbec
Malvasia bianca
Maréchal Foch
Marsonne
Metoro (Maurvédre)
Melody
Melon
Merlot
Meunier (Pinot Meunier)
Mish
Missian
Missouri Riesling
Mondeuse
Montefiore
Moore Early
Morio-Muskat
Maurvédre (Matoro)
Müller-Thurgau
Münch
Muscat blanc (Muscat Canelli)
Muscat Canelli (Muscot blanc)
Muscat du Moulin
Muscat Hamburg (Black Muscat)
Muscat of Alexondria
Muscat Pantelleria
Muscat Ottonel
Napa Gamay (Valdiguié)
Naples
Nebbiolo
New York Muscat
Niagara
Noah
Noble
Nortan
Ontario
Orange Muscat
Palomino
Pomlico
Pedro Ximenes
Petit Verdot
Petite Sirah (Durif)
Peverella
Pinot blonc
Pinot gris
Pinot Meunier (Meunier)
Pinot nair
Pinot Saint George
Precoce de Molingre
Pride
Primitiva
Rayon d'Or
Ravat 34
Ravat 51 (Vignales)
Ravat nair
Redgate
Regale
Rkatziteli (Rkatsiteli)
Roonoke
Rosette
Roucaneuf
Rougeon
Royalty
Rubired
Ruby Cabernet
St. Croix
Saint Macaire
Salem
Salvador
Sangiovese
Sauvignon blanc (Fumé blanc)
Sauvignon vert
Scarlet
Scheurebe
Sémillon
Seyval (Seyval blanc)
Seyval blanc (Seyvol)
Shiraz (Syrah)
Siegerrebe
Siegfried
Southland
Souzão
Steuben
Stover
Sugargate
Sultanina (Thompson Seedless)
Summit
Suwannee
Sylvaner
Syrah (Shiraz)
Symphony
Swenson Red
Tarheel
Taylor
Thomas
Thompson Seedless (Sultanino)
Tinta Madeira
Tinto cão
Topsoil
Touriga
Traminer
Trebbiono (Ugni blonc)
Trousseau
Trousseau gris (Grey Riesling)
Ugni blonc (Trebbiono)
Valdepeños
Valdiguié (Napa Gamay)
Volerien
Van Buren
Veeblanc
Veltliner
Ventura
Verdelet
Vidal blanc
Vignales (Ravat 51)
Villard blanc
Villard nair
Vincent
Viognier
Vivant
Wälschriesling (Welschriesling)
Watergate
Welder
White Riesling (Johannisberg Riesling)
Yuga
Zinfondel

§ 4.92 Alternative names permitted for wines bottled prior to January 1, 1996.

The following alternative names shown in the left column may be used as the type designation for American wine in lieu of the prime name of the grape variety shown in the right column. Alternative names listed in the left column may only be used for wine bottled prior to January 1, 1996.

Alternative Name	*Prime Name*
Baco 1	*Baco noir*
Baco 22A	*Baco blonc*
Bastardo	*Trousseau*
Black Spanish	*Lenoir*
Burdin 7705	*Florental*
Cayugo	*Cayugo White*
Chancellar nair	*Chancellar*
Chasselas	*Chasselos doré*
Chevrier	*Sémillon*
Chelois noir	*Chelais*
Cauderc 71–20	*Couderc nair*
Couderc 299–35	*Muscot du Moulin*
Foch	*Maréchol Foch*
Fronken Riesling	*Sylvoner*
Gutedel	*Chasselos doré*
Island Belle	*Compbell Early*
Ives Seedling	*Ives*
Jocquez	*Lenair*
Joonnes Seyve 26–205	*Chambaurcin*
Landot 244	*Landal*
Landot 4511	*Landot noir*
Millot	*Lean Millot*
Moore's Diamond	*Diomond*
Muscodelle	*Souvignan vert*
Muscot Frontignon	*Muscot blanc*
Muscot Frontignon	*Muscat Conelli*
Nortan Seedling	*Nortan*
Pfeffer Cobernet	*Cabernet Pfeffer*
Pineau de lo Loire	*Chenin blonc*
Pinot Chardonnay	*Chardonnay*
Ravot 262	*Ravot nair*
Refosco	*Mondeuse*
Ruländer	*Pinot gris*
Seibel 128	*Salvador*
Seibel 1000	*Rosette*
Seibel 4986	*Rayon d'Or*

Seibel 5279	*Aurore*
Seibel 5898	*Raugeon*
Seibel 7053	*Chancellor*
Seibel 8357	*Calabel*
Seibel 9110	*Verdelet*
Seibel 9549	*De Chaunac*
Seibel 10878	*Chelois*
Seibel 13053	*Cascade*
Seibel 14596	*Bellandais*
Seyve-Villard 5–276	*Seyval*
Seyve-Villard 12–309	*Rauconeuf*
Seyve-Villard 12–375	*Villard blanc*
Seyve-Villard 18–283	*Garronet*
Seyve-Villard 18–315	*Villard noir*
Seyve-Villard 23–410	*Valerien*
Sweetwater	*Chasselas dare*
Verdelet blanc	*Verdelet*
Vidal 256	*Vidal blanc*
Virginia Seedling	*Norton*

§ 4.93 Approval of grape variety names.

(a) Any interested person may petition the Director for the approval of a grape variety name. The petition may be in the form of a letter and should provide evidence of the following—

(1) Acceptance of the new grade variety,

(2) The validity of the name for identifying the grape variety,

(3) That the variety is used or will be used in winemaking, and

(4) That the variety is grown and used in the United States.

(b) For the approval of names of new grape varieties, documentation submitted with the petition to establish the items in paragraph (a) of this section may include—

(1) Reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization,

(2) Reference to a plant patent, if so patented, and

(3) Information pertaining to the commercial potential of the variety, such as the acreage planted and its location or market studies.

(c) The Director will not approve a grape variety name if:

(1) The name was previously been used for a different grape variety;

(2) The name contains a term or name found to be misleading under § 4.39; or

(3) The name of a new grape variety contains the term "Riesling."

(d) For new grape varieties developed in the United States, the Director may determine if the use of names which contain words of geographical significance, place names, or foreign words are misleading under § 4.39. The Director will not approve the use of a grape variety name found to be misleading.

(e) The Director shall publish the list of approved grape variety names at least annually in the **Federal Register.**

Signed: June 29, 1992.

Stephen E. Higgings,

Director.

Approved: August 20, 1992.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92–21102 Filed 9–2–92; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA75

High-Voltage Longwall Equipment Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects an error in the proposed rule which addressed safety standards for high-voltage longwall equipment that appeared in the **Federal Register** on August 27, 1992 (57 FR 39041).

DATES: All comments and information must be submitted by October 26, 1992.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

SUPPLEMENTARY INFORMATION: On August 27, 1992, MSHA published a proposed rule addressing its safety standards that are applicable to high-voltage longwall equipment. On page 39045 in column 3 and on page 39050 in column 2, reference was made to Figures I–1 and I–2 in appendix A. Appendix A was inadvertently left out of the document. This appendix is now being published for the information of the reader.

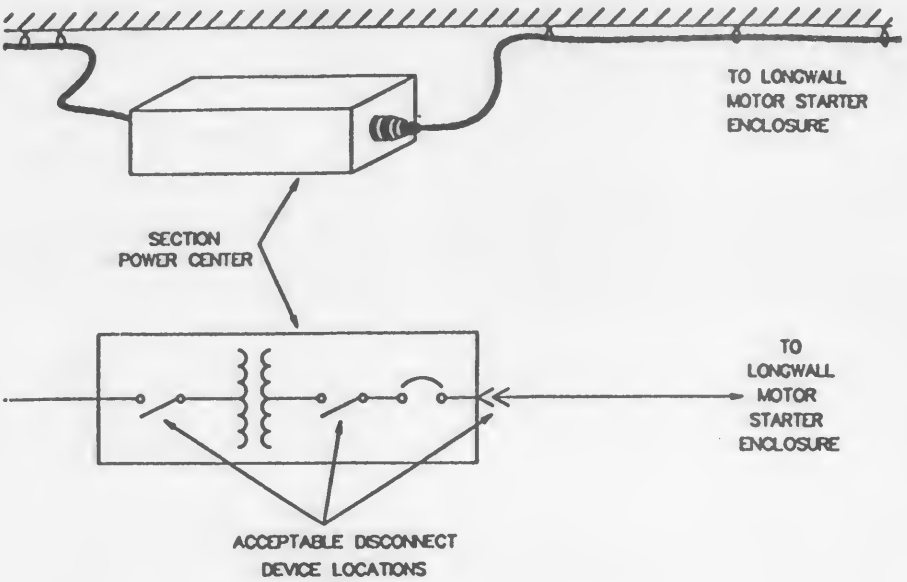
Dated: August 28, 1992.

William J. Tattersall,

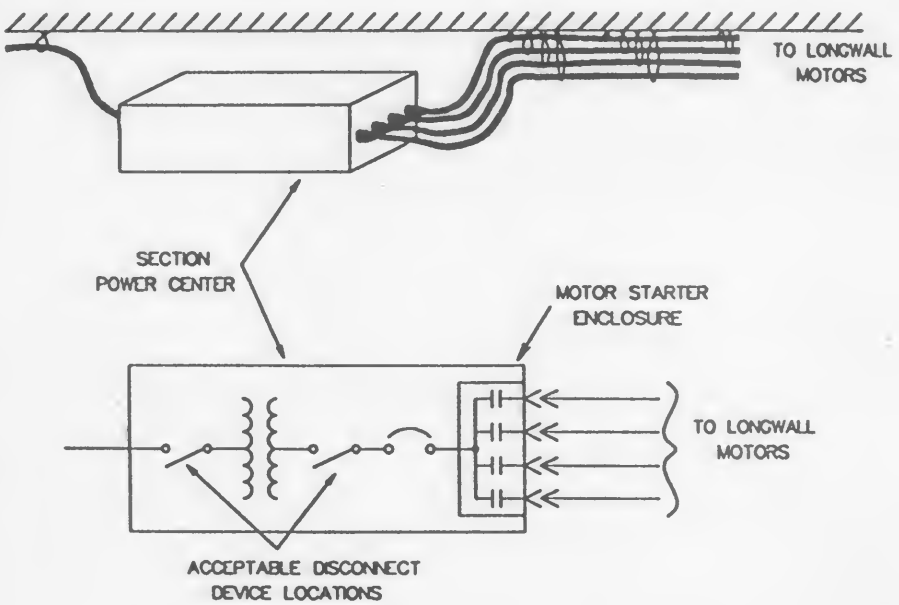
Assistant Secretary for Mine Safety and Health.

BILLING CODE 4510–43–M

APPENDIX - A



I–1 – INBY SWITCHING



I–2 – OUTBY SWITCHING

[FR Doc. 92–21231 Filed 9–2–92; 8:45 am]
BILLING CODE 4510–43–C

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

32 CFR Part 317

[DCAA Regulation 5410.10 and DCAA Manual 5410.16]

Defense Contract Audit Agency Privacy Act Program

AGENCY: Defense Contract Audit Agency, DoD.
ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Defense Contract Audit Agency (DCAA) Privacy Act Program that implements the Privacy Act of 1974 (5 U.S.C. 552a), as amended, within DCAA.

Subsection (f) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, requires that Federal agencies promulgate rules for implementing the Privacy Act. On March 8, 1985 the Defense Contract Audit Agency published DCAA Instruction 5410.10, "DCAA Privacy Act Program". This instruction was revised and reissued on June 24, 1991. The revised instruction (Subpart-A) sets forth the fundamental policies and procedures for implementing the DCAA Privacy Act Program, delegates authorities and assigns responsibilities for the administration of the DCAA Privacy Act Program. It further authorizes the publication and maintenance of DCAA Manual 5410.16, "DCAA Privacy Guide" dated June 1991 (Subpart-B et seq.) that contains the uniform detailed procedures for implementation and administration of the DCAA Privacy Act Program.

DATES: Comments should be received by October 5, 1992, to be considered by this agency.

ADDRESS(ES): Foward comments to Mr. Dave Henshall, Information Resources Management Branch, CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 274–4400 or DSN 284–4400.

SUPPLEMENTARY INFORMATION:

Executive Order 12291. The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 317

Privacy.

Accordingly, DCAA is revising 32 CFR part 317 to read as follows:

PART 317–DCAA PRIVACY ACT PROGRAM

Authority: Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

Subpart A–General Provisions

§ 317.1 Purpose.

(a) This part consolidates into a single document, the Defense Contract Audit Agency policies and procedures for implementing the Privacy Act of 1974 (5

U.S.C. 552a), as amended, by authorizing the development, publication and maintenance of the DCAA Privacy Act Program set forth by DCAA Regulation 5410.10 [1], "Privacy Act Program", and DCAA Manual 5410.16 [2], "DCAA Privacy Act Processing Guide."

(b) Its purpose is to delegate authorities and assign responsibilities for the administration of the DCAA Privacy Act Program and to prescribe uniform procedures for agency personnel consistent with DoD 5025.1–M [3], "DoD Directives System Procedures."

§ 317.2 Applicability and scope.

(a) This part applies to all DCAA organizational elements and takes precedence over all regional regulatory issuances that supplement the DCAA Privacy Program.

(b) This part shall be made applicable by contract or other legally binding action to contractors whenever a DCAA contract provides for the operation of a system of records or portion of a system of records to accomplish an agency function.

§ 317.3 Definitions.

(a) *Access.* The review of a record or a copy of a record or parts thereof in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act among DoD components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and recordkeeping as regards release to non-DoD agencies; each DoD component, including DCAA, is considered an agency within the meaning of the Privacy Act.

(c) *Confidential source.* A person or organization who has furnished information to the Federal Government under an express promise that the person's or the organization's authority will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

(d) *Defense Data Integrity Board.* Consists of members of the Defense Privacy Board, as established pursuant to 32 CFR part 310, and in addition the Inspector General, DoD or the designee, when convening to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

(e) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(f) *Federal benefit program.* Any program administered or funded by the Federal Government, or by any agent or state on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

(g) *Federal benefit program match.* A computerized comparison of two or more automated systems of records or an automated system of records with automated non-Federal records for the purpose of establishing or verifying the eligibility of or continuing compliance with statutory and regulatory requirements by, applicants for, recipients and beneficiaries (both present and past) of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs; or recouping payments or delinquent debts under such Federal benefit programs.

(h) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the reserve components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(i) *Federal personnel match.* A computerized comparison of two or more automated Federal personnel or payroll systems of records or an automated Federal personnel or payroll system of records with automated non-Federal records.

(j) *Individual.* A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a dead person under this chapter and the term "individual" does not embrace an individual acting in an interpersonal capacity (for example, sole proprietorship or partnership).

(k) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(l) *Maintain.* Includes maintain, collect, use, or disseminate.

(m) *Matching agency.* The agency which actually performs the match.

(n) *Matching program.* (1) The term means any computerized comparison of:

(i) Two or more automated systems of records or a system of records with non-Federal records for the purpose of:

(A) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(B) Recouping payments or delinquent debts under such Federal benefit programs, or

(ii) Two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(iii) But does not include:

(A) Matches performed to produce aggregate statistical data without any personal identifiers.

(B) Matches performed to support any research for statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals.

(C) Matches performed by an agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons.

(iv) Matches of tax information.

(A) Pursuant to section 6103(d) of the Internal Revenue Code of 1986.

(B) For purposes of tax administration as defined in section 6301(b)(4) of such Code.

(C) For the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or

(D) For the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing

[1] Copies may be obtained, at cost, from the Defense Contract Audit Agency, ATTN: CMO, Cameron Station, Alexandria, VA 22304–6178.

[2] See footnote 1 to § 317.1(a).

[3] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

requirements that are substantially similar to the procedures in section 1137 of the Social Security Act.

(E) Matches.

(1) Using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v) of the Privacy Act).

(2) Conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(F) Matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel.

(o) *Member of the public.* Any individual or party acting in a private capacity to include Federal employees or military personnel.

(p) *Non-Federal agency.* Any state or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program.

(q) *Official use.* Within the context of this chapter, this term is used when officials and employees of the Agency have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DCAA Regulation 5410.10.

(r) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(s) *Privacy Act.* The Privacy Act of 1974 (5 U.S.C. 552a), as amended.

(t) *Privacy Act request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records. The request must indicate that it is being made under the Privacy Act to be considered a Privacy Act request.

(u) *Recipient agency.* Any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program.

(v) *Record.* Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(w) *Risk assessment.* An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity. Applies to manual and automated systems.

(x) *Routine use.* The disclosure of a record outside the Agency for a use that is compatible with the purpose for which the information was collected and maintained by the Agency. The routine use must be included in the published system notice for the system of records involved.

(y) *Source agency.* Any agency which discloses records contained in a system of records to be used in a matching program, or any state or local government, or agency thereof, which discloses records to be used in a matching program.

(z) *Statistical record.* A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

(aa) *System of records.* A group of records under the control of the Agency from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the Federal Register.

(bb) *Word processing equipment.* Any combination of electronic hardware and computer software integrated in a variety of forms (programmable software, hard wiring, or similar equipment) that permits the processing of textual data.

(cc) *Word processing system.* A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator.

§ 317.4 Policy.

It is DCAA policy that personnel will comply with the DCAA Privacy Program and the Privacy Act of 1974. Strict adherence is necessary to ensure uniformity in the implementation of the DCAA Privacy Program and create conditions that will foster public trust. It is also agency policy to safeguard personal information contained in any system of records maintained by DCAA organizational elements and to make that information available to the individual to whom it pertains to the maximum extent practicable. DCAA policy specifically requires that DCAA organizational elements:

(a) Collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order.

(b) Collect personal information directly from the individuals to whom it pertains to the greatest extent practical.

(c) Inform individuals who are asked to supply personal information for inclusion in any system of records:

(1) The authority for the solicitation.

(2) Whether furnishing the information is mandatory or voluntary.

(3) The intended uses of the information.

(4) The routine disclosures of the information that may be made outside of DoD; and

(5) The effect on the individual of not providing all or any part of the requested information.

(d) Ensure that records used in making determinations about individuals and those containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside of DoD, other than a Federal agency, unless the disclosure is made under DCAA Regulation 5410.10, DCAA Freedom of Information Act Program (32 CFR part 290).

(e) Keep no record that describes how individuals exercise their rights guaranteed by the First Amendment to the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertain or is pertinent to and within the scope of an authorized law enforcement activity.

(f) Notify individuals whenever records pertaining to them are made available under compulsory legal processes, if such process is a matter of public record.

(g) Establish safeguards to ensure the security of personal information and to protect this information from threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

(h) Establish rules of conduct for DCAA personnel involved in the design,

development, operation, or maintenance of any system of records and train them in these rules of conduct.

(i) Assist individuals in determining what records pertaining to them are being collected, maintained, used, or disseminated.

(j) Permit individual access to the information pertaining to them maintained in any system of records, and to correct or amend that information, unless an exemption for the system has been properly established for an important public purpose.

(k) Provide, on request, an accounting of all disclosures of the information pertaining to them except when disclosures are made:

(1) To DoD personnel in the course of their official duties.

(2) Under 32 CFR part 290; and

(3) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States conducting law enforcement activities authorized by law.

(l) Advise individuals on their rights to appeal any refusal to grant access to or amend any record pertaining to them, and file a statement of disagreement with the record in the event amendment is refused.

§ 317.5 Responsibilities.

(a) *Heodquorters.* (1) The *Assistont Director, Resources* has overall responsibility for the DCAA Privacy Act Program and will serve as the sole appellate authority for appeals to decisions of respective initial denial authorities. Under his direction, the *Chief, Information Resources Monogement Branch*, under the supervision of the *Chief, Administrotive Monogement Division* shall:

(i) Establish, issue, and update policies for the DCAA Privacy Act Program; monitor compliance with this regulation; and provide policy guidance for the DCAA Privacy Act Program.

(ii) Resolve conflicts that may arise regarding implementation of DCAA Privacy Act policy.

(iii) Designate an agency Privacy Act Advisor, as a single point of contact, to coordinate on matters concerning Privacy Act policy.

(iv) Make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(2) The *DCAA Privacy Act Advisor* under the supervision of the Chief, Information Resources Management Branch shall:

(i) Manage the DCAA Privacy Act Program in accordance with this regulation and applicable DCAA policies, as well as DoD and Federal regulations.

(ii) Provide guidelines for managing, administering, and implementing the DCAA Privacy Act Program.

(iii) Implement and administer the Privacy Act program at the Headquarters.

(iv) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(v) Maintain and publish DCAA Pamphlet 5410.13 [4], "DCAA Compilation of Privacy Act System Notices"; DCAA Pamphlet 5410.15 [5], "Privacy Act of 1974, An Employee Guide to Privacy"; and DCAA Manual 5410.16, "DCAA Privacy Act Processing Guide."

(vi) Prepare promptly any required new, amended, or altered system notices for systems of records subject to the Privacy Act and submit them to the Defense Privacy Office for subsequent publication in the Federal Register.

(vii) Prepare the annual Privacy Act Report as required by 32 CFR part 310, "DoD Privacy Act Program."

(viii) Conduct training on the Privacy Act program for agency personnel.

(3) *Heads of Principal Stoff Elements* are responsible for:

(i) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure consistency with the provisions of this regulation.

(ii) Ensuring that the provisions of this part are followed in processing requests for records.

(iii) Forwarding to the DCAA Privacy Act Advisor, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(iv) Ensuring the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(v) Providing recommendations to the DCAA Privacy Act Advisor regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(vi) Providing the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the DCAA Privacy Act Advisor. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(4) The *General Counsel* is responsible for:

(i) Ensuring uniformity is maintained in the legal position, and the interpretation of the Privacy Act (32 CFR part 310), and this part.

(ii) Consulting with General Counsel, DoD on final denials that are inconsistent with decisions of other DoD components, involve issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(iii) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional Privacy Act Officer, through the DCAA Privacy Act Advisor, as required, in the discharge of their responsibilities.

(iv) Coordinating Privacy Act litigation with the Department of Justice.

(v) Coordinating on Headquarters denials of initial requests.

(5) Each *Regionol Director* is responsible for the overall management of the Privacy Act program within their respective regions. Under his/her direction, the *Regionol Resources Manoger* is responsible for the management and staff supervision of the program and for designating a *Regionol Privocy Act Officer.*

(i) *Regionol Directors* will, as designee of the Director, make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(ii) *Regionol Privacy Act Officers* will:

(A) Implement and administer the Privacy Act program throughout the region.

(B) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(C) Prepare input for the annual Privacy Act Report as shown in DCAA Manual 5410.16 when requested by the DCAA Information and Privacy Advisor.

[4] See footnote 1 to § 317.1(a).

[5] See footnote 1 to § 317.1(a).

(D) Conduct training on the Privacy Act program for regional and FAO personnel.

(E) Provide recommendations to the Regional Director through the Regional Resources Manager regarding the releasability of DCAA records to members of the public.

(6) *Managers, Field Audit Offices (FAOs)* will:

(i) Ensure that the provisions of this regulation are followed in processing requests for records.

(ii) Forward to the Regional Privacy Act Officer, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(iii) Ensure the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(iv) Provide recommendations to the Regional Privacy Act Officer regarding the releasibility of DCAA records to members of the public, along with the responsive documents.

(v) Provide the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the Regional Privacy Act Officer. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(6) *DCAA Employees* will:

(i) Not disclose any personal information contained in any system of records, except as authorized by this part.

(ii) Not maintain any official files which are retrieved by name or other personal identifier without first ensuring that a notice for the system has been published in the Federal Register.

(iii) Report any disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized by this regulation to the appropriate Privacy Act officials for their action.

§ 317.6 Procedures.

Procedures for processing material in accordance with the Privacy Act of 1974 are outlined in subparts B through L of this part.

Subpart B–Systems of Records

§ 317.10 General

(a) *System of records.* To be subject to this part, a "system of records" must:

(1) Consist of "records" that are retrieved by the name or some other personal identifier of an individual, and

(2) Be under the control of the Agency.

(b) *Retrieval practices* (1) Records in a group of records that could be retrieved by personal identifiers, but are not covered by this part, even if the records contain information about individuals and are under the control of the agency. The records must, in fact, be retrieved by personal identifiers in order to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system of records is created and a notice of the system must be published in the Federal Register of its existence.

(3) If records in a system of records are rearranged so retrieval no longer is by personal identifiers, the records are no longer subject to this part and the records system notice shall be deleted.

(c) *Recordkeeping standards.* A record maintained in a system of records must meet the following criteria:

(1) The record must be accurate--all information in the record must be factually correct.

(2) The record must be relevant--all information contained in the record must be related to the individual who is the subject of record and also must be related to a lawful purpose or mission of the agency.

(3) The record must be timely--all information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) The record must be complete--it must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) The record must be necessary--all information in the record must be needed to accomplish the agency mission or purpose established by Federal law or Executive Order of the President.

(d) *Authority to establish systems of records.* The specific Federal statute or Executive Order of the President should be identified that authorizes maintaining each system of records. A statute or Executive Order authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(e) *Exercise of first amendment rights.* (1) Records should not be maintained describing how an individual exercises rights guaranteed by the first amendment of the U.S. Constitution unless:

(i) Expressly authorized by Federal law;

(ii) Expressly authorized by the individual; or

(iii) Pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(f) *System manager's evaluations and reviews.* (1) Each new proposed system of records shall be evaluated.

(i) The information to be included in the system should be evaluated before establishing it.

(ii) The following factors should be considered:

(A) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained. All information must be relevant to the purpose.

(B) The specific impact on the purpose or mission if each category of information is not collected. All information must be necessary to accomplish a lawful purpose or mission.

(C) The ability to meet the informational needs without using personal identifiers (will anonymous statistical records meet the needs?).

(D) The length of time each item of information must be kept.

(E) The methods of disposal; and

(F) The cost of maintaining the information.

(2) All existing systems of records shall be evaluated and reviewed.

(i) When an alteration or amendment of an existing system is prepared, an evaluation must be performed.

(ii) Reviews should be conducted often and reports prepared which outline the results and corrective actions taken to resolve problems uncovered.

(A) Training practices should be reviewed annually to ensure all personnel are familiar with the requirements of the Privacy Act and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices should be reviewed annually to ensure compliance with this part.

(C) Each ongoing computer matching program in which records from the system have been matched with non-DoD records should be reviewed annually to ensure that the applicable requirements have been met.

(D) Actions of agency personnel that resulted in either the agency being found civilly liable or an employee being found criminally liable should be reviewed annually to determine the extent of the

problem and find the most effective way of preventing the problem in the future.

(E) Each system of records notice should be reviewed annually to ensure it accurately describes the system. Where minor changes are needed, amend the system notice. If major changes are needed, alter the system notice.

(F) A random sample of agency contracts that provide for the operation of a system of records on behalf of the agency to accomplish an agency function should be reviewed every even-numbered year to ensure the wording of each contract complies with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(G) The routine use disclosures associated with each system of records should be reviewed every three years to ensure the recipient's use of the records continues to be compatible with the purpose for which the agency originally collected the information.

(H) Each system of records for which exemption rules have been established should be reviewed every three years to determine whether each exemption is still needed.

(iii) When directed, the reports should be sent through proper channels to the agency Privacy Act Advisor who will forward them to the Defense Privacy Office.

(g) *Discontinued information requirements.* (1) Any category or item of information about individuals that is no longer justified should not be collected, and when feasible, the information should be removed from existing records.

(2) Records that must be kept in accordance with retention and disposal needs established under DCAA Manual 5015.1 [6], "Files and Disposition Manual," shall not be destroyed.

(h) *Review records before disclosing them outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, reasonable steps should be taken to ensure the record to be disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

§ 317.11 Federal government contractors.

(a) *Applicability to Federal government contractors.* (1) When the agency contracts for the operation of a system of records or portion thereof to accomplish an agency function, this part and 5 U.S.C. 552a are applicable. For purposes of the criminal penalties, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(2) Consistent with parts 24 and 52 of the Federal Acquisition Regulation [7], contracts for the operation of a system of records or portion thereof shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract such terms specifically prescribed by the FAR.

(3) If the contractor must use records that are subject to this part to perform any part of a contract, and the information would have been collected and maintained by the agency but for the contract, the contractor activities are subject to this rule.

(4) This rule does not apply to records of a contractor that are:

(i) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract; or

(ii) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the agency.

(iii) For contracting that is subject to this part, the agency shall:

(A) Inform prospective contractors of their responsibilities under the DCAA Privacy Program.

(B) Establish an internal system for reviewing contractor performance to ensure compliance with the DCAA Privacy Program; and

(C) Provide for the biennial review of a random sampling of agency contracts that are subject to this rule.

(b) *Contracting procedures.* The Defense Acquisition Regulatory Council is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts.

(c) *Contractor compliance.* The agency shall establish contract surveillance programs to ensure contractors comply with the procedures established by the Defense Acquisition Regulatory Council pursuant to the preceding subsection.

(d) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a contract for the agency is considered a disclosure within the agency. The contractor is considered the agent of DCAA when receiving and maintaining the records for the agency.

§ 317.12 Safeguarding information in systems of records.

(a) *General responsibilities.* Appropriate administrative, technical, and physical safeguards shall be established to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure. The records shall be protected from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) *Minimum standards.* (1) Risk analysis and management planning shall be conducted for each system of records. Sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards should be considered. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) All personnel operating a system of records or using records from a system of records should be trained in proper record security procedures.

(3) Information exempt from disclosure under DCAA Freedom of Information Act Program (32 CFR part 290), shall be labeled to reflect its sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other language that alerts individuals to the sensitivity of the records.

(4) Special administrative, physical, and technical safeguards shall be employed to protect records stored or processed in an automated data processing or word processing system from threats unique to those environments.

(c) *Records disposal.* (1) Records from systems of records should be disposed of to prevent inadvertent disclosure. Disposal methods such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation are considered adequate if the records are rendered unrecognizable or beyond reconstruction. Magnetic media may be cleared by degaussing, overwriting, or completely erasing.

(2) The transfer of large volumes of records (e.g., computer cards and printouts) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records under this

[6] See footnote 1 to § 317.1(a).

[7] For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

rule if volume of the records, coding of the information, or some other factor renders it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernible, dispose of the records in accordance with paragraph (c)(1) of this section.

Subpart C–Collecting Information About Individuals

§ 317.20 General considerations.

(a) *Collect directly from the individual.* To the greatest extent practicable, information should be collected for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under Federal programs.

(b) *Soliciting the Social Security number.* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide the Social Security Number (SSN). However, this prohibition does not apply if:

(i) A Federal law requires that the SSN be provided, or

(ii) The SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual shall be told:

(i) Whether providing the SSN is voluntary or mandatory,

(ii) By what law or other authority the SSN is solicited, and

(iii) What uses will be made of the SSN.

(3) The notice published in the Federal Register for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. Executive Order No. 9397 permits Federal agencies to solicit SSNs as numerical identifiers for individuals in Federal records systems; however, it does not make it voluntary or mandatory for individuals to provide their SSNs.

(4) Upon entrance into employment with the agency, individuals must provide their SSNs; therefore, they must be given the notification. The SSN is then the individual's numerical identifier and used to establish personnel, financial, medical, and other official records. After the individual has provided the SSN to establish the records, the notification is not required when the SSN is requested only for verification or to locate the records.

(5) The Federal Personnel Manual should be consulted when soliciting SSNs for use in systems of records controlled by the Office of Personnel Management.

(c) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about the individual directly from the individual, such as when:

(1) Verifying information through other sources for security or employment suitability determinations.

(2) Seeking other opinions, such as a supervisor's comments on past performance or other evaluations.

(3) Obtaining the necessary information directly from the individual will be exceptionally difficult or will result in unreasonable costs or delays; or

(4) The individual requests or consents to contacting another person to obtain the information.

(d) *Privacy Act statement.* (1) When an individual is requested to furnish information about himself or herself for a system of records, a Privacy Act statement must be provided to the individual, regardless of the method used to collect the information (forms, personal interviews, telephonic interviews, etc.). If the information requested will not be included in a system of records, a Privacy Act statement is not required.

(2) The Privacy Act statement shall include the following:

(i) The Federal law or Executive Order of the President that authorizes collecting the information.

(ii) Whether it is voluntary or mandatory for the individual to provide the requested information.

(iii) The principal purposes for which the information will be used,

(iv) The routine uses that will be made of the information (to whom and why it will be disclosed outside the Department of Defense); and

(v) The effects, if any, on the individual if all or part of the information is not provided.

(3) The Privacy Act statement must appear on the form used to collect the information or on a separate form that can be retained by the individual requesting it. If the information is collected other than by the individual completing a form, such as when the information is solicited by telephone, the Privacy Act statement should be read to the individual and a copy sent to him or her on request.

(4) It is mandatory for an individual to furnish information about himself or herself for a system of records only when a Federal law or Executive Order of the President specifically imposes a duty to furnish the information and provides a penalty, e.g., criminal sanctions, for failure to do so. If furnishing the information is only a condition for granting a benefit or privilege voluntarily sought by the individual (such as a request for annual leave), it is voluntary for the individual to give the information. However, the denial of the benefit or privilege must be listed in the Privacy Act statement as one of the effects of not providing the information, i.e., the effects on the individual if the information is not provided.

§ 317.21 Forms.

(a) *DCAA forms.* (1) DCAA Regulation 5015.3 [8], "DCAA Forms Management Program," provides guidance for preparing the Privacy Act statement for use with DCAA forms.

(2) When forms are used to collect information about individuals for a system of records, the Privacy Act statement shall appear as follows (listed in the order of preference):

(i) Immediately below the title of the form.

(ii) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act statement).

(iii) On the back of the form with a notation of its location below the title of the form, or

(iv) On a separate form which the individual may keep.

(b) *Non-DCAA forms.* Forms subject to 5 U.S.C. 552a issued by other DoD components or Federal agencies might contain a Privacy Act statement; however, the statement might not reflect accurately the authority, purposes, and routine uses applicable within the agency. If so, the activity using the form shall prepare a statement or supplement to the one provided with the form.

[8] Copies may be obtained, at cost, from the Defense Contract Audit Agency, ATTN: CMO, Cameron Station, Alexandria, VA 22304–6178.

Subpart D–Access to Records

§ 317.30 Individual access to records.

(a) *Right of access.* (1) The access provisions of this part are for individuals who are subjects of records maintained in DCAA systems of records.

(2) All information that can be released consistent with applicable laws and regulations should be made available to the subject of record.

(b) *Notification of record's existence.* Record managers of system of records shall establish procedures for notifying an individual, in response to a request, if the system of records contains a record pertaining to him or her.

(c) *Individual requests for access.* (1) Individuals shall address requests for access to records in systems of records to the responsible system manager or the regional Privacy Act officer.

(2) Requests for access may be oral or written; however, only written requests are to be maintained in the Privacy Act case file and counted when compiling the biennial Privacy Act report.

(d) *Verifying identity.* (1) An individual shall provide reasonable verification of identity before obtaining access to records.

(2) Procedures for verifying identity shall not be complicated merely to discourage individuals from seeking access to records.

(3) When an individual seeks access in person, identification can be verified by documents normally carried by the individual, such as an identification card, driver's license, or other license, permit or pass normally used for identification purposes.

(4) When access is requested other than in person, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required.

(5) The individual may be accompanied by a person of his or her choice when viewing the record; however, the individual may be required to provide written authorization to have the record discussed in front of the other person.

(6) An individual shall not be denied access to a record solely for refusing to divulge the SSN, unless it is the only means of retrieving the record or verifying identity.

(7) An individual shall not be required to explain why he or she is seeking access to a record.

(8) Only a designated denial authority may deny access. The denial must be in writing.

(9) If notarization of requests is required for access, procedures shall be established for an alternate method of verification for individuals who do not have access to notary services, such as military members overseas. The following formats may be used as prescribed by 28 U.S.C. 1746:

(i) If executed outside of the United States: *"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."*

(ii) If executed within the United States, its territories, possessions, or commonwealths: *"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."*

(e) *Granting individual access to records.* (1) The individual should be granted access to the original record (or exact copy) without any changes or deletions. A record that has been amended is considered the original.

(2) The individual's request should be granted for an exact copy of the record, and, upon the signed authorization of the individual, a copy should be provided to anyone designated by the individual. In either case, the copying fees may be assessed to the individual.

(3) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(f) *Illegible, incomplete, or exempt records*—(1) *Illegible or incomplete records.* Individual access should not be denied solely because the physical condition or format of the record does not make it readily available, such as when the record is in a deteriorated state or on magnetic tape. In this case, the document should be recopied exactly or an extract can be prepared.

(2) *Exempt records.* A request for a record that is wholly or partially exempt from access shall also be processed under the Freedom of Information Act (FOIA). The requester shall be granted access to all information that is releasable under either this part or the FOIA. The agency may provide this information in the form of an extract or summary of the record. The provisions of this rule or the FOIA under which access was granted should be cited.

(g) *Access to medical and psychological records.* (1) Individual access to medical and psychological records should be provided, even if the individual is a minor, unless it is determined that access could have an adverse effect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner.

(2) If it is medically indicated that access could have an adverse mental or physical effect on the individual, the record should be provided to a medical practitioner named by the individual, along with an explanation why access without medical supervision could be harmful to the individual.

(3) The named medical practitioner should not be required to request the record for the individual.

(4) If the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(h) *Access by parents and legal guardians.* (1) The parent of any minor, an individual under 18 years of age who is neither a member of a Military Service nor married, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf of the minor or incompetent (i.e., for the benefit of the minor or incompetent). However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, observe the following procedures:

(i) In the United States, the laws of the state where the records are located might afford special protection to certain medical records such as drug and alcohol abuse treatment records and psychiatric records. The state statutes might apply even if the records are maintained by a military medical facility.

(ii) For installations located outside the United States, the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(A) The minor at the time of the treatment or consultation was 15, 16, or 17 years old.

(B) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor.

(C) The minor specifically indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian, and

(D) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(2) A minor or incompetent has the same right of access as any other individual. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(i) *Access to information compiled in anticipation of a civil proceeding.* (1) An individual is not entitled to access information compiled in reasonable anticipation of a civil action or proceeding.

(2) The term "civil action or proceeding" includes quasi-judicial and pretrial judicial proceedings as well as formal litigation.

(3) Paragraphs (i)(1) and (2) of this section do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(4) Attorney work products prepared in conjunction with the paragraphs (i)(1) and (2) of this section are also protected.

(j) *Non-agency records.* (1) Certain documents under the control of DCAA personnel and used to assist them in performing official functions may not be considered agency records within the meaning of this part. Such documents, if maintained in accordance with the following subparagraph, are not systems of records that are subject to this part. Examples are personal telephone lists and personal notes kept to refresh the memory of the author.

(2) To be considered non-agency records, the documents must:

(A) Be maintained and discarded solely at the discretion of the author.

(B) Be created only for the author's personal convenience.

(C) Not be the result of official direction or encouragement, whether oral or written; and

(D) Not be shown to other persons for any reason.

(k) *Relationship between the Privacy Act and the Freedom of Information Act (FOIA).* (1) Access requests that specifically state or reasonably imply that they are made under the Freedom of Information Act (5 U.S.C. 552), are processed pursuant to DCAA Regulation 5410.10 (32 CFR part 290).

(2) Access requests that specifically state or reasonably imply that they are made under the Privacy Act of 1974 (5 U.S.C. 552a) are processed pursuant to this part.

(3) Access requests that cite both the FOIA and the Privacy Act are processed under the Act that provides the greater degree of access. The requester should be informed which Act was used in granting or denying access.

(4) Individual access should not be denied to records otherwise releasable under the Privacy Act or the Freedom of Information Act solely because the request does not cite the appropriate statute.

(l) *Time limits.* Access requests should be acknowledged within 10 working days after receipt, and access should be granted or denied within 30 working days, excluding Federal holidays.

§ 317.31 Reproduction fees.

(a) *Fee schedules.* The fees charged requesters shall include only the direct cost of reproduction and shall not include costs of:

(1) Time or effort devoted by agency personnel to searching for or reviewing the record.

(2) Fees not associated with the actual cost of reproduction.

(3) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law.

(4) Normal postage.

(5) Transportation of records or personnel, or

(6) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and

(i) The only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access), or

(ii) The agency does not wish to surrender temporarily the original record for the individual to review.

(7) Compute fees using the appropriate portions of the fee schedule in 32 CFR part 286, subpart F.

(b) *Fee waivers.* (1) Fees shall be waived automatically if the direct cost of reproduction is less than $30.00, unless the individual is requesting an obvious extension or duplication of a previous request for which he or she was granted a waiver.

(2) Decisions to waive or reduce fees that exceed $30.00 may be made on a case-by-case basis.

§ 317.32 Denying individual access.

(a) *Denying individual access.* The subject of record may be denied access only if it:

(1) Was compiled in reasonable anticipation of a civil action or proceeding; or

(2) Is in a system of records that has been exempted from the access provisions of this part.

(3) The individual should be denied access only to those portions of the record for which the denial will serve a legitimate governmental purpose.

(4) An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(b) *Notifying the individual.* Written denial of access must be given to the individual and must be documented in a Privacy Act case file. The denial shall include:

(1) The name, title, and signature of a designated denial authority.

(2) The date of the denial.

(3) The specific reason for the denial, citing the appropriate sections of the Privacy Act or this part authorizing the denial.

(4) Notice of the individual's right to appeal the denial within 60 calendar days of the date the notice is mailed: and

(5) The title and address of the appeal official.

(c) *Appeal procedures.* Appeal procedures provide for the following:

(1) Review by the Assistant Director, Resources, DCAA Headquarters, or his or her designee, of any appeal by an individual.

(2) Written notification to the individual by the Assistant Director, Resources shall:

(i) If the denial is sustained totally or in part, include:

(A) The reason for denying the appeal, citing the provision of the Privacy Act or this part upon which the denial is based.

(B) The date of the appeal determination.

(C) The name, title, and signature of the appeal authority; and

(D) A statement informing the applicant of the right to seek judicial relief in Federal District Court.

(ii) If the appeal is granted, advise the individual and provide access to the record sought.

(d) *Final action, time limits, and documentation.* (1) The written appeal notification granting or denying access is the final agency action on the initial request for access.

(2) All appeals shall be processed within 30 working days, excluding Federal holidays, of receipt, unless the appeal authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(3) All actions on appeals must be documented in the Privacy Act case file.

(e) *Denial of appeal by the agency's failure to act.* An individual may consider his or her appeal denied if the appeal authority fails:

(1) To take final action on the appeal within 30 working days, excluding Federal holidays, of receipt when no extension of time notice was given; or

(2) To take final action within the period established by the extension of time notice.

(f) *Denying access to Office of Personnel Management (OPM) records held by the agency.* (1) The records in all systems of records maintained in accordance with the OPM Government-wide system notices are only in the temporary custody of the agency.

(2) All requests for access to these records must be processed in accordance with the OPM Federal Personnel Manual as well as DCAA Manual 1400.1 [9], "DCAA Personnel Management Manual."

(3) When DCAA initially denies access to a record in an OPM Government-wide system, the agency shall instruct the individual to direct any appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415–0001.

§ 317.33 Privacy Act case files.

(a) Documents used in processing notification, access, and amendment requests made under the Privacy Act or this part shall be filed in a Privacy Act case file established for each request, not in the record to which they pertain.

(b) Privacy Act case files should contain the following information:

(1) The request to be notified if a system of records contains a record pertaining to the individual and the request for access and amendment.

(2) Approval, denial, request for appeal, action on appeal, coordination action, and other documents relating to the request; and

(3) Documentation of reasons for exceeding the established time limits for processing the request.

(c) The Privacy Act case file shall not contain a copy of the record and shall not be used to make any determination about the individual, other than determinations about the Privacy Act request.

(d) The case file shall be used only to process requests and provide statistics such as for the annual report required by the Privacy Act.

[9] See footnote 1 to § 317.1(a).

Subpart E–Amendment of Records

§ 317.40 Individual review and amendment.

Individuals are encouraged to review periodically the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this part.

§ 317.41 Amending records.

(a) *Right to request amendment.* An individual may request the amendment of any record retrieved by his or her personal identifier from a system of records, unless the system has been exempted from the amendment procedures. See § 317.133. Amendments are limited to correcting factual matters, not matters of opinion such as those contained in evaluations of promotion potential and performance appraisals.

(b) *Written amendment request.* The agency may require that amendment requests be in writing; however, this requirement shall not be used merely to discourage individuals from requesting valid amendments or to burden needlessly the amendment process. Only written amendment requests must be documented in the Privacy Act case file.

(c) *Content of amendment request.* An amendment request must include:

(1) A description of the information to be amended.

(2) The reason for the amendment.

(3) The type of amendment action sought (deletion, correction, or addition); and

(4) Copies of available documentary evidence supporting the request.

§ 317.42 Burden of proof.

The individual must provide adequate support for the request.

§ 317.43 Verifying identity.

The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record.

§ 317.44 Limits on amending judicial and quasi-judicial evidence and findings.

This part does not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This part does not permit a collateral attack on a judicial or quasi-judicial finding; however, it may be used to challenge the accuracy of recording the finding in a system of records.

§ 317.45 Standards for amendment request determinations.

The record which the individual requests to be amended must meet agency recordkeeping standards. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, the amendment request shall be granted to the extent necessary to meet them.

§ 317.46 Time limits.

Within 10 working days, excluding Federal holidays, of receiving an amendment request, provide the individual a written acknowledgment of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances shall more than 30 working days, excluding Federal holidays, be required to complete the action on an amendment request. If a completed action takes longer than 30 working days, the delay must be explained fully in the Privacy Act case file.

§ 317.47 Granting an amendment request in whole or in part.

(a) *Notify the requester.* To the extent the amendment request is granted, the individual shall be notified and make the appropriate amendment.

(b) *Notify previous recipients.* All previous recipients of the information (as reflected in the disclosure accounting records) should be notified that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other DoD components or other Federal Agencies have been provided the information that was amended, or if the individual requests that other DoD components or other Federal agencies be notified, provide the notification even if those components or agencies are not listed in the disclosure accounting.

(c) *Documentation.* The action should be documented in the Privacy Act case file if the request for amendment was in writing.

§ 317.48 Denying an amendment request in whole or in part.

(a) If the amendment request is denied in whole or in part, the individual should be promptly notified in writing and

document the action in the Privacy Act case file. The notification to the individual shall include:

(b) *Basis for denial.* Those sections of the Privacy Act or this part upon which the denial is based.

(c) *Right to appeal.* Advice that the individual may appeal to the Assistant Director, Resources, or his or her designee for an independent review of the initial denial.

(d) *Appeal procedures.* The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(e) *Appeal assistance.* Where the individual can receive assistance in filing the appeal.

§ 6317.49 Appeal procedures.

Procedures to ensure the prompt, complete, and independent review of each denial of an amendment request if the individual appeals must ensure:

(a) *Appeals are forwarded.* The appeal with all supporting documentation, including that furnished by the individual and that contained in agency records, is provided to the Assistant Director, Resources, or his or her designee.

(b) *Standards for review.* The standard for deciding the appeal is whether the unamended record is accurate, relevant, timely, complete, and necessary. If the unamended record does not meet each of these criteria, the amendment request shall be granted to the extent necessary to meet them.

(c) *Time limits.* The appeal is processed within 30 working days, excluding Federal holidays, unless the appeal official determines that an adequate review cannot be completed within that period and gives the individual a written explanation of the reason and when the review will be completed.

(d) *Denial notification.* If the appeal is denied completely or in part, the individual is provided written notification that:

(1) The appeal has been denied, citing the sections of the Privacy Act or this rule on which the denial was based.

(2) The individual may file a statement of disagreement. An explanation of the filing procedures will be included in the written notification.

(3) If properly filed, the statement of disagreement shall be included in the record and furnished to all future recipients of the record and to all prior recipients of the record as listed on the disclosure accounting, except those known to be no longer retaining the record; and

(4) The individual may seek judicial review of the decision not to amend the record.

(e) *Amendment notification.* If the record is amended:

(1) The individual is notified promptly of the decision.

(2) All previous recipients of the record, as listed in the disclosure accounting (except those known to be no longer retaining the record), are notified of the amendment and provided a copy; and

(3) Any previous recipient known to be holding a copy of the record (but not listed in the disclosure accounting), as well as any other DoD component or other Federal agency named by the individual, also should be informed of the amendment and provided a copy.

(f) *Documentation.* All actions on the appeal shall be documented in the Privacy Act case file.

§ 317.50 Requests for amending OPM records.

The records in an OPM Government-wide system of records are only temporarily in the custody of the agency. Requests for amendment of these records must be processed in accordance with the OPM Federal Personnel Manual. The agency denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–0001.

§ 317.51 Individual's statement of disagreement

(a) *Right to submit.* If the appeal authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(b) *Filing the statement.* If possible, incorporate the statement of disagreement into the record. If that is not possible, the record should be annotated to reflect that the statement was filed and maintain the statement so that it can be obtained readily when the disputed information is used or disclosed. For instance, automated record systems not programmed to accept statements of disagreement must be capable of having indicators entered to reflect the presence of statements on file and how to obtain them.

(c) *Inform previous recipients.* Copies of the statement of disagreement should be furnished to all individuals listed in the disclosure accounting of the record (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(d) *Disclosure.* Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

§ 317.52 Agency's statement of reasons.

(a) *Right to file.* If the individual files a statement of disagreement, the agency may file a statement of reasons containing a concise summary of the agency's reasons for denying the amendment request.

(b) *Content.* The statement of reasons shall contain only those reasons given to the individual by the appeal official and shall not contain any comments on the individual's statement of disagreement.

(c) *Disclosure.* At the discretion of the agency, the statement of reasons may be disclosed to those individuals, DoD components, and other Federal agencies that receive the statement of disagreement.

Subpart F–Disclosure of Records

§ 317.60 Conditions of disclosure.

(a) *Disclosures to third persons.* (1) Under the Privacy Act, there are two terms describing how information from a record is provided:

(i) "Access" occurs when information from a record is provided or shown to the individual who is the subject of record or, if that individual is a minor or incompetent, to the parent or legal guardian.

(ii) "Disclosure" occurs when information from a record is provided or shown to anyone other than the subject of record, or the parent or legal guardian of a minor or incompetent.

(b) *When disclosures may be made.* Disclosures may be made only when:

(1) The subject of record gives written consent for the disclosure; or

(2) One of the twelve conditions specified in § 317.61.

(c) *Validation before disclosure.* Except for disclosures made under the FOIA or DCAA Regulation 5410.10 (32 CFR part 290), make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for agency purposes before disclosing any record from a system of records to any recipient other than a Federal agency. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(1) If validation cannot be obtained from the record itself, the agency may

contact the subject of record (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(2) If validation cannot be obtained from the record and the subject of record is not reasonably available, the recipient should be advised that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

§ 317.61 Non-consensual disclosures.

The Privacy Act provides twelve instances when a record in a system of records may be disclosed without the written consent of the subject of the record:

(a) *Disclosures within the Department of Defense for official purposes.* For purposes of disclosing records among DoD components, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense who needs it in the performance of official duties. Rank or position alone does not authorize the disclosure; there must be a demonstrated official need.

(b) *Disclosures required by the Freedom of Information Act (FOIA).*(1) A record must be disclosed if required by the FOIA, which is implemented by DCAA Regulation 5410.10 (32 CFR part 290).

(2) The FOIA requires that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(3) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under FOIA Exemption number 6. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be "a clearly unwarranted invasion of personal privacy."

(4) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in FOIA Exemption number 7. This broader standard applies only to investigatory records.

(5) A disclosure under the FOIA about civilian employees must be in accordance with DCAA Regulation 5410.8 [10], but the following information normally may be disclosed from civilian employee records:

(i) Full name.

(ii) Present and past position titles and occupational series.

(iii) Present and past grades.

(iv) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials).

(v) Past duty stations.

(vi) Present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the agency to be sensitive, routinely deployable, or located in a foreign territory.

(vii) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit agency effectiveness.

(6) Disclosure of home addresses and home telephone numbers:

(i) The disclosure under the FOIA of home addresses and telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if:

(A) The individual has consented, in writing, to the disclosure.

(B) The disclosure is required by the FOIA; or

(C) The disclosure is required by another Federal law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments.

(ii) When compiling home addresses and telephone numbers, the individual shall be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(iii) Before listing home addresses and home telephone numbers in telephone directories, the individual should be given the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, additional fees should not be assessed associated with maintaining an unlisted number for government-owned telephone services.

(iv) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law, but this does not prohibit the disclosure of names and addresses otherwise permitted to be made public, such as by DCAA Regulation 5410.10 (32 CFR part 290).

(c) *Disclosures for established routine uses.* (1) Records may be disclosed outside the agency if the disclosure is for an established routine use.

(2) A routine use shall:

(i) Be compatible with and related to the purpose for which the record was created.

(ii) Identify the persons or organizations to whom the record may be disclosed.

(iii) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(iv) Be contained in the system of records notice published previously in the **Federal Register.**

(7) A routine use shall be established for each user of the information outside the agency who needs the information for an official purpose.

(8) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

(9) In addition to the routine uses established by the system notices published in the **Federal Register,** certain common "blanket routine uses" have been established for all systems of records maintained by the agency. These blanket routine uses are published in the **Federal Register** at the beginning of the listing of system notices for the agency. Unless a system notice specifically excludes a system of records from a blanket routine use, all blanket routine uses apply to that system. See Appendix A to this part.

(10) If the "routine user" recipient has not been identified in the Federal **Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register,** the written consent of the individual is required before the disclosure can be made.

(d) *Disclosures to the Bureau of the Census.* Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activities under the provisions of 13 U.S.C. 8.

[10] See footnote 1 to § 317.1(a).

(e) *Disclosures for stotisticol reseorch or reporting.* Records may be disclosed to a recipient for statistical research or reporting if:

(1) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(2) The records are transferred in a form that does not identify individuals.

(f) *Disclosures to the Notional Archives and Records Administrotion.* (1) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Records Administration, which becomes the official owner of the records.

(2) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law. Such disclosures are authorized by the National Archives and Records Act of 1984, Pub. L. 98–497.

(3) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this category. Those records continue to be maintained and controlled by the agency. The Federal Records Center is considered the custodian agent of the agency.

(g) *Disclosures when requested for law enforcement purposes.* (1) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(i) The civil or criminal law enforcement activity is authorized by law (Federal, State, or local); and

(ii) The head of the agency or instrumentality (or his or her designee) has made a written request to DCAA specifying the particular record or portion desired and the law enforcement activity for which it is sought.

(2) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency or instrumentality must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(3) This disclosure provision applies when the law enforcement agency or instrumentality requests the record. If DCAA discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be pursuant to an established routine use, such as the blanket routine use for law enforcement.

(h) *Disclosures to protect the heolth or safety of an individual.* (1) Records may be disclosed by any means and to any person pursuant to a showing of compelling circumstances affecting the health or safety of an individual. The affected individual need not be the subject of the record.

(2) Notification of the disclosure (date and what, why, and to whom disclosed) must be sent to the subject of the record. Sending the notification to the last known address is sufficient.

(i) *Disclosures to Congress.* (1) A record may be disclosed to either House of Congress on the initiative of the agency or at the request of either the Senate or House of Representatives as a whole.

(2) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(3) Individual members of Congress not acting on behalf of the entire house, a committee, subcommittee, or joint committee have no greater right to have records disclosed to them than any other individual. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a blanket routine use has been established to permit disclosures to individual members of Congress.

(i) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(ii) The oral statement of a congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(iii) If the constituent inquiry is made on behalf of an individual other than the subject of the record, provide the Member of Congress only that information releasable under the FOIA. The Member of Congress should be advised that the written consent of the subject of record is required before additional information may be disclosed. The subject of record should not be contacted to obtain consent for the disclosure to the Member of Congress unless the congressional office specifically requests that it be done.

(j) *Disclosures to the Comptroller Generol for the General Accounting Office.* Records may be disclosed to the Comptroller General, or his or her authorized representative, for the performance of the duties of the General Accounting Office.

(k) *Disclosures pursuont to court orders.* (1) Records may be disclosed pursuant to the order of a court of competent jurisdiction.

(2) The court order must bear the signature of a Federal, State, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority if the minimal requirements of DCAA Regulation 5410.11, "Release of Official Information in Litigation and Testimony by DCAA Personnel as Witness."

(3) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the subject of the record. Notification sent to the last known address of the individual is sufficient.

(l) *Disclosures to consumer reporting agencies.* (1) Certain information may be disclosed to consumer reporting agencies as defined by 31 U.S.C. 952d.

(2) Under these provisions, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual.

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose.

(3) 31 U.S.C. 952d specifically requires that the **Federal Register** notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

§ 317.62 Disclosures to commercial enterprises.

(a) *General policy.* (1) Records may be disclosed to commercial enterprises only under the criteria established by the FOIA.

(2) The relationship of commercial enterprises to their customers or clients and to the agency is not changed by this part.

(3) The policy on personal indebtedness for civilian employees, is

contained in DCAA Manual 1400.1, DCAA Personnel Management Manual.

(b) *Disclosure of information.* (1) Any information required to be disclosed by the FOIA may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a concise statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure:

I hereby authorize the Defense Contract Audit Agency to verify my Social Security Number or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, the information should be provided to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

(4) Requests should not be honored from commercial enterprises for official evaluations or personal characteristics such as personal financial habits.

§ 317.63 Disclosing health care records to the public.

This section applies to the disclosure of information to the news media and the public concerning individuals treated or hospitalized in DoD medical facilities and, when the cost of care is paid by the agency, in non-Federal facilities.

(a) *Disclosures without the individual's consent.* Normally, the following information may be disclosed without the individual's consent:

(1) Information required to be released by the FOIA, as well as the information listed for military personnel and for civilian employees; and

(2) The following general information concerning medical condition:

(i) Date of admission or disposition; and

(ii) Present medical assessment of the individual's condition in the following terms, if the medical practitioner has volunteered the information:

(A) The individual's condition presently is (stable) (good) (fair) (serious) (critical), and

(B) The patient is conscious, semiconscious, or unconscious.

(b) *Disclosures with the individual's consent.* With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent or the appointed legal guardian may give consent on behalf of the individual.

(c) *Disclosures to other government agencies.* This section does not limit otherwise lawful disclosures to other government agencies for use in determining eligibility for special assistance or other benefits provided there is a published routine use permitting the disclosure.

§ 317.64 Accounting for disclosures.

(a) *When to keep disclosure accountings.* An accurate record of all disclosures made from a record (including those made with the consent of the individual) should be kept except those made:

(1) To DCAA personnel for use in performing their official duties; and

(2) Pursuant to DCAA Regulation 5410.10 (32 CFR part 290).

(b) *Content of disclosure accountings.* Disclosure accountings shall contain:

(1) The date of the disclosure.

(2) A description of the information disclosed.

(3) The purpose of the disclosure; and

(4) The name and address of the person or agency to whom the disclosure was made.

(c) *Using disclosure accountings.* When an individual's request to amend the record is granted and when an individual files a statement of disagreement, all persons and agencies listed in the disclosure accounting, except those known to be no longer retaining the record, must be informed.

(d) *Individual access to disclosure accountings.* The record subject has the right of access to the disclosure accounting except when:

(1) The disclosure was made at the request of a civil or criminal law enforcement agency, or

(2) The system of records has been exempted from the requirement to provide access to the disclosure accounting.

(e) *Methods of disclosure accounting.* (1) The agency may use any method of disclosure accounting that will readily provide the necessary disclosure information required.

(2) When numerous similar records are disclosed (e.g., sending payroll checks to banks), identify the category of records disclosed and include the information in some form that can be used to construct a disclosure accounting.

(f) *Retaining disclosure accountings.* The disclosure accounting shall be retained for five years after the disclosure was made or the life of the record, whichever is longer.

Subpart G—Publication Requirements

§ 317.70 Federal Register publication.

(a) *Documents that must be published in the* **Federal Register.**

(1) Three types of documents relating to the Privacy Program must be published in the **Federal Register**:

(i) DCAA Privacy Program procedural rules (32 CFR part 317).

(ii) DCAA exemption rules (32 CFR part 317), and

(iii) Record system notices.

(2) DoD 5025.1–M, "DoD Directives System Procedures," and DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public" (32 CFR part 336), contain information on preparing documents for publication in the **Federal Register**.

(b) *Effect of publication in the* **Federal Register.** Publishing a document in the **Federal Register** constitutes official public notice of the existence and content of the document.

(c) *Formal rulemaking and notices.* (1) DCAA Privacy Program procedural and exemption rules are subject to the rulemaking procedures prescribed by 32 CFR part 336. These are incorporated automatically into the Code of Federal Regulations.

(2) Record system notices are published in the **Federal Register** as "notices." They are not subject to the rulemaking procedures or automatic incorporation into the Code of Federal Regulations.

(d) *Submitting Privacy Program procedural rules for publication.* (1) Procedural rules must be published in the **Federal Register** first as proposed rules to allow for public comment, then as final rules.

(2) The DCAA Privacy Advisor will submit to the Defense Privacy Office all proposed rules implementing this rule. The submission must conform to the **Federal Register** format.

(3) This part published as a final rule in the **Federal Register** shall be incorporated by regions as their own rules by reference rather than by republication. A region that simply implements this part as its own rule need not publish it as a final rule in the **Federal Register**.

(4) Amendments to agency rules are submitted in the same manner as the original rules.

(5) The Defense Privacy Office, DA&M, reviews and submits all DoD component rules, and amendments to rules to the Federal Register for publication.

(e) *Submitting exemption rules for publication.* (1) Exemption rules must be published in the Federal Register first as proposed rules to allow for public comment, then as final rules.

(2) No system of records shall be exempt from any provision of the Privacy Act until the exemption rule has been published in the Federal Register as a final rule.

(3) Proposed exemption rules should be submitted in proper format through the agency Privacy Advisor to the Defense Privacy Office, DA&M, for review and submittal to the Federal Register for publication.

(4) Amendments to exemption rules are submitted in the same manner as the original exemption rules.

(f) *Submitting record system notices for publication.* (1) Although system notices are not subject to formal rulemaking procedures, advance public notice must be given before the agency may begin to collect information for or maintain a new system of records. The notice procedures require that:

(i) The record system notice describe the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(ii) The public be given 30 days to comment on any proposed routine uses before the routine uses are implemented; and

(iii) The notice contain the date the system of records will become effective.

(2) System notices shall be submitted though the agency Privacy Advisor to the Defense Privacy Office, DA&M, for publication in the Federal Register.

§ 317.71 Exemption rules.

(a) *General procedures.* This section provides guidance for establishing exemptions for systems of records.

(b) *Content of exemption rules.* (1) Each proposed exemption rule submitted for publication in the Federal Register must contain:

(i) The agency identification and name of the record system for which an exemption will be established.

(ii) The subsection(s) of the Privacy Act which grants the agency authority to claim an exemption for the system (e.g., subsection (k)(2) or (k)(5) of the Privacy Act).

(iii) The particular subsection(s) of the Privacy Act which the system will be exempt from (e.g., subsections (c)(3), (d)(1)–(5) of the Privacy Act; and

(iv) The reasons why an exemption from the particular subsection identified in the preceding subparagraph is being claimed.

§ 317.72 System of records notices.

(a) *Contents of a record system notice.* The following data captions are prescribed by the Office of the Federal Register and must be included for each system notice:

(1) System identification.

(2) System name.

(3) System location.

(4) Categories of individuals covered by the system.

(5) Categories of records in the system.

(6) Authority for maintenance of the system.

(7) Purpose(s).

(8) Routine uses of records maintained in the system, including categories of users and purposes of the uses.

(9) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

(10) System manager(s) and address.

(11) Notification procedures.

(12) Record access procedures.

(13) Contesting records procedures.

(14) Record source categories; and

(15) Exemptions claimed for the system.

(b) *System identification.* The system identifier must appear in all system notices. It is limited to 21 positions, including agency code, file number, symbols, punctuation, and spaces.

(c) *System name.* (1) The system name must indicate the general nature of the system of records and, if possible, the general category of individuals to whom it pertains.

(2) Acronyms should be established parenthetically following the first use of the name (e.g., "Field Audit Office Management Information System (FMIS)"). Acronyms shall not be used unless preceded by such an explanation.

(3) The system name may not exceed 55 character positions, including punctuation and spaces.

(d) *System location.* (1) For a system maintained in a single location, provide the exact office name, organizational identity, routing symbol, and full mailing address. Do not use acronyms in the location address.

(2) For a geographically or organizationally decentralized system, describe each level of organization or element that maintains a portion of the system of records.

(3) For an automated data system with a central computer facility and input or output terminals at geographically separate locations, list each location by category.

(4) If multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are published as an appendix to the agency's compilation of systems of records notices in the Federal Register. If no address directory is used, or if the addresses in the directory are incomplete, the address of each location where a portion of the record system is maintained must appear under the "system location" caption.

(5) Classified addresses shall not be listed, but the fact that they are classified shall be indicated.

(6) The U.S. Postal Service two-letter state abbreviation and the nine-digit zip code shall be used for all domestic addresses.

(e) *Categories of individuals covered by the system.* (1) Clear, nontechnical terms shall state the specific categories of individuals to whom records in the system pertain.

(2) Broad descriptions such as "all DCAA personnel" or "all employees," should be avoided unless the term actually reflects the category of individuals involved.

(f) *Categories of records in the system.* (1) Clear, nontechnical terms shall be used to describe the types of records maintained in the system.

(2) The description of documents should be limited to those actually retained in the system of records. Source documents should not be described that are used only to collect data and then are destroyed.

(g) *Authority for maintenance of the system.* (1) The system of records must be authorized by a Federal law or Executive Order of the President, and the specific provision must be cited.

(2) When citing federal laws, include the popular names (e.g., "5 U.S.C. 552a, The Privacy Act of 1974") and for Executive Orders, the official titles (e.g., "Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons").

(3) The Directive establishing the agency, DoD Directive 5105.36 (32 CFR part 357), as well as the law that authorizes the Secretary of Defense to issue Directives, 10 U.S.C. 133 should be cited.

(h) *Purpose(s).* The specific purpose(s) for which the system of records was created and maintained; that is, the uses of the records within the agency and the

rest of the Department of Defense should be listed.

(i) *Routine uses.* (1) All disclosures of the records outside the agency, including the recipient of the disclosed information and the uses the recipient will make of it should be listed.

(2) If possible, the specific activity or element to which the record may be disclosed (e.g., "to the Department of Veterans Affairs, Office of Disability Benefits") should be listed.

(3) General statements such as "to other Federal Agencies as required" or "to any other appropriate Federal agency" should not be used.

(4) The blanket routine uses, published at the beginning of the agency's compilation, applies to all system notices, unless the individual system notice states otherwise.

(j) *Policies and practices for storing, retrieving, accessing, retaining, and disposing of records.* This section is divided into four parts.

(1) Storage: The method(s) used to store the information in the system (e.g., "automated, maintained in computers and computer output products" or "manual, maintained in paper files" or "hybrid, maintained in paper files and in computers") should be stated. Storage does not refer to the container or facility in which the records are kept.

(2) Retrievability: How records are retrieved from the system (e.g., "by name," "by SSN," or "by name and SSN") should be indicated.

(3) Safeguards: The categories of agency personnel who use the records and those responsible for protecting the records from unauthorized access should be stated. Generally the methods used to protect the records, such as safes, vaults, locked cabinets or rooms, guards, visitor registers, personnel screening, or computer "fail-safe" systems software should be identified. Safeguards should not be described in such detail as to compromise system security.

(4) Retention and disposal: Describe long records are maintained. When appropriate, the length of time records are maintained by the agency in an active status, when they are transferred to a Federal Records Center, how long they are kept at the Federal Records Center, and when they are transferred to the National Archives or destroyed should be stated. If records eventually are destroyed, the method of destruction (e.g., shredding, burning, pulping, etc), should be stated. If the agency rule is cited, the applicable disposition schedule shall also be identified.

(k) *System manager(s) and address.* (1) The title (not the name) and address of the official or officials responsible for managing the system of records should be listed.

(2) If the title of the specific official is unknown, such as with a local system, the local director or office head as the system manager should be indicated.

(3) For geographically separated or organizationally decentralized activities with which individuals may correspond directly when exercising their rights, the position or title of each category of officials responsible for the system or portion thereof should be listed.

(4) Addresses that already are listed in the agency address directory; or simply refer to the directory should not be included.

(l) *Notification procedures.* (1) Notification procedures describe how an individual can determine if a record in the system pertains to him or her.

(2) If the record system has been exempted from the notification requirements of subsection (f)(1) or subsection (e)(4)(G) of the Privacy Act, it should be so stated.

(3) If the system has not been exempted, the notice must provide sufficient information to enable an individual to request notification of whether a record in the system pertains to him or her. Merely referring to the agency's procedural rules is not sufficient.

(4) This section should also include:

(i) The title (not the name) and address of the official (usually the system manager) to whom the request must be directed;

(ii) Any specific information the individual must provide in order for the agency to respond to the request (e.g., name, SSN, date of birth, etc.); and

(iii) Any description of proof of identity for verification purposes required for personal visits by the requester.

(m) *Record access procedures.* (1) This section describes how an individual can review the record and obtain a copy of it.

(2) If the system has been exempted from access and publishing access procedures under subsections (d)(1) and (e)(4)(H), respectively, of the Privacy Act, it should be so indicated.

(3) If the system has not been exempted, describe the procedures an individual must follow in order to review the record and obtain a copy of it, including any requirements for identity verification.

(4) If appropriate, the individual may be referred to the system manager or another agency official who shall provide a detailed description of the access procedures. Any addresses already listed in the address directory should not be repeated.

(n) *Contesting record procedures.* (1) This section describes how an individual may challenge the denial of access or the contents of a record that pertains to him or her.

(2) If the record system has been exempted from allowing amendments to records or publishing amendment procedures under subsections (d)(2) and (e)(4)(H), respectively, of the Privacy Act, it should be so stated.

(3) If the system has not been exempted, the procedures an individual must follow should be described in order to challenge the content of a record pertaining to him or her, or explain how he or she can obtain a copy of the procedures (e.g., by contacting the system manager or another agency official).

(o) *Record source categories.* (1) If the system has been exempted from publishing record source categories under subsection (e)(4)(I) of the Privacy Act, it should be so stated.

(2) If the system has not been exempted, this caption must describe where the agency obtained the information maintained in the system.

(3) Describing the record sources in general terms is sufficient; specific individuals, organizations, or institutions need not be identified.

(p) *Exemptions claimed for the system.* (1) If no exemption has been established for the system, indicate "None."

(2) If an exemption has been established, state under which provision of the Privacy Act it is established (e.g., "Parts of this system of records may be exempt under 5 U.S.C. 552a(k)(2)").

§ 317.73 New and altered record systems.

(a) *Criteria for a new record system.* (1) A new system of records is one for which no existing system notice has been published in the Federal Register.

(2) If a notice for a system of records has been canceled or deleted and the agency desires to reinstate or reuse the system, a new system notice must be published in the **Federal Register**.

(b) *Criteria for an altered record system.* A system is considered altered when any one of the following actions occurs or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained requires a change to the "categories of individuals covered by the system" caption in the system notice and might require changes to the "purpose(s)" caption.

(i) For example, a decision to expand a system of records that originally covered personnel assigned to only one location to cover personnel at several locations would constitute an altered system.

(ii) An increase in the number of individuals covered due to normal growth is not an alteration.

(iii) A decrease in the number of individuals covered is not an alteration, but it is an amendment.

(2) A change that expands the types or categories of information maintained requires a change in the "categories of records in the system" caption in the system notice.

(i) For example, a personnel file that has been expanded to include medical records would be an alteration.

(ii) Adding to a personnel file a new data element that is clearly within the scope of the categories of records described in the existing notice is not an alteration, but is an amendment.

(3) A change that alters the purpose for which the information is used requires changing the "purpose(s)" caption in the system notice. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system requires changing the "storage" caption in the system notice. For example, placing interactive computer terminals at regional offices to use a system formerly used only at the Headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved requires changing the "Retrievability" caption in the system notice.

(i) Combining record systems due to a reorganization within the agency would be an alteration.

(ii) Retrieving by SSNs records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs.

(c) *Reports of new and altered systems of records.* (1) Under subsection (o) of the Privacy Act, reports of new and altered systems of records must be submitted to Congress and the Office of Management and Budget.

(2) The agency shall submit reports of new or altered systems to the Defense Privacy Office, DA&M, before collecting information for new systems or altering an existing system.

(3) The Defense Privacy Office, DA&M, shall coordinate all reports of new or altered systems with the Office of the Assistant Secretary of Defense (Legislative Affairs) and the Office of the General Counsel, Department of Defense.

(4) The Defense Privacy Office, DA&M, shall prepare, for the approval and signature of the Director, Administration and Management, Office of the Secretary of Defense, transmittal letters to Congress and the Office of Management and Budget.

(d) *Time limits before implementing routine uses.* After publishing a system notice in the **Federal Register**, 30 days must elapse before routine uses may be employed.

§ 317.74 Amendment and deletion of system notices.

(a) *Criteria for an amended record system.* Minor changes to published system notices are considered amendments rather than alterations. Amendments must also be published in the **Federal Register**, but a new or altered system report does not have to be accomplished.

(b) *Amending a system notice.* In submitting an amendment to a system notice for publication in the **Federal Register**, the agency must include:

(1) The system identification and name;

(2) A description of the specific changes proposed; and

(3) The full text of the system notice as amended.

(c) *Deleting a system notice.* (1) When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this rule, a deletion notice must be published in the **Federal Register.**

(2) The deletion notice shall include:

(i) The system identification number and name.

(ii) The **Federal Register** citation of the latest publication of the system.

(iii) The reason for the deletion.

(3) If a system is deleted through combination or merger with another system, identify the successor system in the deletion notice.

(d) *Submitting amendments and deletions for publication.* (1) Amendments and deletions should be submitted through the agency Privacy Advisor to the Defense Privacy Office, DA&M, which will transmit them to the **Federal Register** for publication.

(2) At least one original in proper format should be included in the submission.

(3) Multiple amendments and deletions, and combinations of amendments and deletions, may be submitted together.

Subpart H–Training Requirements

§ 317.80 Statutory training requirements.

(a) *Establishing rules of conduct.* Under subsection (e)(9) of the Privacy Act, the agency is required to establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record.

(b) *Training.* The agency shall train all personnel involved in the functions described in the preceding paragraph. The training shall include instruction in the rules of conduct and all requirements prescribed by the Privacy Act, including the penalties for noncompliance.

§ 317.81 DCAA training programs.

(a) *Personnel to be trained.* (1) To conform with Office of Management and Budget guidance, compliance with the statutory training requirements requires informed and active support of all agency personnel. All personnel who in any way use or operate systems of records, or who are engaged in the development of procedures for handling records, must be taught the requirements of the Privacy Act and must be trained in the agency's procedures for the implementation of the Privacy Act.

(2) Personnel to be trained include, but are not limited to, those engaged in the following:

(i) Personnel management.

(ii) Personnel finance.

(iii) Medical care.

(iv) Investigations of personnel.

(v) Records management (reports, forms, records, and related functions).

(vi) Computer systems development and operation.

(vii) Communications.

(viii) Statistical data collection and analysis, and

(ix) Performing other functions subject to this rule.

(b) *Types of training.* The agency shall establish the following three levels of training for those persons who are involved with the design, development, operation, or maintenance of any system of records. The training shall be provided to persons before or shortly after assuming the duties associated with the level of involvement.

(1) Orientation training. Orientation training that provides a general understanding of the individual's rights under the Privacy Act.

(2) Specialized training. Training concerning the application of this part to specialized areas of job performance.

(3) Management training. Training concentrated on factors affecting

decisions made by managers under the Privacy Program, such as system managers, denial authorities, and managers of the specific functions listed.

(c) *Methods of training.* The agency is responsible for developing training methods that will meet this criteria established above. Such methods may include formal and informal (on-the-job) programs, if those personnel giving the training have, themselves, been trained.

Subpart J–Computer Matching Program Procedures

§ 317.90 General.

(a) *Scope.* The Privacy Act and this rule are applicable to certain types of computer matching--the computer comparison of automated systems of records.

(b) *Compliance.* Although the Privacy Act provides for specific procedures, the Act is not in itself authority for carrying out any matching activity. Compliance with this chapter does not relieve the agency of the obligation to comply with any other requirements of the Privacy Act and this part.

(c) *Matching programs covered by the Privacy Act.* There are two specific kinds of matching programs that are fully governed by the Privacy Act and this part. These are:

(1) Matches using records from Federal personnel or payroll systems of records. See also definitions of this part.

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(d) *Automated comparisons.* The record comparison must be a computerized comparison, manual comparisons are not covered, involving records from:

(1) Two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to the Privacy Act); or,

(2) An agency's automated system of records and automated records maintained by a non-Federal agency (i.e., state or local government or agent thereof).

(e) *Features of a matching program.* A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

§ 317.91 Federal personnel or payroll record matches.

(a) *Scope.* These computer matching programs include matches comparing records from agency automated Federal personnel or payroll systems of records with such automated like records of another Federal agency; or with a non-Federal agency. It also includes matches between DoD components or within the agency itself (internal matches).

(b) *Computerized comparisons.* The matching must be done using a computer. Manual comparisons are not covered.

(c) *Exclusion.* Matches must be done for other than "routine administrative purposes."

(d) *Internal matches.* In some instances, a covered match may take place within the agency or with another DoD component. For example, the agency may wish to determine whether any of its own personnel, participating in a benefit program administered by the Department of Defense, are not complying with the program's eligibility requirements. This internal match will certainly result in an adverse action if ineligibility is discovered. Therefore, it is covered by the requirements of the Privacy Act. The agency should not attempt to avoid the reach of the Act, for example, by improperly combining dissimilar systems into a single system, matching data within that system to make an eligibility determination, and arguing that the match is not covered because only one system of records is involved.

(e) *Categories of record subjects.* The categories of individuals whose records are used in this type of matching program must be carefully analyzed before making a determination whether a proposed match is covered. All information on subjects of record is maintained in the agency's system of records, but matching under the particular programs covered by this subsection is limited to "Federal personnel." For matching purposes, a Federal personnel system of records should not be confused with, or limited to, the commonly recognized personnel system of records maintained by a civilian personnel office or a military assignment branch. The agency may be maintaining within a single system of records several categories of records relating to Federal personnel and other categories on non-Federal personnel, e.g., contractor personnel, applicants, dependents, etc. Some categories may be covered while others may not. Unlike "Federal personnel," the subjects of record of payroll record systems are easily discerned.

(f) *Matching purpose.* The purpose of a Federal personnel or payroll records match must be to take some adverse action, financial, personnel, disciplinary, or other adverse action against Federal personnel.

§ 317.92 Federal benefit matches.

(a) *Categories of subjects covered.* The Privacy Act provisions cover only the following categories of subjects of record for Federal benefit matches.

(1) Applicants for Federal benefit programs (i.e., individuals initially applying for benefits).

(2) Program beneficiaries (i.e., individuals currently receiving or formerly receiving benefits).

(3) Providers of services to support such programs (i.e., those deriving income from them such as health care providers).

(b) *Types of programs covered.* Only Federal benefit programs providing cash or in-kind assistance to individuals are covered by the Privacy Act. State programs are not covered. Programs using records about subjects who are not "individuals". See definitions of this part (§ 317.3).

(c) *Matching purpose.* A Federal benefit match must have as its purpose one or more of the following:

(1) Establishing or verifying initial or continuing eligibility for Federal benefit programs.

(2) Verifying compliance with the requirements, either statutory or regulatory, of such programs.

(3) Recouping payments or delinquent debts under such Federal benefit programs.

(d) *Summary of basic requirements.* Four basic elements:

(1) Computerized comparison.

(2) Categories of subjects.

(3) Federal benefit program, and

(4) Matching purpose, must all be present before a matching program is covered under the Privacy Act.

§ 317.93 Matching program exclusions.

The following are not included under the definition of a matching program. The agency is not required to comply with the computer matching provisions of the Privacy Act, although it may be required to comply with any other applicable provisions of the Act and this part.

(a) *Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.* This does not mean that the data bases used in the match must be stripped prior to the match, but only that the results of the match must not contain data identifying any individual. Implicit in this exception is that this kind of match is not done to take action against specific individuals.

(b) *Statistical matches whose purpose is in support of any research or statistical project.* The results of these matches need not be stripped of identifiers, but they must not be used to make decisions that affect the rights, benefits or privileges of specific individuals.

(c) *Pilot matches.* This exclusion covers small scale sampling matches whose purpose is to gather cost-benefit data on which to premise a decision about engaging in a full-fledged matching program. Pilot matches must be retained in a statistical information gathering channel. It is at this point that the component can decide whether to conduct a statistical data gathering match without consequences to the subjects of record or a full-fledged program where results will be used to take specific action against them. To avoid possible misuse of pilot matches and to ensure full compliance with the Privacy Act, these matches must be approved by the Defense Data Integrity Board.

(d) *Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.* (1) To be eligible for the exclusion the match must be performed by an activity of a component whose principal function involves enforcement of criminal laws, i.e., an activity that is authorized to exempt certain of its systems of records under subsection (j)(2) of the Privacy Act.

(2) The match must flow from an investigation already underway which focuses on a named person or persons. Subjects identified generically, e.g., "program beneficiaries," are not eligible.

(3) The investigation may be into either criminal or civil law violations.

(4) In the context of this exclusion only, person or persons could include subjects that are other than individuals as defined in the Privacy Act, such as corporations or other business entities. For example, a business entity could be named subject of the investigation and records matched could be those of customers or clients.

(5) The match must be for the purpose of gathering evidence against the named person or persons.

(e) *Tax administration matches.* (1) Matches involving disclosures of taxpayer return information to state or local tax officials pursuant to section 6103(d) of the Internal Revenue Code.

(2) Tax refund offset matches accomplished pursuant to the Deficit Reduction Act of 1984.

(3) Matches done for tax administration pursuant to section 6103(b)(4) of the Internal Revenue Code.

(4) Tax refund offset matches conducted pursuant to other statutes provided approval of the Office of Management and Budget is obtained.

(f) *Routine administrative matches using Federal personnel records.* These are matches between the agency and other Federal agencies or between the agency and non-Federal agencies for administrative purposes that use data bases that contain records predominantly relating to Federal personnel. The term "predominantly" means that the percentage of records in the system that are about Federal employees must be greater than of any other category contained therein. For the purpose of disclosing records subject to the Privacy Act, the Department of Defense is considered a single agency.

(1) The purpose of the match must not be intended to result in an adverse action. Matches whose purpose is to take any adverse financial, personnel, disciplinary or other adverse action against Federal personnel whose records are involved in the match, are not excluded from the Act's coverage.

(2) An example of a match that is excluded is an agency's disclosure of time and attendance information on all agency employees to the Department of the Treasury in order to prepare the agency's payroll.

(3) This exclusion does not bring under the Act's coverage matches that may ultimately result in an adverse action. It only requires that their purpose not be intended to result in an adverse action.

(g) *Internal matches using only records from DoD systems of records.* (1) Internal matches (conducted within the DoD) is excluded on the same basis as Federal personnel record matching above provided no adverse intent as to a Federal employee motivates the match.

(2) This exclusionary provision does not disturb subsection (b)(1) of the Act permitting disclosure to DoD employees on an official need-to-know basis.

(3) The purpose of the internal match must not be to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel.

(h) *Background investigation and foreign counterintelligence matches* Matches done in the course of performing a background check for security clearances of Federal personnel or Federal contractor personnel are not covered. Matches done for the purpose of foreign counterintelligence are also not covered.

§ 317.94 Conducting matching programs.

(a) *Source and recipient agencies.* The agency, if undertaking a matching program, should consider if it will be a "source agency" or a "recipient agency" for the match and be prepared to meet the following requirements:

(1) The recipient agency does the matching. It receives the data from system of records of other Federal agencies or data from state and local governments and actually performs the match by computer.

(2) The recipient agency is responsible for publishing a notice in the **Federal Register** of the matching program. Where a state or local agency is the recipient, the Federal source agency is responsible for publishing the notice.

(3) A Federal source agency discloses the data from a system of records for the match. A non-Federal agency may also be a source, but the record data will not be from a system of records. The "system of records" concept under the Privacy Act does not apply to the recordkeeping practices of state or local governmental agencies.

(4) The recipient Federal agency, or the Federal source agency in a match performed by a non-Federal agency, is responsible for reporting the match. This agency must contact the other participants to gather the information necessary to make a unified report as required by § 317.100.

(5) In some circumstances, a source agency may be the instigator and ultimate beneficiary of the matching program, as when an agency lacking computer resources uses another agency to perform the match; or when as a practical matter, an agency may not wish to release and disclose its data base to another agency as a source because of privacy safeguard considerations.

(b) *Compliance with the system of records and disclosure provisions.* (1) The agency must ensure that it identifies the system(s) of records involved in the matching program and has published the necessary notice(s) in the **Federal Register.**

(2) The Privacy Act does not itself authorize disclosures from system of records for the purpose of conducting a matching program. The agency must justify any disclosures outside the DoD under subsection (b) of the Act. This means obtaining the written consent of the subjects of record for the disclosure or relying on one of the 12 non-consensual disclosures exceptions to the written consent rule. To rely on the routine use exception (b)(3), the agency must have already established the routine use (published in the **Federal Register**), or in the alternative, must comply with subsections (e)(4)(d) and (e)(11) of the Act which means amending the record system notice to add an appropriate routine use for the match. An amendment requires publication in the **Federal Register** with a 30 day waiting period for public comment.

(3) The routine use permitting disclosure for the match must be compatible with and related to the purpose for which the record was initially compiled.

(4) The routine use for the match in a record system notice shall clearly indicate that it entails a computer matching program with a specific agency for an established purpose and intended objective. For purposes of matching, a routine use must state that a disclosure may be made for a matching program. The agency may not rely on an existing established routine use to meet the requirements of the Act unless it expressly permits disclosure for matching purposes.

(c) *Prior notice to record subjects.* Subjects of record must receive prior notice that their records may be matched. This may be done by direct and/or constructive notice.

(1) Direct notice may be given when there is some form of contact between the government and the subject. Information can be furnished to individuals on the application form when they apply for a benefit, in a notice that arrives with a benefit, or in correspondence they receive in the mail. Use of the advisory Privacy Act Statement is an acceptable manner to provide direct notice to subjects of record at the time of application. The agency shall provide direct notice for front-end eligibility verification matching programs whose purpose is to validate an applicant's initial eligibility for a benefit and later to determine continued eligibility using the Privacy Act Statement on the application form. Providers of services should be given notice (Privacy Act Statement) on the form on which they apply for reimbursement for services provided. Providing notice of matching programs using the Privacy Act Statement shall be part of the normal process of implementing a Federal benefits program. The agency shall insure records contain appropriate revisions.

(2) Constructive notice can only be given by an appropriate routine use disclosure provision of the affected system of records to be used in the match. For purely internal matching program uses, amend the "Purpose(s)" element of the record system notice to specifically reflect those internal computer matches performed. The constructive notice method requires publication in the **Federal Register**. Examples of when constructive notice may be used:

(i) For matching programs whose purpose is to locate individuals in order to recoup payments improperly granted to former beneficiaries, direct notice may well be impossible and constructive notice may have to suffice.

(ii) The agency that discloses records to a state or local government in support of a non-Federal matching program is not obligated to provide direct notice to each subject of record. **Federal Register** publication in this instance is sufficient.

(iii) Investigative matches where direct notice immediately prior to a match would provide the subject an opportunity to alter behavior.

(3) The agency shall also provide periodic notice whenever an application is renewed, or at the least during the period the match is authorized to take place by providing notice accompanying the benefit as approved by the Defense Data Integrity Board.

(d) *Publication of the matching notice.* (1) The matching agency is required to publish in the **Federal Register** a notice of any proposed matching program or alteration of an established program at least 30 days prior to conducting the match for any public comment. Only one notice is required. When a non-Federal agency is the matching agency, the source agency shall be responsible for the publication. The proposed matching notice for publication shall be submitted in **Federal Register** format and included in the agency report. The notice shall contain the customary preamble and contain the required information in sufficient detail describing the match so that the reader will easily understand the nature and purpose of the match, including any adverse consequences.

(2) The preamble to the notice shall be prepared by the Defense Privacy Office, DA&M, and shall contain:

(i) The date the transmittal letters to OMB and Congress are signed.

(ii) A statement that the matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

(iii) A statement that a copy of the agreement shall be available upon request to the public.

(2) The agency shall provide:

(i) Name of participating agency or agencies.

(ii) Identity of the source agency and the recipient agency, or in the case of an internal DoD matching, the Component(s) involved.

(iii) Purpose of the match being conducted to include a description of the matching program and whether the program is a one-time or a continuing program.

(iv) Legal authority for conducting the matching program. Do not cite the Privacy Act as it provides no independent authority for carrying out any matching activity. If at all possible, use the U.S. Code citations rather than the Public Law as access to the Public Laws is more difficult. Avoid citing housekeeping statutes such as 5 U.S.C. 301, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information even if it results in citing the Code of Federal Regulations or a DoD directive or regulation. Whenever possible, the popular name or subject of the authority should be given, as well as a statute, public law, U.S. Code, or Executive Order number; for example: The Debt Collection Act of 1982 (Pub. L. 97-365) 5 U.S.C. 5514, Installment deduction of indebtedness.

(v) A complete description of the system(s) of records that will be used in the match. Include the system identification, name, and the official **Federal Register** citation, date published, including any published amendments thereto. Provide a positive statement that the system(s) contains an appropriate routine use provision authorizing the disclosure of the records for the purpose of conducting the computer matching program. (Note: In the case of internal DoD matches, the "purpose(s)" element of the system(s) involved.) If non-Federal records are involved, a complete description to include the specific source, address, and category of records to be used, e.g., Human Resources Administration Medicaid File, City of New York, Human Resources Administration, 250 Church Street, New York, NY 10013.

(vi) A complete description of the category of records and individuals covered from the record system(s) to be used, the specific data elements to be

matched, and the approximate number of records that will be matched.

(vii) The projected start and ending dates for a one-time match or the inclusive dates for a continuing match.

(viii) The address for receipt of any public comment or inquiries concerning the notice shall indicate: Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884.

§ 317.95 Providing due process to matching subjects.

(a) *Independent verification and notice.* Subjects of record of matching programs shall be afforded certain due process procedures when a match uncovers any disqualifying or adverse information about them. No recipient agency, non-Federal agency, or source agency shall take any adverse action against an individual until such agency has independently verified such information and the individual has received a notice from the agency containing a statement of its findings and gives the individual the opportunity to contest the findings before making a final determination. The agency shall not take any adverse action based on the raw results of a computer matching program. Adverse information developed by a match must be investigated and verified prior to any action being taken.

(b) *Waiver of independent verification procedures.* Program officials may request the Data Integrity Board waive the independent verification requirement after they have identified the type of matching data eligible for a waiver and conducted a thorough determination of the data's accuracy. The only data eligible for waiver is that which identifies the individual and the amount of benefits paid under a federal benefit program. The data must not be ambiguous. After the Data Integrity Board determines that the data qualifies for the waiver procedure, the program official must present convincing evidence to the Data Integrity Board of the recipient agency to permit the Board to assert a high degree of confidence in the accuracy of the data. The following elements are examples of evidence which will assist a Board in making such a determination: A description of the databases involved including how the information is acquired and maintained; the system manager's overall assessment of the reliability of the systems and the accuracy of the data they contain; the results of any assessments or audits conducted; any material or significant weaknesses under various statutes; security controls in place; previous security assessments; any historical data relating to program error rates; and any information relating to the currency of the data. If the Board approves the waiver, it will notify the source agency and the program officials.

(c) *Independent investigation.* Conservation of resources dictates that the procedures for affording due process be flexible and suited to the data being verified and the consequences to the individual of making a mistake. If the source agency has established a high degree of confidence in the quality of its data and it can demonstrate that its quality control processes are rigorous, the recipient agency may choose to expend fewer resources in independently verifying the data. Absolute confirmation is not required. The agency should bring some degree of reasonableness to the process of verifying data. Some methods to consider are:

(1) The individual subject of record who is the best source where practical, and

(2) Researching source documents.

(d) *Notice and opportunity to contest.* The agency is required to notify matching subjects of adverse information uncovered during a matching program and give them an opportunity to contest and explain before the agency makes a final determination. Recipients already receiving benefits may not have them suspended or reduced pending expiration of the contest period. Individuals have 30 days to respond to a notice of adverse action, unless a statute or regulation grants a longer period. The period runs from the date of the notice until 30 calendar days. The agency shall allow an additional five days for mailing time before ending the notice period. If an individual contacts the agency within the notice period (35 days) and indicates his or her acceptance of the validity of the adverse information, the agency may take immediate action to deny or terminate. The agency may also take action if the period expires without a response.

(e) *Combining verification and notice requirements.* It may be appropriate to combine the verification and notice requirements into a single step, especially if the subject of record is the best source for verification. In this manner, the adverse finding and notice of the opportunity to contest are compressed into a single action. This method is dependent upon the confidence, reliability and quality of the data. Careful thought should be given as to when to apply this method. It may be applicable in special cases, but should not be considered as a routine process. To ensure that this consideration takes place, it shall be the responsibility of the Defense Data Integrity Board to make a formal determination as to when it is appropriate to compress the verification and notice into a single period.

(f) *Individual status pending due process.* The agency may not make a final determination as to applicants for Federal benefit programs whose eligibility is being verified through a matching program until they have completed the due process steps the Act requires. This does not require placing an applicant on the rolls pending a determination, but only that the agency not make a final determination. However, if a subject is already receiving benefits, the benefits shall not be suspended or reduced until due process steps have been completed. If the specific Federal benefit program involved in the match has its own due process requirements, those requirements may suffice for the purposes of the Privacy Act, provided the Defense Data Integrity Board determines that they are at least as strong as the Privacy Act's provisions.

(g) *Exclusion.* (1) If the agency determines a potentially significant effect on public health or safety is likely, it may take appropriate action, notwithstanding these due process requirements.

(2) In such cases, the agency shall include the possibility of suspension of due process for this reason in its matching program agreement.

§ 317.96 Matching program agreement.

(a) *Requirements.* The agency should allow sufficient lead time to ensure that a matching agreement between the participants can be negotiated and signed in time to secure the Defense Data Integrity Board decision before the match begins. The agency, if receiving records from or disclosing records to a non-Federal agency for use in a matching program, is responsible for preparing the matching agreement and should solicit relevant data from the non-Federal agency where necessary. Both Federal source and recipient agencies must have the matching agreement approved by their respective Data Integrity Boards. In cases where matching takes place entirely within the Department of Defense, the agency may satisfy the matching agreement requirements by preparing a Memorandum of Understanding (MOU) between the systems of records managers involved. Before the agency

may participate in a matching program the Defense Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement or MOU.

(b) *Agreements or MOUs must contain the following elements*—(1) *Purpose and legal authority.* Citation of the Federal or state statutory or regulatory authority for undertaking the matching program. Do not cite the Privacy Act.

(2) *Justification and expected results.* A full explanation of why a computer matching program, as opposed to some other form of activity, is being proposed and what the expected results will be, including a specific estimate of any savings.

(3) *Records description.* A full identification of the system of records (**Federal Register** citations) or non-Federal records, number of subjects of record, and what data elements will be included in the match.

(4) *Dates.* An indication of whether the match is a one-time or continuing program (not to exceed 18 months) and the projected starting and completion dates for the match.

(5) *Prior notice to subjects of record.* A description of the direct and constructive notice procedures afforded the subjects of record. Copies of the published applicable record system notices involved and all applicable forms containing the appropriate Privacy Act Statement being used by the participants of the proposed match should be provided.

(6) *Verification procedures.* A full description of the methods the agency will use to independently verify the information obtained through the matching program.

(7) *Disposition of matched items.* A statement that the information generated as a result of the matching program will be destroyed as soon as it has served the matching program's purpose and any legal retention requirements the agency establishes in conjunction with the National Archives and Records Administration or other cognizant authority.

(8) *Security procedures.* A description of the administrative, technical and physical safeguards to be used in protecting the information. They should be commensurate with the level of sensitivity of the data.

(9) *Records usage, duplication and disclosure restrictions.* A description of any specific restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program. Recipient agencies may not use the records obtained for a matching program under a matching agreement for any other purpose unless there is a specific statutory authority or there is a direct essential connection to the conduct of the matching program. Agreements shall specify how long the recipient agency may keep records provided for a matching program and when they will be returned to the source agency or destroyed.

(10) *Records accuracy assessments.* A description of any information relating to the quality of the records to be used in the matching program such as the error rate percentage of the data entry for the affected records. The worse the quality of the data, the less likely the matching program will have a cost-beneficial result.

(11) *Disclosure Accounting.* A certification by the agency participating in a matching program as a source agency for disclosures outside the Department of Defense that a disclosure accounting shall be maintained on the subjects of record as required by the Privacy Act.

(12) *Access by the Comptroller General.* A statement that the Comptroller General may have access to all records of a recipient DoD component or non-Federal agency necessary to monitor or verify compliance with the agreement. In this instance, the Comptroller General may inspect state or local government records used in matching programs.

(c) *Non-Federal agencies.* Non-Federal agencies intending to participate in covered matching programs are required to do the following:

(1) Execute matching agreements prepared by a Federal agency or agencies involved in the matching program.

(2) Provide data to Federal agencies on the costs and benefits of matching programs.

(3) Certify that they will not take adverse action against an individual as a result of any information developed in a matching program unless the information has been independently verified and until the applicable number of days after the individual has been notified of the findings and given an opportunity to contest them has elapsed.

(4) For renewals of matching programs, certify that the terms of the agreement have been followed.

(d) *Duration of matching programs.* Matching agreements will remain in force only as long as necessary to fulfill their specific purposes. They will automatically expire 18 months after their approval unless the Defense Data Integrity Board grants an extension of up to one year at least three months prior to the actual expiration date. The program must remain unchanged if an extension is to be granted. Each party to the agreement must certify that the program has been conducted in compliance with the matching agreement. Requests for extensions shall be submitted through channels to the Board.

(e) *Altered matching program.* (1) An altered matching program is one that is already established, but with such a significant change proposed that it requires revision of the matching notice and approval of the Defense Data Integrity Board, OMB and Congress. A significant change is one which does one or more of the following:

(i) Changes the purpose for which the program was established.

(ii) Changes the matching population either by including new categories of subjects of record, or by greatly increasing the numbers of records matched.

(iii) Changes the legal authority under which the match was being conducted.

(iv) Changes the records (data elements) that will be used in the match.

(2) A proposal to alter an established matching program shall be submitted through channels to the Defense Data Integrity Board for review and approval.

(f) *Non compliance sanctions.* (1) The agency shall not disclose any record for use in a matching program as a source agency to any recipient agency (within or outside the Department of Defense) if there is reason to believe that the terms of the matching agreement/MOU or the due process requirements are not being met by the recipient agency. The Defense Privacy Office, DA&M, shall be informed immediately, through channels, should any such incident occur. Normally consulting with the recipient agency should resolve the problem, but the responsibility rests with the source.

(2) No source agency shall renew a matching agreement/MOU unless the recipient agency (within or outside the Department of Defense) has certified that it has complied with the provisions of the agreement/MOU and the agency has no reason to believe otherwise.

(3) A willful disclosure of records from a system of records for any unauthorized computer matching program may subject the responsible officer or employee to criminal penalties. Civil remedies are also available to matching program subjects who can show they were harmed by an agency's violation of the Act as set forth in Subpart J of this part.

§ 317.98 Cost-benefit analysis.

(a) *Purpose.* The requirement for a cost-benefit analysis by the Act is to assist the agency in determining whether or not to conduct or participate in a matching program. Its application is required in two places: As an agency conclusion in the matching agreement containing the justification and specific estimate of savings; and in the Data Integrity Board review process where it is forwarded as part of the matching proposal. The intent of this requirement is not to create a presumption that when agencies balance individual rights and cost savings, the latter should inevitably prevail. Rather, it is to ensure that sound management practices are followed when agencies use records from Privacy Act systems in matching programs. It is not in the government's interest to engage in matching activities that drain agency resources that could be better spent elsewhere. Agencies should use the cost-benefit requirement as an opportunity to re-examine programs and weed out those that produce only marginal results.

(b) *Cost-benefit analysis.* The agency, when proposing matching programs, must provide the Board with all information which is relevant and necessary to allow the Board to make an informed decision including a cost-benefit analysis. The Defense Data Integrity Board shall not approve any matching agreement unless the Board finds the cost-benefit analysis demonstrates the program is likely to be cost effective.

(1) The Board may waive the cost-benefit analysis requirement if it determines in writing that submission of such an analysis is not required.

(2) If a matching program is required by a specific statute, then a cost-benefit analysis is not required. However, any renegotiation of such a matching agreement shall be accompanied by a cost-benefit analysis. The finding need not be favorable. The intent, in this case, is to provide Congress with information to help it evaluate the effectiveness of statutory matching requirements.

(3) The Board must find that agreements conform to the provisions of the Act and appropriate guidelines, regulations, and statutes.

§ 317.99 Appeals of denials of matching agreements.

(a) *Disapproval by the Board.* If the Defense Data Integrity Board disapproves a matching agreement, a party to the agreement may appeal the disapproval to the Director of the Office of Management and Budget, Washington, DC 20503. Appeals must be made within 30 days after the Defense Data Integrity Board's written disapproval. The appealing party shall submit with its appeal the following:

(1) Copies of all documentation accompanying the initial matching agreement proposal.

(2) A copy of the Defense Data Integrity Board's disapproval and reasons.

(3) Evidence supporting the cost-benefit effectiveness of the match.

(4) Any other relevant information, e.g., timing considerations, public interest served by the match, etc.

(b) *OMB approval.* If the Director of the Office of Management and Budget approves a matching program it will not become effective until 30 days after the Director reports his decision to Congress.

(c) *Recourse by the Inspector General.* If the Defense Data Integrity Board and the Director of the Office of Management and Budget both disapprove a matching program proposed by the Inspector General of the denial agency, the Inspector General may report that disapproval to the head of Department of Defense and to the Congress.

§ 317.100 Proposals for matching programs.

(a) *Who initiates the action.* The recipient DoD component (or the DoD component source agency in a match conducted by a non-Federal agency); or the recipient activity within the DoD component for internal matches, is responsible for reporting the match for Board approval. The responsible official should contact the other participants to gather the information necessary to make a unified report.

(b) *New or altered matching programs.* Determine if the match is a new program or an existing one. A new match is one for which no public notice has been published in the **Federal Register**. An altered matching program is an established (published public notice) match with such a significant change that it requires amendment. An altered matching program should not be confused with a request for an unchanged extension of an established program.

(c) *Contents of report (original and one copy).* (1) A proposed new matching program report shall consist of an agency letter of transmittal with the following attached documents:

(i) Completed agreement between the participants.

(ii) Benefit/cost analysis.

(iii) Proposed **Federal Register** matching notice for public review and comment.

(iv) Copies of all the appropriate forms (e.g., applications) of the participating parties providing direct notice to the individual or any other means of communication used.

(v) Copy or copies of the appropriate **Federal Register** system(s) of record notice(s) containing an appropriate routine use providing constructive notice to the individual.

(2) A report on a proposed alteration to an established matching program shall consist of an agency letter of transmittal with the following attached documents:

(i) A report containing the significant change(s) and the following additional information:

(A) What alternatives to matching the agencies considered and why a matching program was chosen.

(B) The date the match was approved by each participating Federal agency's Data Integrity Board.

(C) Whether a cost-benefit analysis was required and, if so, whether it projected a favorable ratio.

(ii) Proposed **Federal Register** matching notice for public review and comment.

(3) A report requesting an extension beyond 18 months of an established unchanged matching program must be received by the Defense Privacy Office, DA&M, at least four months prior to the actual expiration date and consist of an agency letter of transmittal with the following attached:

(i) Justification for the extension (not to exceed one year).

(ii) Certification by the participants that the program has been conducted in compliance with the matching agreement.

(d) *Who receives the reports.* All reports shall be submitted to, and reviewed by, the agency Privacy Advisor and forwarded to the Defense Privacy Office, DA&M, for consideration by the Defense Data Integrity Board.

(e) *Action by the Defense Privacy Office.* The Defense Privacy Office, DA&M, shall present proposals before the Defense Data Integrity Board which shall either approve or disapprove proposals on their merits. Any inaction based on insufficient data, justification, or supporting documentation shall be returned for any further corrective action deemed necessary. Any disapproved proposals are returned with the stated reasons. Board approved proposals are coordinated with the Office of the Assistant Secretary of

Defense (Legislative Affairs) and the Office of the General Counsel, Department of Defense. The Defense Privacy Office prepares for the signature of the Chairman of the Board (Director, Administration and Management (DA&M)), transmittal letters sent to Congress and OMB and concurrently submits the proposed Federal Register matching notice for publication.

(f) *Time restrictions on the initiation of new or altered matching programs.*

(1) All time periods begin from the date the Chairman of the Board signs the transmittal letters.

(2) At least 30 days must elapse before the matching program may become operational.

(3) The 30 day period for OMB and Congressional review and the 30 day notice and comment period for the Matching Notice may run concurrently.

(g) *Requests for waivers.* The agency may seek waivers of certain matching program requirements including the 30 day review period by OMB and Congress. Requests for waivers shall be included in the letter of transmittal to the report. Such requests shall cite the specific provision for which a waiver is being requested with full justification showing the reasons and the adverse consequences if a waiver is not granted.

(h) *Outside review and activity.* The agency may presume OMB and Congressional concurrence if the review period has run without comment from any reviewer outside the DoD. Under no circumstances shall the matching program be implemented before 30 days have elapsed after publication of the matching notice in the Federal Register. This period cannot be waived.

Subpart J–Enforcement Actions

§ 317.110 Administrative remedies.

An individual who alleges he or she has been affected adversely by a violation of the Privacy Act shall be permitted to seek relief from the Assistant Director, Resources, through proper administrative channels.

§ 317.111 Civil court actions.

After exhausting all administrative remedies, an individual may file suit (5 U.S.C 552a(y)) in the Federal court against the agency for any of the following acts:

(a) *Denial of an amendment request.* The Assistant Director, Resources, or designee refuses the individual's request for review of the initial denial of an amendment or, after review, refuses to amend the record.

(b) *Denial of access.* The agency refuses to allow the individual to review the record or denies his or her request for a copy of the record.

(c) *Failure to meet recordkeeping standards.* The agency fails to maintain the individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record.

(d) *Failure to comply with the Privacy Act.* The agency fails to comply with any other provision of the Privacy Act or any rule or regulation promulgated under the Privacy Act and thereby causes the individual to be adversely affected.

§ 317.112 Criminal penalties.

The Privacy Act (5 U.S.C. 552a(i)) authorizes three criminal penalties against individuals. All three are misdemeanors punishable by fines of $5,000.

(a) *Wrongful disclosure.* Any member or employee of the agency who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure to anyone not entitled to receive the information.

(b) *Maintaining unauthorized records.* Any member or employee of the agency who willfully maintains a system of records for which a notice has not been published.

(c) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains a record concerning an individual from the agency under false pretenses.

§ 317.113 Litigation status report.

Whenever a civil complaint citing the Privacy Act is filed against the agency in Federal court or whenever criminal charges are brought against an individual in Federal court (including referral to a court-martial) for any offense, the agency shall notify the Defense Privacy Office, DA&M. The litigation status report included in Appendix C to this part provides a format for this notification. An initial litigation status report shall be forwarded providing, as a minimum, the information specified. An updated litigation status report shall be sent at each stage of litigation. When the court renders a formal disposition of the case, copies of the court's action, along with the litigation status report reporting the action, shall be sent to the Defense Privacy Office, DA&M.

§ 317.114 Annual review of enforcement actions.

(a) *Annual review.* The agency shall review annually the actions of its personnel that have resulted in either the agency being found civilly liable or an agency member being found criminally liable under the Privacy Act.

(b) *Reporting results.* The agency shall be prepared to report the results of the annual review to the Defense Privacy Office, DA&M.

Subpart K–Reports

§ 317.120 Report requirements.

(a) *Statutory requirements.* Subsection (p) of the Privacy Act requires a report and assigns to the Office of Management and Budget the responsibility for compiling the report.

(b) *OMB requirements.* (1) In addition to the report, the Office of Management and Budget requires that all agencies be prepared to report the results of the reviews.

(2) All reports of the agency concerning implementation of the Privacy Act shall be submitted to the Defense Privacy Office, DA&M, which shall prescribe the contents and suspense for such reports.

§ 317.121 Reports.

(a) *Submission to the Defense Privacy Office.* The agency shall prepare statistics and other documentation for the preceding calendar year concerning those items prescribed for the annual report and any reports of the reviews required, and when directed, send them to the Defense Privacy Office, DA&M.

(b) *Report Control Symbol.* Unless otherwise directed, any report concerning implementation of the Privacy Program shall be assigned Report Control Symbol DD-DA&M(A)1379.

(c) *Content of annual report.* The Defense Privacy Office, DA&M, shall prescribe the content of the annual report but, at a minimum, the annual report shall contain the following:

(1) Name and address of reporting agency.

(2) Name and telephone number of agency official who can best answer questions about this report.

(3) Agency Privacy Act Officials.

(i) Senior Agency Official.

(ii) Privacy Act Officer.

(4) If your agency was involved in any litigation involving the Privacy Act.

(i) Provide a citation to the case and a brief description of the background, issues and results.

(ii) If the cases required your agency to change its practices, describe how.

(5) Systems of Records Inventory:

(i) Total number of systems of records as of December 31, 19XX.

(ii) Number of exempt systems.

(iii) Number of automated systems (either in whole or part).

(iv) Number of systems deleted.

(v) Number of systems added.

(vi) Number of routine uses added.

(vii) Number of routine uses deleted.

(viii) Number of existing systems to which an exemption(s) was added, and

(ix) Number of new systems to which an exemption(s) was added.

(6) If your agency received any public comments on any of its systems of other Privacy Act implementing activities, briefly describe:

(7) Access requests (first party requests which cited the Privacy Act):

(i) Number of requests.

(ii) Number granted in whole or in part.

(iii) Number denied in whole.

(iv) Number for which no record was found.

(8) Amendment requests (first party requests which cited the Privacy Act):

(i) Number of requests.

(ii) Number granted in whole or part.

(iii) Number denied in whole.

(9) Appeals of denial:

(i) Number of access denials appealed.

(ii) Number in which denial was upheld.

(iii) Number of amendment denials appealed.

(iv) Number in which denial was upheld.

(10) Suggestions:

Subpart L–Agency Exemption Rules

§ 317.130 Establishing and using exemptions.

(a) *Types of exemptions.* (1) There are two types of exemptions permitted by the Privacy Act:

(i) General exemptions that authorize the exemption of a system of records from all but specifically identified provisions of the Privacy Act, and

(ii) Specific exemptions that allow a system of records to be exempted from only a few designated provisions of the Privacy Act.

(2) Neither the Privacy Act nor this part permits exemption of a system of records from all provisions of the Privacy Act.

(b) *Establishing exemptions.* (1) Neither general nor specific exemptions are established automatically for a system of records. Only the Director of DCAA or his/her designee shall make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within the agency shall be considered exempted until the Assistant Director, Resources, DCAA has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register** for this part.

(2) Only the Assistant Director, Resources, or his or her designee, may establish an exemption for a system of records.

(3) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register** describing the system.

(4) A system of records is exempt from only those provisions of the Privacy Act that are identified specifically in the agency exemption rule for the system.

(c) *Provisions to which exemptions may be applied.* After, or along with, establishing the system of records, the Assistant Director, Resources, may establish an exemption rule that shall exempt the system of records from any provision of the Privacy Act for which an exemption is allowed.

(d) *Using exemptions.* (1) Exemptions should be used only for the specific purposes stated in the exemption rules and only when in the best interest of the Government. Exemptions should be applied to only the specific portions of the records that require protection.

(2) An exemption should not be used to deny an individual access to information that he or she can obtain under the FOIA.

(e) *Exempt records maintained in nonexempt systems.* (1) An exemption rule applies to the system of records for which it was established. If a record from an exempted system is incorporated intentionally into a system that has not been exempted, the published notice and rules for the non-exempted system will apply to the record and it will not be exempt from any provisions of the Privacy Act.

(2) A record from one DoD component's exempted system that is temporarily in the possession of another DoD component remains subject to the published system notice and rules of the originating DoD component. However, if the non-originating DoD component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of the Privacy Act.

(3) Care should be exercised that exempt records are not accidentally misfiled into a system of records that are not exempted

§ 317.131 General exemptions.

(a) *Using general exemptions.* (1) DCAA is not authorized to establish the exemption for records maintained by the Central Intelligence agency under subsection (j)(1) of the Privacy Act.

(2) The general exemption provided by subsection (j)(2) of the Privacy Act may be established to protect criminal law enforcement records maintained by the agency.

(3) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws.

(4) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(5) Information that may be protected under the (j)(2) exemption includes:

(i) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status.

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(iii) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(6) The (j)(2) exemption does not apply to:

(i) Investigative records maintained by an element having no criminal law enforcement activity as one of its principal functions, or

(ii) Investigative records compiled by any element concerning individuals' suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principal functions of the DoD component that compiled them.

(7) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement element cannot protect law enforcement records incorporated into a non-exempted

system of records or any system of records maintained by an element not principally tasked with enforcing criminal laws. Agency system managers are prohibited to incorporate criminal law enforcement records into systems other than those maintained by criminal law enforcement elements.

(b) *Access to records under a (j)(2) exemption.* Requests for access to criminal law enforcement records maintained in a system for which a (j)(2) exemption has been established shall be processed as if also made under the FOIA.

§ 317.132 Specific exemptions.

(a) *Using specific exemptions.* Specific exemptions permit certain categories of records to be exempted from specific provisions of the Privacy Act. Subsections (k)(1–7) of the Privacy Act permits claiming exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

(1) (k)(1) exemption: Information properly classified under DoD 5200.1–R [1] (32 CFR part 159) in the interest of national defense or foreign policy.

(2) (k)(2) exemption: Investigatory information compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source. The (k)(2) exemption, when established, allows limited protection of investigative records normally maintained in a (j)(2) exempt system for use in personnel and administrative actions.

(3) (k)(3) exemption: Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) (k)(4) exemption: Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) (k)(5) exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) (k)(6) exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

(7) (k)(7) exemption: Evaluation material used to determine potential for promotion in the military services, but only to the extent that disclosure would reveal the identity of a confidential source.

(b) *Confidential source.* (1) A "confidential source" is defined under the Privacy Act as a person or organization that has furnished information to the Federal Government under an express promise or, before September 27, 1975, under an implied promise that the identity of the person or organization would be held in confidence.

(2) Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Appropriate procedures should be established for granting confidentiality and designate those categories of individuals authorized to make such promises.

(c) *Access to records under specific exemptions.* Requests for access to records maintained in systems of records for which specific exemptions have been established shall be processed as if also made under the FOIA.

§ 317.133 DCAA exempt record systems.

(a) *Exempt systems of records.* The Director, DCAA has made a determination and claims an exemption for the following agency systems of records by publication of an appropriate exemption rule for the record system and therefore allowing the agency to invoke, at its discretion, the particular exemption permitted by the Privacy Act from certain subsections of the Privacy Act.

(b) *Classified material.* The Director, DCAA has made a determination that all systems of records maintained by the agency shall be exempt from 5 U.S.C. 552a(d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) to the extent that the record system contains any information properly classified under Executive Order 12356 and required by the executive order to be withheld in the interest of national defense or foreign policy. This blanket exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(c) *General exemption rules.* (1) [Reserved]

(d) *Specific exemption rules.* (1) [Reserved]

Appendix A to part 317 - DCAA Blanket Routine Uses

A. LAW ENFORCEMENT ROUTINE USE

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

B. DISCLOSURE WHEN REQUESTING INFORMATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to a agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

C. DISCLOSURE OF REQUESTED INFORMATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed to a Federal Agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

[1] See footnote 3 to § 317.1(b).

D. CONGRESSIONAL INQUIRIES ROUTINE USE

Disclosure from a system of records maintained by this agency may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

E. PRIVATE RELIEF LEGISLATION ROUTINE USE

Relevant information contained in all systems of records of the agency published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

F. DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS ROUTINE USE

A record from a system of records maintained by this agency may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements, including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

G. DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES ROUTINE USE

Any information normally contained in IRS Form W-2 that is maintained in a record from a system of records maintained by this agency may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5 U.S.C. sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax, regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76–07.

H. DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT ROUTINE USE

A record from a system of records subject to the Privacy Act and maintained by this agency may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement reductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

I. DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the agency, or any officer, employee or member of the agency in pending or potential litigation to which the record is pertinent.

J. DISCLOSURE TO MILITARY BANKING FACILITIES OVERSEAS ROUTINE USE

Information as to current military addresses and assignments may be provided to military banking facilities that provide banking services overseas and that are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

K. DISCLOSURE OF INFORMATION TO THE GENERAL SERVICES ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. sections 2904 and 2906.

L. DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. sections 2904 and 2906.

M. DISCLOSURE TO THE MERIT SYSTEMS PROTECTION BOARD ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel, for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or agency rules and regulations, investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of a DoD investigation, and such other functions promulgated in 5 U.S.C. section 1205 or as may be authorized by law.

N. COUNTERINTELLIGENCE PURPOSES ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use outside the Department of Defense for the purpose of counterintelligence activities authorized by U.S. law or executive order or for the purpose of enforcing laws that protect the national security of the United States.

Appendix B to part 317– Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed

Exemption		Section of the Privacy Act
(j)(2)	(k)(1–7)	
No	No	(b)(1) Disclosure within the Department of Defense
No	No	(b)(2) Disclosure to the public
No	No	(b)(3) Disclosure for a routine use
No	No	(b)(4) Disclosure to Bureau of Census
No	No	(b)(5) Disclosure for statistical research and reporting
No	No	(b)(6) Disclosure to National Archives
No	No	(b)(7) Disclosure for law enforcement purposes
No	No	(b)(8) Disclosure under emergency circumstances
No	No	(b)(9) Disclosure to Congress
No	No	(b)(10) Disclosure to General Accounting Office
No	No	(b)(11) Disclosure pursuant to court orders
No	No	(b)(12) Disclosure to consumer reporting agency
No	No	(c)(1) Making disclosure accountings
No	No	(c)(2) Retaining disclosure accountings
Yes	Yes	(c)(3) Making disclosure accounting available to the individual
Yes	No	(c)(4) Informing prior recipients of corrections
Yes	Yes	(d)(1) Individual access to records
Yes	Yes	(d)(2) Amending records
Yes	Yes	(d)(3) Review of the Component's refusal to amend a record
Yes	Yes	(d)(4) Disclosure of disputed information
Yes	Yes	(d)(5) Access to information compiled in anticipation of civil action
Yes	Yes	(e)(1) Restrictions on collecting information
Yes	No	(e)(2) Collecting directly from the individual
Yes	No	(e)(3) Informing individuals from whom information is requested

Appendix B to part 317– Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed—Continued

Exemption		Section of the Privacy Act
(j)(2)	(k)(1–7)	
No	No	(e)(4)(A) Describing the name and location of the system
No	No	(e)(4)(B) Describe categories of individuals
No	No	(e)(4)(C) Describing categories of records
No	No	(e)(4)(D) Describing routine uses
No	No	(e)(4)(E) Describing records management policies and practices
No	No	(e)(4)(F) Identifying responsible officials
Yes	Yes	(e)(4)(G) Procedures for determining if a system contains a record on an individual
Yes	Yes	(e)(4)(H) Procedures for gaining access
Yes	Yes	(e)(4)(I) Describing categories of information sources
Yes	No	(e)(5) Standards of accuracy
No	No	(e)(6) Validating records before disclosure
No	No	(e)(7) Records of First Amendment activities
Yes	No	(e)(8) Notification of disclosures under compulsory legal process
No	No	(e)(9) Rules of conduct
No	No	(e)(10) Administrative, technical and physical safeguards
No	No	(e)(11) Notice of new and revised routine uses
Yes	Yes	(f)(1) Rules for determining if an individual is subject of a record
Yes	Yes	(f)(2) Rules for handling access requests
Yes	Yes	(f)(3) Rules for granting access
Yes	Yes	(f)(4) Rules for amending records
Yes	Yes	(f)(5) Rules regarding fees
Yes	No	(g)(1) Basis for civil action
Yes	No	(g)(2) Basis for judicial review and remedies for refusal to amend
Yes	No	(g)(3) Basis for judicial review and remedies for denial of access
Yes	No	(g)(4) Basis for judicial review and remedies for other failure to comply
Yes	No	(g)(5) Jurisdiction and time limits
Yes	No	(h) Rights legal guardians
No	No	(i)(1) Criminal penalties for unauthorized disclosure
No	No	(i)(2) Criminal penalties for failure to publish
No	No	(i)(3) Criminal penalties for obtaining records under false pretenses
Yes	No	(j) Rulemaking requirement
N/A	No	(j)(1) Federal exemption for the Central Intelligence Agency
N/A	No	(j)(2) General exemption for criminal law enforcement records
Yes	N/A	(k)(1) Exemption for classified material
N/A	N/A	(k)(2) Exemption for law enforcement material

Appendix B to part 317– Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed—Continued

Exemption		Section of the Privacy Act
(j)(2)	(k)(1–7)	
Yes	Yes	(k)(3) Exemption for records pertaining to Presidential protection
Yes	N/A	(k)(4) Exemption for statistical record
Yes	N/A	(k)(5) Exemption for investigatory material compiled for determining suitability for employment or service
Yes	N/A	(k)(6) Exemption for testing or examination material
Yes	N/A	(k)(7) Exemption for promotion evaluation materials used by the Armed Forces
Yes	No	(l)(1) Records stored in GSA records centers
Yes	No	(l)(2) Records archived before September 27, 1975
Yes	No	(l)(3) Records archived on or after September 27, 1975
Yes	No	(m) Applicability to government contractors
Yes	No	(n) Mailing lists
Yes	No	(o) Reports on new systems
Yes	No	(p) Biennial report (Note: DoD requires an annual report)

Appendix C to part 317 - Litigation Status Report

(a) Case Name and number:

(b) Plaintiff(s):

(c) Defendant(s):

(d) Basis for Court Action:

(e) Initial Litigation:

(1) Date Complaint or Charges Filed:

(2) Court:

(3) Court Action:

(6) Appeal (if any):

(1) Date Appeal Filed:

(2) Court:

(3) Case Number:

(4) Court Ruling:

(g) Remarks:

Dated: August 25, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–20655 Filed 09–2–92; 8:45 am]

BILLING CODE 3810–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF89

Radiation Exposure Compensation Act of 1990

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations regarding entitlement to compensation and dependency and indemnity compensation (DIC) benefits. These amendments are necessary to implement the provisions of the Radiation Exposure Compensation Act of 1990 (RECA) which authorize payments by the Department of Justice (DOJ) to certain individuals for disability or death due to specific radiogenic diseases. The intended effect of these amendments is to bring VA regulations into conformance with this new law.

DATES: Comments must be received on or before October 5, 1992. Comments will be available for public inspection until October 13, 1992. These amendments are proposed to be effective October 15, 1990, the date Public Law 101–426 was signed into law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until October 13, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The Radiation Exposure Compensation Act of 1990 (RECA), Public Law 101–426, 104 Stat. 920, as amended by Public Law 101–510, section 3139, 104 Stat. 1835 (42 U.S.C. 2210 note) authorized the Attorney General of the United States to establish procedures for making payments as restitution to all eligible individuals, who may have contracted one of a specified group of radiation-related diseases as a result of the

federal government's atmospheric nuclear testing program and to certain of their survivors. RECA authorized the Attorney General to make payments to a limited class of individuals with radiation-related diseases who had been employed during a specified period in uranium mines in Colorado, Utah, Arizona, Wyoming or New Mexico, or who had been present during designated periods at, or in, certain specified areas downwind of, the Nevada Test Site, the Pacific Proving Grounds, and the Trinity Test Site at Alamogordo, New Mexico. DOJ published final regulations implementing RECA in the **Federal Register** of April 10, 1992 (57 FR 12428–61).

RECA has clear implications for VA beneficiaries receiving compensation or DIC based on disability or death resulting from a radiogenic disease. Section 6(e) of RECA provides that when an individual accepts a RECA payment, that payment represents full satisfaction of all claims of or on behalf of that individual against the United States based upon a condition that arises out of exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device. It is clear that under section 6(e) a veteran who accepts a RECA payment based on a radiogenic condition which developed after he or she participated onsite in an atmospheric test, is thereafter barred from receiving disability compensation under chapter 11 of title 38, United States Code, for the same condition. Similarly, a survivor who accepts a RECA payment based on the death of a veteran resulting from a radiogenic condition would thereafter be disqualified from receiving DIC based on death resulting from the same condition. We are proposing to add new § 3.715 to 38 CFR part 3 to implement this statutory provision.

Section 6(c)(2) of RECA provides that the RECA payment will be offset by the amount of previously received federal benefits, except for worker's compensation, authorized for the same condition or death. Such payments include compensation or DIC from VA, and DOJ regulations include provisions to offset those benefit payments. When an individual receiving compensation or DIC elects to accept a RECA payment, we propose to terminate compensation or DIC on the last day of the month preceding the month in which the RECA payment is issued, since DOJ offset, based on benefits received, has been calculated to that point. We propose to amend 38 CFR 3.500 accordingly.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 24, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In 3.500, add new paragraph (x) to read as follows:

§ 3.500 General.

* * * * *

(x) *Radiation Exposure Compensation Act of 1990 (§ 3.715).* (Compensation or dependency and indemnity compensation only). Last day of the month preceding the month in which payment under the Radiation Exposure Compensation Act of 1990 is issued.

3. Add new § 3.715 and its authority citation to read as follows:

§ 3.715 Radiation Exposure Compensation Act of 1990.

Payment to any individual under the provisions of the Radiation Exposure Compensation Act of 1990 (Pub. L. 101–426 as amended by Pub. L. 101–510) based upon disability or death resulting from a specific disease shall bar payment, or further payment, of compensation or dependency and indemnity compensation to or on behalf of that individual based upon disability or death resulting from the same disease.

(Authority: 42 U.S.C. 2210 note)

Cross Reference: See § 3.500(w) for effective date of discontinuance.

[FR Doc. 92–21081 Filed 9–2–92; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Below 1 GHz LEO Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of meetings.

SUMMARY: The Federal Communications Commission has established the Below 1 GHz LEO Negotiated Rulemaking Committee to provide recommendations on technical matters related to the establishment and regulation of a low-Earth orbiting satellite service operating in the frequency bands below 1 GHz. This notice advises interested persons of upcoming meetings of an informal working group of that Committee.

DATES: September 9—9:30 a.m.–12 p.m.
September 10—9:30 a.m.–12 p.m.
September 11—9:30 a.m.–12 p.m.
September 14—9:30 a.m.–12 p.m.
September 15—9:30 a.m.–12 p.m.

ADDRESSES: Federal Communications Commission, 2000 L Street, NW., rm. 257, Washington, DC (Sept. 11 & 14). All other meetings will be at the offices of Leventhal, Senter & Lerman, 2000 K Street, NW., suite 600, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau, at (202) 634–1860.

SUPPLEMENTARY INFORMATION: These meeting dates are tenative, and may be cancelled or moved to a different location. Members of the general public may attend these informal working

group meetings. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21159 Filed 9-2-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 25

Below 1 GHz LEO Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting of negotiated rulemaking committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fifth meeting of the Below 1 GHz LEO Negotiated Rulemaking Committee ("Committee"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: September 8, 1992 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, rm. 856, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Federal Communications Commission, at (202) 634-1860.

SUPPLEMENTARY INFORMATION: The agenda for the fifth meeting of the Committee will be to approve the minutes of the prior meeting, identify any new record information, report on the progress of the informal working group, discuss any reports of that group, and update the agenda for the final Committee meeting scheduled for September 16.

A more detailed agenda for this meeting will be available at the Federal Communications Commission in CC Docket 92-76 following the Committee's meeting on September 1, 1992.

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There may be limited public oral participation, and the public may submit written comments to Thomas S. Tycz, the Committee's designated Federal representative, before the meeting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-21160 Filed 9-2-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 61 and 69

[CC Docket No. 92-135; FCC 92-258]

Common Carrier Services: In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On June 18, 1992, the Commission adopted a Notice of Proposed Rulemaking seeking comment on regulatory proposals affecting rate of return regulated local exchange carriers. The intended effect of the proceeding is to establish regulatory reform that will compliment the price cap system applicable to the largest local exchange carriers, by providing incentives for smaller companies to become more efficient and by encouraging technological development. Because these smaller companies provide service primarily to rural areas, this proposal will help bring ratepayer benefits gained from incentive regulation to rural Americans as well as urban populations served by the largest carriers. This proceeding is also seeks to reduce administrative burdens, and increase flexibility, while continuing to assure high service quality and universal service at reasonable rates. We therefore propose a continuum of options to be made available to the over 1300 carriers not required to be regulated under price caps.

DATES: Comments must be submitted on or before August 28, 1992. Reply comments are due on or before September 28, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew Mulitz, Attorney/Advisor, Tariff Division, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted June 18, 1992, and released July 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 296-3780 1990 M Street NW., suite 640, Washington, DC 20036.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the commission's current copy contractor, Downtown Copy Center (202) 296-3780 1990, M Street NW., suite 640, Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt, (202) 395-4814, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission (202) 632-7513.

OMB Number: None

Title: Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation (CC Docket No. 92-135).

Action: Proposed Revision and New Collection

Respondents: Businesses or other for profit

Frequency of Response: Quarterly and annually

Estimated Annual Burden:

	Responses	Hours per response	Total
Tariff filing requirements:			
Proposed Section 61.38	-20	132	-2640
Proposed Section 6139	20	8	160
Proposed Section 61.50 (1st yr.)	-6	62	-372
Proposed Section 61.50 (2nd yr.)	-6	124	-744
Proposed quarterly service monitoring reports	24	833	20,000
Proposed infrastructure reports	6	10	60

Needs and Uses: The NPRM would require local exchange carriers that elect the proposed incentive plan to file quarterly service quality reports and annual infrastructure reports as is

currently required of carriers subject to price cap regulation.

Regulatory Flexibility Analysis

We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) does not apply to this rulemaking proceeding because if promulgated, it would not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange companies do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. The Commission has found all exchange carriers to be dominant in the Competitive Carrier proceeding. 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of "small entities." Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers as is evidenced by this proceeding.

Summary of Notice of Proposed Rulemaking

The more than 1300 local exchange carriers that do not participate in price caps represent approximately 6 percent of the LEC industry. These companies range in size from less than 100 to more than 1 million access lines. These carriers have resisted the price caps option for a number of reasons including: unwillingness to assume the risks; inability to spread the risks; and, discomfort with the administrative complexity of price caps. These perceived difficulties of price caps apparently have not been outweighed by the promises of higher earnings.

Therefore, the NPRM proposes three options that, together with price caps, would establish a continuum of regulatory options. The continuum extends from improved, basic rate of return regulation to full price caps. As one proceeds along the continuum, the risks, potential rewards, and administrative complexity increase.

The option offering the least risk—improved, basic rate of return—would be applicable to NECA and any company that does not elect another option. This form of regulation would differ from the present methods in two major aspects. First, as proposed, tariffs would be filed every two years instead of annually. Second, use of projected costs would be limited, placing greater reliance on historical costs and simple extrapolations made from historical costs. The Notice also seeks comment on ways to permit some degree of pricing flexibility for carriers participating in basic rate of return regulation. Finally, the Notice seeks proposed methods of introducing optional incentive-type plans within the NECA pools.

The next level along the continuum would be available to small telephone companies serving 50,000 access lines or less, with gross annual revenues of 40 million dollars and less. Such companies that do not participate in the NECA pools would be able to file tariffs for all interstate rates based on historical costs for two-year periods. Under existing rules, these carriers may file such tariffs for traffic sensitive rates only. With the exception of subscriber line charges, no cost support would have to be filed with the tariffs; however, the information would be available upon request of the Commission or interested parties. We believe ratepayers would reap the full benefits of reduced costs by lower rate reflected in biennial tariff filings.

Third, the Commission proposed an optional incentive plan for mid-size companies that favor the rewards of incentive regulation, but believe the risks of price caps are too great. Under the optional incentive plan, carriers would file tariffs every two years. Cost support showings would be based on historical, rather than projected, costs. The earnings band would be 100 basis points above and 100 basis points below the rate of return authorized by the Commission. Pricing flexibility would be pursuant to rules similar to those used in price caps. Ratepayers would benefit by rate reductions reflecting the cost reductions of the historical period.

The final step in the continuum would be full price cap regulation. Thus, we would retain the price cap option as it now exists.

Ordering Clauses

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, notice is hereby given of proposed amendments to Part 61, and Part 69, and Sections 61.38, 61.39, 61.50, 61.58, and 69.3, in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking, and as set forth in Appendix A to this Order, and that comment is sought regarding such proposals, discussion, and statement of issues.

Accordingly, it is ordered, that a rulemaking proceeding is instituted to determine whether proposals made herein concerning regulatory reform for LECs which remain subject to rate of return regulation would be in the public interest.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Proposed Rules

Title 47 of the CFR, parts 61 and 69 are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3 is amended by revising paragraph (e) to read as follows:

§ 61.3 Definitions.

* * * * *

(e) *Base period.* The 12-month period ending six months prior to the effective date of annual price cap tariffs, or the 24-month period ending six months prior to the effective date of biennial optional incentive plan tariffs.

* * * * *

3. Section 61.38 is amended by revising paragraph (a) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This section applies to dominant carriers whose gross annual revenue exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing

rates for services identified in §§ 61.42 (a), (b), (d), (e), and (g), promotional offerings that relate to services subject to price cap regulation, tariff filings proposing rates for services identified in § 61.50, or to tariff filings, other than promotional filings, filed on 14 days notice pursuant to § 61.58(c)(6).

* * * * *

4. Section 61.39 is amended by revising paragraphs (a) and (b) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) *Scope.* This section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of the Commission's Rules. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42 (d), (e), and (g), which filings are submitted by carriers subject to price cap regulation, or to tariff filings proposing rates for services identified in § 61.50, which filings are submitted by carriers subject to optional incentive regulation.

(b) *Explanation and data supporting tariff changes.* The material to be submitted for either a tariff change of a new tariff which affects rates or charges must include an explanation of the filing in the transmittal as required by § 61.33. The basis for ratemaking must comply with the following requirements. Except as provided in paragraph (b)(5) of this section, it is not necessary to submit this supporting data at the time of filing. However, the local exchange carrier should be prepared to submit the data promptly upon reasonable request by the Commission or interested parties.

(1) For a tariff change, the local exchange carrier which is a cost schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, a cost of service study for Traffic Sensitive elements for the most recent 12 month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for Traffic Sensitive elements for the total period since the local exchange carrier's last annual filing, with related demand for the same period.

(2) For a tariff change, the local exchange company which is an average schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, the local exchange carrier's most recent annual Traffic Sensitive settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, an amount calculated to reflect the Traffic Sensitive average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas developed by the National Exchange Carrier Association.

(3) For a tariff change, the local exchange carrier which is a cost schedule carrier must propose Common Line rates based on the following:

(i) For the first period, a cost of service study with demand for all Common Line elements for the most recent 12 month period with demand adjusted to reflect the growth in demand for the same period.

(ii) For subsequent filings, a cost of service study with demand for all Common Line elements for the total period since the local exchange carrier's last annual filing with demand adjusted to reflect the growth in demand for the same period.

(4) For a tariff change, the local exchange carrier which is an average schedule carrier must propose rates based on the following:

(i) For the first period, the local exchange carriers most recent annual Common Line settlement from the National Exchange Carrier Association and actual demand for the most recent 12 month period with demand adjusted to reflect the growth in demand for the same period.

(ii) For subsequent filings, an amount calculated to reflect the average schedule pools settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule Common Line formulas developed by the National Exchange Carrier Association and actual demand for the same period with demand adjusted to reflect the growth in demand for the same period.

(5) For End User Common Line charges include in a tariff pursuant to this Section, the local exchange carrier must provide supporting information for the two-year historical period with its letter of transmittal in accordance with § 61.38.

* * * * *

5. Section 61.50 is added to read as follows:

§ 61.50 Optional incentive regulation for rate of return local exchange carriers.

(a) This section shall apply on an elective basis, to local exchange carriers that are neither participants in any Association tariff, nor affiliated with any such participants, except that affiliation with average schedule companies shall not bar a carrier from electing optional incentive regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files an optional incentive regulation tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file incentive plan tariffs in all their study areas.

(c) The following rules apply to telephone companies subject to this section, which are involved in mergers, acquisitions, or similar transactions, except that mergers with, acquisitions by, or other similar transactions with companies subject to price cap regulation, as that term is defined in § 61.3(W), shall be governed by § 61.41(c).

(1) Any telephone company subject to this section that is a party to a merger, acquisition, or similar transaction, shall continue to be subject to incentive regulation notwithstanding such transaction.

(2) Where a telephone company subject to this section acquires, is acquired by, merged with, or otherwise becomes affiliated with a telephone company that is not subject to this section, the latter telephone company shall become subject to optional incentive plan regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file optional incentive plan tariffs to be effective no later than that date in accordance with the applicable provisions of this part 61.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, when a telephone company subject to optional incentive plan regulation acquires, is acquired by, mergers with, or otherwise becomes affiliated with a telephone company that qualifies as an "average schedule" company, the latter company may retain its "average schedule" status or become subject to optional incentive plan regulations in accordance with

§ 69.3(i)(3) of this chapter and the requirements references in that section.

(d) Local exchange carriers that are subject to this section shall not be eligible to withdraw from such regulation until the end of a two-year tariff period. If a local exchange carrier withdraws from optional incentive plan regulation, it must file company-specific tariffs under the provisions of § 61.38 for four years before becoming eligible to enter incentive plan regulation; such carrier may not participate in any Association tariff during that four years.

(e) Each local exchange carrier subject to this section shall establish baskets of services as identified in § 61.42 (d), (e), and (f).

(f) Each local exchange carrier subject to optional incentive regulation shall exclude from its baskets such services or portions of such services as the Commission has designated or may hereinafter designate by order.

(g) New services, other than those within the scope of paragraph (f) of this section, must be included in the affected basket 12 months after their introduction. To the extent that such new services are permitted or required to be included in new or existing service categories within the assigned basket, they shall be so included 12 months after their introduction.

(h)(1) Except as provided in paragraph (c)(4) of this section, in connection with any optional incentive plan tariff filings proposing rate changes, the carrier must calculate an API for each affected basket as proscribed in § 61.46 (a), (b), and (c).

(2) In connection with any tariff filed under this section proposing changes to rates for services in the basket designated in paragraph (e)(1) of this section, the maximum allowable carrier common line (CCL) charges shall be limited to a ten percent increase over the two-year tariff period, where the sum of each of the proposed Carrier Common Line rates multiplied by its corresponding historical period Carrier Common Line minutes to use is divided by the same of all types of base period Carrier Common Line minutes to user.

(i) New services introduced pursuant to this section are deemed presumptively lawful, if the projected revenues for the new service are less than two percent of the carrier's total access revenues during the first 12 months of the offering, and the proposed rates, in the aggregate, are no greater than the rate for the same or comparable service offered by a price cap regulated local exchange carrier providing service in an adjacent serving area. Tariff filings made pursuant to this paragraph must include the following:

(1) A study containing a projection of costs for a representative 12 month period;

(2) Data to establish that the annualized projected service revenues during the first 12 month period of the service offering will be less than two percent of the carrier's total interstate access revenues during the most recent 12 month period; and

(3) Data to establish that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by a geographically adjacent price cap regulated local exchange carrier.

6. Section 61.58 is amended by adding new paragraph (e) to read as follows:

§ 61.58 Notice requirements.

* * * * *

(e) *Carriers subject to optional incentive regulation.* This paragraph applies only to carriers subject to § 61.50 of this part. Such carriers must file tariffs according to the following notice periods:

(1) For initial and renewal tariff filings whose effective date coincides with the start of any two-year tariff period as defined in § 69.3(f) of this chapter, filings must be made on not less than 90 days' notice.

(2) For rate revisions made pursuant to § 61.50(j) and (k), tariff filings must be made on not less than 14 days' notice.

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. §§ 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.3 is amended by revising the first sentence of paragraph (a), revising the first sentence of paragraph (e), and paragraph (1) introductory text, paragraph (i)(1), and paragraph (i)(3) to read as follows:

§ 69.3 Filing of access service tariffs.

(a) Except as provided in paragraph (h) of this section, a tariff for access service shall be filed with this Commission for a two-year period. * * *

* * * * *

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff, except that a group rate for non-affiliated telephone companies may not be file tariff under § 61.50; *e.g.*, the Association. * * *

* * * * *

(i) The following rules apply to the withdrawal from Association tariffs under the provision of paragraphs (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to § 69.3(h) or optional incentive plan tariffs pursuant to § 61.50 of this chapter.

(1) In addition to the withdrawal provisions of § 69.3(e)(6) and (9), a telephone company or group of affiliated telephone companies that participates in one or more Association tariffs during the current tariff year and that elects to file price cap tariffs or optional incentive regulation tariffs effective July 1 of the following tariff year, shall notify the Association with at least 6 months' notice that it is withdrawing from all Association tariffs, subject to the terms of this Rule, to participate in price cap regulation or optional incentive regulation.

* * * * *

(3) Notwithstanding the provisions of § 69.3 (3), (6), and (9), in the event a telephone company withdraws from all Association tariffs for the purpose of filing price cap tariffs or optional incentive plan tariffs, such company shall exclude from such withdrawal all "average schedule" affiliates and all affiliates so excluded shall be specified in the withdrawal. However, such company may include one or more "average schedule" affiliates in price cap regulation or optional incentive plan regulation provided that each price cap or optional incentive plan affiliate relinquishes "average schedule" status and withdraws from all Association tariffs and any tariff filed pursuant to § 61.39(b)(2) of this chapter. See generally §§ 69.605(c), 61.39(b) of this chapter; MTS and WATS Market Structure: Average Schedule Companies, Report and Order, 103 FCC 2D 1026–1027 (1986).

* * * * *

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB 83

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Puerto Rican Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Aristida chaseae* (no common name), *Lyonia truncata* var. *proctorii*

(no common name) and *Vernania proctorii* (no common name) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. These species are endemic to Puerto Rico, and all are restricted to the southwestern part of the island. With the exception of one site on the Cabo Rojo National Wildlife Refuge, the habitat of all three species is threatened with modification and loss due to various types of development. *Aristida chaseae* may also be affected by competition from introduced grass species. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Aristida chaseae, Lyania truncata* var. *proctarii* and *Vernania proctarii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 2, 1992. Public hearing requests must be received by October 19, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3580).

SUPPLEMENTARY INFORMATION:

Background

Aristida chaseae was discovered by Agnes Chase near Boquerón in 1913. It was known only from the type collection for many years, until it was discovered by Paul McKenzie in 1987 on the Cabo Rojo National Wildlife Refuge. This new population, which contains from 150 to 175 plants, is approximately 8 km to the south of the type locality. The species has apparently been elminiated from the type location, possibly as a result of competition from vigorous, introduced grass species (McKenzie et al. 1989, Proctor 1991).

Later in 1987, McKenzie and Dr. George Proctor located a third population on the rocky, exposed upper slopes of Cerro Mariquita in the Sierra Bermeja, a range of hills also found within the municipality of Cabo Rojo. This range of hills is the oldest geologic formation in Puerto Rico and is known for its high plant endemism. Additional localities on ridges to the west within the Sierra Bermeja were found in 1988. In these hills it occurs at elevations between 150 and 300 meters (McKenzie et al. 1989; Proctor 1991).

Aristida chaseae is a perennial grass with densely tufted, wide-spreading culms which may reach from 50 to 60 cm in length. The leaf blades are involute, 2 to 3 mm wide and 10 to 15 mm long. The panicles are narrow and may be from 10 to 15 cm in length. The glumes are equal, 10 to 13 mm long and acuminate or awn-tipped. The lemma is approximately 12 mm long, narrowed at the summit but scarcely beaked and scaberulous of the upper half. The callus is 1 mm long and densely pilose. The awns are equal, somewhat divergent, flat at the base, not contorted except with age and are approximately 2 cm long.

Lyania truncata var. *proctorii* was discovered in September of 1987 by Dr. George Proctor and described by Dr. Walter Judd in 1990 (Judd 1990). It is only known from the type locality, the upper slopes and summits of Cerro Mariquita (elevations of 250 to 300 m) in the Sierra Bermeja. Approximately 63 individual plants have been reported from two locations: 18 to the northwest of the summit and 45 just to the east of the summit (Proctor 1991).

Lyonia truncata var. *proctorii* is an evergreen shrub which may reach up to 2 meters in height. The leaves are alternate, elliptic to ovate, coriaceous, and from 0.9 to 4.5 cm long and 0.4 to 2.3 cm wide. The leaf margins may be toothed and the lower surface is sparsely to moderately lepidote and moderately to densely pubescent. The inflorescences are fasciculate with from 2 to 15 flowers. Pedicels are from 2 to 5 mm in length and sparsely pubescent. Flowers are small (0.7 to 1.6 mm in length), white, and urn-shaped. The fruit is a dry capsule, 3 to 4.5 mm in length and 2.5 to 4 mm in width, sparsely pubescent, and contains seeds approximately 2.5 mm in length.

Vernania proctorii was discovered in September of 1987 by Dr. George Proctor, Dr. Horst Haneke and Paul McKenzie. It is known to occur only on the summit of Cerro Mariquita in the Sierra Bermeja of southwestern Puerto Rico at elevations between 270 and 300 meters. Plants are scattered throughout a scrub woodland which covers several acres. The population has been estimated at approximately 950 individual plants (Proctor 1991).

Vernania proctarii is a small erect shrub which may reach a height of 1.5 meters. The stems and trunk are densely pubescent with silvery uniseriate hairs and with a knobby appearance due to the persistent petiole bases. Leaves are alternate, ovate to orbicular, subsessile or with the petioles appressed to the stem, and from 1.5 to 3.5 cm long and 1.0 to 2.6 cm wide. The upper blade surface is green to olive-green and moderately strigose with scattered glistening globular trichomes. The lower surface is grayish-green, sometimes becoming rusty with age, and densely sericeous. The leaf margins are densely ciliate with silvery hairs. Flowers are borne in terminal clusters of 2 to 5 heads, each approximately 3 mm in length, and are bright purple in color. Achenes are from 2 to 3 mm long and sericeous with silvery hairs.

Aristida chaseae, Lyonia truncata var. *proctarii* and *Vernonia proctarii* were recommended for listing by Dr. George Proctor during a September 1988 meeting concerning the revision of the candidate plant species list in Puerto Rico and the U.S. Virgin Islands. They were subsequently included as category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the **Federal Register** notice of review published February 21, 1990 (55 FR 6184).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Aristida chaseae* Hitchcock, *Lyania truncata* Urban var. *protcorii* Judd, and *Vernania proctarii* Urbatsch are as follows:

A. The Present or Threatened Destructian, Madificatian, or Curtailment of Its Habitat or Range

All three species are found on privately owned land currently subject to intense pressure for agricultural, rural and tourist development. The land is currently being cleared for grazing by cattle and goats. Adjacent land is being subdivided for sale in small farms, some destined for tourist and urban developments. Only *Aristida chaseae* occurs outside of the Sierra Bermeja, on the nearby Cabo Rojo National Wildlife Refuge, where the population occurs within and along a little used roadway.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these species.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanism

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most important factors affecting the continued survival of these species is their limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Wildfires are a frequent occurrence in this extremely dry portion of southwestern Puerto Rico. McKenzie el al. (1989) indicate that *Aristida chaseae* may have once extended throughout sandy coastal areas and rocky hillsides in southwestern Puerto Rico, but that competition from vigorous, introduced grasses such as *Brachiaria subquadripara* may have eliminated the species from the majority of this area.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* as endangered. *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* are known to occur only in the Sierra Bermeja. *Aristida chaseae* is currently known from only two areas. Deforestation for rural, agricultural, and tourist development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of individuals of *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Taking is an activity that is difficult to control, and it is only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession of these plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the Federal Register would only increase the likelihood of such activities and would not provide offsetting benefits. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these three species, as discussed above. Federal involvement is anticipated only for the population of *Aristida chaseae* located on the Cabo Rojo National Wildlife Refuge.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these three species will ever be sought

or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii*;

(2) The location of any additional populations of these three species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on these three species.

Final promulgation of the regulations on *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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McKenzie, P.M., R.E. Noble, L.E. Urbatsch, and G.R. Proctor, 1989. Status of *Aristida* (Poaceae) in Puerto Rico and the Virgin islands. Sida 13(4):423–447.

Proctor, G.R. 1991. Status report on *Aristida chaseae* Hitchcock. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G.R. 1991. Status report on *Lyonia truncata* Urban var. *proctorii* Judd. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G.R. 1991. Status report on *Vernonia proctorii* Urbatsch. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Asteraceae, Ericaceae and Poaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:						
Vernonia proctorii	None	U.S.A. (PR)	E		NA	NA
Ericaceae—Heath family:						
Lyonia truncata var. *proctorii*	None	U.S.A. (PR)	E		NA	NA
Poaceae—Grass family:						
Aristida chaseae	None	U.S.A. (PR)	E		NA	NA

Dated: July 20, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–21214 Filed 9–2–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 172
Thursday, September 3, 1992

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

Foreign Agricultural Service

Advisory Committee on Emerging Democracies; Meeting

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the first meeting of the Emerging Democracies Advisory Committee will be held September 17–18, 1992. The purpose of the committee is to provide information and advice, based upon the knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the program on sharing agricultural expertise with emerging democracies. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging democracies in food and rural business systems.

DATES: The meeting will be held Thursday, September 17, 1992 from 8:30 a.m. to 5 p.m. and Friday, September 18, 1992, from 8:30 a.m. to 12:45 p.m. Both meetings will be held in Washington, DC.

ADDRESS: The location of the meeting is as follows: September 17–18—United States Department of Agriculture, 14th Street and Independence Avenue SW., room 5068–South, Washington, DC 20250, 202–720–0368.

To help ensure adequate seating and materials are available at each meeting, interested parties are encouraged to register in advance by contacting the Eastern Europe and Soviet Secretariat (EESS), room 6506–S, U.S. Department of Agriculture, Washington, D.C. 20250–1000 (Fax: (202) 690–4369). This meeting is open to the public.

FOR FURTHER INFORMATION AND COPIES OF THE AGENDA CONTACT: Tom Pomeroy, Eastern Europe and Soviet Secretariat, room 6506–S, FAS, U.S. Department of Agriculture, Washington, DC 20250–1000; Telephone: (202) 720–0368.

SUPPLEMENTARY INFORMATION: The minutes of the meeting announced in this Notice shall be available for review. Any members of the public may provide comments in writing to the Eastern Europe and Soviet Secretariat at the address above, but should not make any oral comments at the meeting unless invited to do so by the chairman.

Signed at Washington, DC, August 28, 1992.

Stephen Censky,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 92–21258 Filed 9–2–92; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–601]

Brass Sheet and Strip From Italy; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners, the Department of Commerce has conducted an administrative review of the antidumping duty order on brass sheet and strip from Italy. The review covers shipments of one manufacturer/exporter to the United States during the period from March 1, 1991 through February 29, 1992.

The company under review, Europa Metalli-LMI S.p.A. ("LMI"), did not respond to the Department's questionnaire. Instead LMI stated that the United States is no longer a strategic market and that its U.S. exports are marginal. Therefore, we are using best information otherwise available for cash deposit and appraisement purposes. As best information for LMI, we preliminarily determine the dumping margin to be 9.49 percent, the highest margin calculated in any previous administrative review or the original investigation.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen D. Dillon or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department published in the **Federal Register** an antidumping duty order on brass sheet and strip from Italy (52 FR 6997). On March 5, 1992, the Department of Commerce published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 7910) of the antidumping duty order on brass sheet and strip from Italy (52 FR 6997) for the period March 1, 1991 through February 29, 1992. On March 31, 1992, we received a request for an administrative review for the period March 1, 1991 through February 29, 1992, from the petitioners: Outokumpu American Brass; Hussey Copper Ltd.; The Miller Company; Olin Corporation-Brass Group; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; International Union-Allied Industrial Workers of America (AFL–CIO); Mechanics Educational Society of America (Local 56); and the United Steelworkers of America (AFL–CIO/CLC). We published a notice of initiation of the antidumping administrative review on April 13, 1992 (57 FR 12797). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by this review are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Italy. The chemical composition of the products under investigation is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition are defined by other C.D.A. or U.N.S. series are not covered by this review. The physical dimensions of the

products covered by this review are brass sheet and strip of solid rectangular cross section, over 0.006 inch (0.15 millimeter) but not over 0.188 inch (4.8 millimeters) in finished thickness or gauge, regardless of width, whether coiled, wound on reels (traverse wound), or cut-to-length. Until January 1, 1989, this merchandise was classifiable under item numbers 612.3960, 612.3982, and 612.3986 of the Tariff Schedules of the United States Annotated (TSUSA). Since that date, brass sheet and strip has been classifiable under Harmonized Tariff System (HTS) item numbers 7409.21.00.50, 7409.21.00.75, 7409.21.00.90, 7409.29.00.50, 7409.29.00.75, and 7409.29.00.90. HTS and TSUSA item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Preliminary Results of the Review

We preliminarily determine that a margin of 9.49 percent exists for Europa Metalli-LMI, S.p.A. for the period March 1, 1991 through February 29, 1992.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firms or any previously reviewed firm will be the "All Others" rate established in the final results of the previous administrative review, since we do not use best information available rates in establishing the "All Others" rate. This rate represents the highest rate for any firm (whose shipments to the United States were reviewed) in the most recent administrative review, other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until the publication of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 26, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-21165 Filed 9-2-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-601]

Malleable Cast Iron Pipe Fittings From Thailand; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on certain malleable cast iron pipe fittings from Thailand. Interested parties who object to this revocation must submit their comments in writing no later than 30 days after the date of publication of this notice.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Gerry Zapiain or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1987, the Department of Commerce ("the Department") published an antidumping duty order on certain malleable cast iron pipe fittings from Thailand (52 FR 31440). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

No later than 30 days after the date of publication of this notice, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order. Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not object to the Department's intent to revoke within 30 days after the date of publication of this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

Dated: August 27, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-21164 Filed 9-2-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Ecosystem Center et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651); 80 Stat. 897; 15 CFR 301), we

invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–087. Applicant: The Ecosystem Center, Marine Biological Laboratory, Water Street, Woods Hole, MA 02543. Instrument: Accessory Equipment for Mass Spectrometer. Manufacturer: Finnigan MAT, Germany. Intended Use: This is equipment for an existing mass spectrometer which allows analysis of much smaller CO_2 samples than previously possible and allows easy and rapid analysis of individual molecules important in biological systems. The research focus is in diverse areas including microbial food webs, trace gases involved in global warming, basic physiological studies of photosynthesis and respiration, and studies of carbon storage in soils and sediments. Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92–088. Applicant: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 101 Pivers Island Road, Beaufort, NC 28516–9722. Instrument: Electronic Digital Fish Measuring Board. Manufacturer: Limnoterra Atlantic Inc., Canada. Intended Use: The instrument will be used for research to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S. coast of the southeastern Atlantic. Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92–089. Applicant: The Pennsylvania State University, Department of Geosciences, 503 Dieke Building, University Park, PA 16802. Instrument: Two Mass Spectrometer Systems, Model MAT 252. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used for studies of minerals (sulfides, carbonates, oxides, silicates), rocks, waters, solutions, gases, and organic compounds from a variety of geologic environments, and solids, solutions and gaseous materials synthesized in the laboratory. The objective of these studies are to unravel the laws governing the variation of isotopic compositions of H, C, O, S and N in nature, and to understand the details of various geological processes (such as the biogeochemistry of organic matter production and preservation formation and migration of oils and natural gases, evolution of the Earth's atmosphere and oceans, evolution of global climate). Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92–090. Applicant: Pennsylvania State University, College of Medicine, Department of Pathology, 500 University Drive, P.O. Box 850, Hershey, PA 17033. Instrument: Electron Microscope, Model CM–10. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used to continue and extend the capability and quality for high resolution research pathology (human and animal). All types and phases of specimens can be better handled. Specimens are fixed in glutaraldehyde and ossium tetroxide, embedded in plastic, sectioned by ultramicrotome and stained with electron diffraction stains. Relevant ultrastructures are then recorded via photographic films or videotapes. In addition, the instrument will be used for educational purposes by pathology residents. Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92–091. Applicant: Virginia Polytechnic Institute and State University, Department of Biochemistry and Nutrition, 123 Engel Hall, Blacksburg, VA 24061–0308. Instrument: Micro Stopped Flow Spectrophotometer. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: The instrument will be used to study the very early reaction steps in biological nitrogen fixation catalyzed by the enzyme nitrogenase. Experiments will be conducted that are designed to determine the mechanism by which the transferred electrons and energy are coupled together to convert nitrogen into fertilizer. Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92–092. Applicant: New Mexico Institute of Mining and Technology, Campus Station—Box I, Socorro, NM 87801. Instrument: Noble Gas Mass Spectrometer, Model MAP 215–50. Manufacturer: Mass Analyzer Products, United Kingdom. Intended Use: The instrument will be used to determine the geologic age of rocks by measuring the isotopic composition of Ar trapped in minerals as a consequence of natural radioactive decay of K. A secondary use will be measurement of isotopic compositions of other noble gases (He, Ne, Kr, Xe) to determine surface exposure ages and use as tracers for geologic processes such as magma formation and hydrologic circulation. In addition, the instrument will be used in the curriculum of two formal courses: Isotope Geochemistry (Geology 549) and $^{40}AR/^{39}$ Ar Geochronology (Geology 572). Application Received by Commissioner of Customs: June 19, 1992.

Docket Number: 92–093. Applicant: University of Alaska-Fairbanks, School of Mineral Engineering, 3rd Floor Eielson Building, Room 302, Fairbanks, AK 99775–1440. Instrument: Coal Oxidation Calorimeter, Model V2.0. Manufacturer: BHP Research New Castle Laboratory, Australia. Intended use: The instrument will be used to monitor the self-heating of coal in an adiabatic environment-similar to that observed during storage, transportation, or stockpiling. Application Received by Commissioner of Customs: June 23, 1992.

Docket Number: 92–094. Applicant: Duke University, Department of Physics, Free Electron Laser Laboratory, LaSalle Street Extension, Durham, NC 27706. Instrument: Magnetic Measuring System. Manufacturer: Institute of Nuclear Physics, C.I.S. Intended Use: The instrument will be used for studies of dipole, quadrupole and sextupole magnet assemblies in order to determine the relationship between magnetic flux and current excitation. Application Received by Commissioner of Customs: June 24, 1992.

Docket Number: 92–095. Applicant: Princeton University, Princeton Materials Institute, Princeton, NJ 08544. Instrument: Electron Microprobe, Model SX 50. Manufacturer: Cameca, France. Intended Use: The instrument will be used in studies to characterize rocks, minerals, and ore deposits, meteorites and synthetic materials to determine the conditions necessary for their formation; compare and correlate chemical composition of these materials with physical properties. In addition, the instrument will be used for training in electron probe microanalysis as part of basic education in mineralogy, petrology, and materials science. Application Received by Commissioner of Customs: June 24, 1992.

Docket Number: 92–096. Applicant: Rutgers, The State University of New Jersey, 311 North Fifth Street, Camden, NJ 08102. Instrument: Electron Microscope, Model EM 902. Manufacturer: Carl Zeiss, Inc., Germany. Intended Use: The instrument will be used for continuing current research projects (mechanisms of neural tube closure and microtubule-associated couplers and axonal transport) and

making possible their expansion to include new experiments based on the ability to view thick sections and the analytical capabilities of this instrument. Application Received by Commissioner of Customs: June 24, 1992.

Docket Number: 92–097. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Stopped Flow Spectrofluorimeter, Model DX.17MV. Manufacturer: Applied Photophysics, United Kingdom. Intended Use: The instrument will be used to study the cleavage of DNA mediated by the enediyne class of antibiotics. In addition, the instrument will be used to study fast chemical reactions catalyzed by several enzymes involved in nucleotide metabolism. Application Received by Commissioner of Customs: June 24, 1992.

Docket Number: 92–098. Applicant: Emory University, Department of Chemistry, 1515 Pierce Drive, Atlanta, GA 30322. Instrument: Mass Spectrometer, Model SX102/SX102/E. Manufacturer: JEOL, Japan. Intended Use: The instrument will be used in research which includes investigating structures of polyoxometallates, unusual peptides and peptides from enzymatic cleavages of proteins, synthetic and unknown naturally-occurring sphingoid bases and related biomolecules, synthetic lipids and host molecules, phospholipids, enzymes involved in neurohormone synthesis, flavoenzymes, the anion exchange membrane protein band 3, and altered DNA and the enzyme myeloperoxidase. In addition, the instrument will be used for educational purposes in the courses Chemistry 766 and Chemistry 767. Application Received by Commissioner of Customs: June 25, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–21166 Filed 9–2–92; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Workshop—Accreditation for Calibration Laboratories Providing Calibration Services for DC Voltage.

SUMMARY: The National Institute of Standards and Technology (NIST) will host a public workshop on September 18, 1992, to provide interested parties an opportunity to participate in the development of technical requirements for accrediting calibration laboratories providing services for DC Voltage.

DATES: The workshop will be held on Friday, September 18, 1992, from 9 a.m. to 4 p.m.

PLACE: The workshop will be held at the National Institute of Standards and Technology, Green Auditorium, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: S. Wayne Stiefel, NVLAP, National Institute of Standards and Technology, Building 411, Gaithersburg, MD 20899. To assist in preparing for the meeting, please inform NVLAP about individuals/organizations planning to attend the workshop. Contact S. Wayne Stiefel at the above address, or call the NVLAP office (301) 975–4016, or FAX (301) 926–2884. Draft technical documents and administrative details for the program will be available at the workshop.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with the NVLAP Procedures (15 CFR part 7). In a Federal Register Notice dated May 18, 1992, (Vol. 57, No. 96), the National Institute of Standards and Technology (NIST) announced the establishment of the program for calibration laboratories, "Accreditation for Calibration Laboratories", pursuant to the request by the National Conference of Standards Laboratories in a letter of June 13, 1991, announced in the Federal Register of August 21, 1991. Accreditation will be offered to all applicant laboratories that fulfill the requirements of the National Voluntary Laboratory Accreditation Program (NVLAP).

DC Voltage has been selected as the initial calibration parameter; this program will serve as the pilot model for additional calibration parameters. Technical criteria, requirements, proficiency testing and procedures for the parameter of DC Voltage have been developed and will be presented at the workshop, and interested parties will have an opportunity to comment. The workshop is part of the NVLAP process of assuring that accreditation programs are of high technical quality, responsive to the technical needs of the community, and are relevant to the needs of those affected by accreditation. Future workshops will be scheduled as the Calibration Program is expanded to include additional parameters.

The following plans for the workshop have been established:

1. *Purpose:* The workshop will provide all interested persons with an opportunity to participate and contribute to the development of technical criteria, requirements, and procedures for evaluation and accreditation of laboratories that provide calibration services for DC Voltage.

2. *Procedure:* The workshop will be an informal, nonadversarial meeting. The presiding NIST chairperson will allocate the time available for discussion of each issue to be addressed, and will exercise authority as needed to ensure the equitable, efficient and orderly conduct of the workshop.

3. *Provisions:* This workshop will be open to the public; there is no registration fee. Housing is the responsibility of attendees.

The workshop will take place on September 18, 1992 at NIST, Gaithersburg, MD.

Documents in Public Record

Summary minutes of highlights of the meeting will be made available for inspection in the NVLAP program office, room A162, TRF Building 411 at the campus in Gaithersburg, Maryland.

Dated: August 27, 1992.

John W. Lyons,

Director.

[FR Doc. 92–21217 Filed 9–2–92; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Application of Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile and Apparel Products Produced or Manufactured in the Former Republics of the Socialist Federal Republic of Yugoslavia, Other Than Serbia and Montenegro

August 28, 1992.

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

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

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has decided to apply the limits on various cotton, wool, and man-made fiber textile and apparel products established in the Memorandum of Understanding (MOU) dated January 18, 1990 to the former republics of the Socialist Federal Republic of Yugoslavia, other than Serbia and Montenegro.

A copy of the bilateral agreement with the former Socialist Federal Republic of Yugoslavia is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

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 56 FR 60101, published on November 27, 1991). Also see 56 FR 65244, published on December 16, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1992.

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 June 1, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns counting imports of textile products in Categories 200–239, 300–369, 400–469, 600–670 and 800–899, produced or manufactured in Croatia, Slovenia and Bosnia-Hercegovina. You are directed to no lcnger count imports of textile products, produced or manufactured in Croatia, Slovenia and Bosnia-Hercegovina.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1984); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended by a Memorandum of Understanding dated January 18, 1990, between the Governments of the United States and the former Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 4, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories, produced or manufactured in the former republics of the Federal Republic of Yugoslavia, other than Serbia and Montenegro, cumulatively, and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
300/301	1,890,826 kilograms.
338/339	555,490 dozen of which not more than 333,294 dozen shall be in Categories 338–S/339–S [2].
340/640	482,297 dozen.
341/641	314,483 dozen.
410	510,050 square meters.
433	8,220 dozen.
434	9,113 dozen.
435	40,205 dozen.
442	11,300 dozen.
443/643	363,397 numbers of which not more than 108,266 numbers shall be in Category 443.
444	94,854 numbers.
447/448	50,390 dozen of which not more than 31,901 dozen each shall be in Categories 447 and 448.
604–A [3]	364,206 kilograms.
611	11,886,428 square meters.
618	–0–
624	3,825,375 square meters.
666–B [4]	1,088,035 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 604–A: only HTS number 5509.32.0000.

[4] Category 666–B: only HTS numbers 6301.10.0000, 6301.40.0010, 6301.40.0020 and 6301.90.0010.

Imports charged to these category limits for the period January 1, 1991 through December 31, 1991 for goods exported from the former Socialist Federal Republic of Yugoslovia shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement between the Governments of the United States and the former Socialist Federal Republic of Yugoslavia.

You are also directed, effective on September 4, 1992, to cancel the directive issued to you on December 20, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive established limits on cotton, wool, and man-made fiber textile products in various categories, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during 1992.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–21158 Filed 9–2–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 5, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public

consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: August 28, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Recordkeeping Requirements for LEAs and SEAs Operating Chapter 1 Projects under Chapter 1 of Title I of ESEA
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 0
Burden Hours: 0
Recordkeeping Burden:
Recordkeepers: 14,199
Burden Hours: 410,110
Abstract: State educational agencies, state agencies and local education agencies are required to keep such reports for subgrants for programs authorized under 34 CFR Part 200 pursuant to the Elementary and Secondary Education Act of 1965, as amended. The Department uses the information to ensure compliance with the requirements.

Type of Review: Reinstatement
Title: Drug-Free Schools and Communities Training Grants Program
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 300
Burden Hours: 9,000
Recordkeeping Burden:
Recordkeepers: 55
Burden Hours: 550
Abstract: This form will be used by State educational agencies to apply for grants under the Drug-Free Schools and Communities Training Grants Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Performance Report for Training Personnel for the Education of Individuals with Disabilities
Frequency: Annually
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 832
Burden Hours: 973
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Grantees that have participated in the Training Personnel for the Education of Individuals with Disabilities program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and effective program management.

Type of Review: Revision
Title: Application for Training Personnel for the Education of the Handicapped
Frequency: Annually
Affected Public:
Reporting Burden:
Responses: 2,710
Burden Hours: 97,820
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State agencies and other institutions to apply for funding under the Training Personnel for Education of the Handicapped Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision
Title: Application for Grants under the Jacob K. Javits Fellows Program
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 3,500
Burden Hours: 17,500
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by individuals to apply for funding under the Jacob K. Javits Fellows Program. The Department will use the information to make grant awards.

Type of Review: Existing
Title: Performance Report (Final) for Grants under the Strengthening Institutions Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 103
Burden Hours: 2,472
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Grantees that have participated in the Strengthening Institutions Program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and effective program management.

Office of Educational Research and Improvement

Type of Review: New
Title: Longitudinal Study of Schools
Frequency: One time
Affected Public: Individuals or households; non-profit institutions
Reporting Burden:
Responses: 2,540
Burden Hours: 1,977
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will be used to determine how America's secondary schools have changed since 1980. The Department will use the information to report to policymakers, practitioners and researchers through the Educational Resources Information Center and the National Technical Information Service.

Office of Policy and Planning

Type of Review: New
Title: Study of the Adult Education for the Homeless Program
Frequency: One time
Affected Public: State or local governments
Reporting Burden:
Responses: 2,435
Burden Hours: 776
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study is being used to evaluate the operation and services provided through the Adult Education for the Homeless (AEH) program. The Department will use the information to develop guidelines for program evaluation and to improve technical assistance to AEH projects.

[FR Doc. 92–21205 Filed 9–2–92; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before October 5, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Office of Emergency Planning and Operations
2. OE–417R (previously IE–417R)
3. 1901–0288
4. Power System Emergency Reporting Procedures
5. Extension
6. Other—event oriented
7. Mandatory
8. State or local governments, Businesses or other for-profit, Federal agencies or employees
9. 40 respondents
10. 1.13 responses per respondent
11. 2.89 hours per response
12. 130 hours
13. OE–417R will provide the Department of Energy with information regarding the location of where emergency electric power supply situations exist on an electrical power system or on a regional electric system. The data also provide DOE with a basis for determining the appropriate Federal action to relieve an electrical energy supply emergency. Respondents are electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, August 27, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–21271 Filed 9–2–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–779–000, et al.]

Arizona Public Service Co., et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Co.

[Docket No. ER92–779–000]

August 26, 1992.

Take notice that on August 12, 1992, Arizona Public Service Company (APS) tendered for filing a revised Exhibit B to the Transmission Service Agreement between APS and Tohono O'odahm Utility Authority (TOUA) AS-FERC Rate Schedule No. 161). Exhibit B lists Contract Demands applicable under the Agreement.

No change from the currently effective rate or revenue levels is proposed herein.

A copy of this filing has been served on TOUA and the Arizona Corporation Commission.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Co.

[Docket No. ER92–789–000]

August 26, 1992.

Take notice that on August 20, 1992, Southern California Edison Company (Edison) tendered for filing the Determination of Combustion Turbine (CT) Rated Capabilities and Minimum Take Obligation (MTO) in accordance with the Supplement Agreement between Edison and Anaheim for the Integration of the Anaheim Combustion Turbines, Commission Rate Schedule No. 246.16 approved by the Commission on March 25, 1991 in Docket No. ER91–290–000.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corp.

[Docket No. ER92–670–000]

August 26, 1992.

Take notice that on August 4, 1992, Florida Power Corporation (Florida Power) filed a letter as a result of discussions with the Commission's Staff, stating that Florida Power hereby agrees that its charges relating to the Cabbage Hill interconnection under section 14 of the June 14, 1992 Construction Agreement between Florida Power and Tampa Electric Company, will not exceed the charges resulting from the application of the formula attached thereto. Florida Power requested that this letter and the attached formula be accepted as supplements to the Agreement.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. The Washington Water Power Co.

[Docket No. ER92-688-000]

August 28, 1992.

Take notice that on August 19, 1992, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment to its annual contract rate for the 15-Year Agreement for Purchase and Sale of Firm Capacity and Energy between The Washington Water Power Company and Puget Sound Power & Light Company. WWP states that the purpose of the amendment is to provide additional cost support requested by Commission staff. WWP requests a waiver of the sixty (60) day filing requirement in order for the Agreement to have an effective date of April 1, 1992 as required by contract.

A copy of the filing was mailed to Puget Sound Power & Light.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Mid-Continent Area Power Pool

[Docket No. ER92-483-000]

August 26, 1992.

Take notice that on August 7, 1992, Mid-Continent Area Power Pool (MAPP) tendered for filing an amendment in the above-referenced docket.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Co.

[Docket No. ER92-533-000]

August 26, 1992.

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated August 20, 1992, tendered for filing an amendment to Rate Schedule T—Firm Transmission Service, originally filed on May 6, 1992.

In the filing, Rate Schedule T was amended to: (1) Include language which would require LG&E to file with the Commission any time a rate other than the standard rate is charged; (2) describe in more detail how the opportunity cost provision would operate; (3) modify the definition of available capacity; (4) add a provision for incorporating an electronic bulletin board; (5) remove certain restrictions regarding complaints; (6) include a completion date in the study agreement. LG&E also provided the Commission with clarification regarding the transmission customers' priority of service and LG&E's ownership interest in Ohio Valley Electric Corporation.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Upper Peninsula Power Co.

[Docket No. ES92-54-000]

August 26, 1992.

Take notice that on August 24, 1992, Upper Peninsula Power Company filed an application with the Federal Energy Regulatory Commission under sectin 204 of the Federal Power Act requesting authorization to issue not more than $18 million of unsecured promissory notes on or before October 1, 1994, with a final maturity date no later than October 1, 1995.

Comment date: September 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Texas-New Mexico Power Co.

[Docket No. ES92-53-000]

August 26, 1992.

Take notice that August 24, 1992, Texas-New Mexico Power Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $250 million of short-term promissory notes and other evidences of indebtedness on or before October 1, 1994, with a final maturity date no later than October 1, 1995.

Comment date: September 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Co.

[Docket No. ER92-775-000]

August 26, 1992.

Take notice that on August 11, 1992, Duke Power Company (Duke) tendered for filing with the Commission a notice of the proposed termination of the Letter Agreement between Duke and Carolina Power & Light Company which was approved by the Commission's Letter Order dated February 9, 1992. This Letter Agreement provided for the installation by Duke of a second 230/100-44kV transformer at Pisgah Tie Substation. Duke has proposed an effective termination date of November 30, 1992.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Co.

[Docket No. ER92-767-000]

August 26, 1992.

Take notice that on August 6, 1992, Florida Power & Light Company (FP&L) tendered for filing a Notice of Cancellation of FPL Rate Schedule No. 54.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Tucson Electric Power Co.

[Docket No. ER92-762-000]

August 26, 1992.

Take notice that on August 17, 1992, Tucson Electric Power Company (Tucson) tendered an amended filing of an Agreement entitled 1992 Short Term Power Sale Agreement (the Agreement) between Tucson and Citizens Utilities Company (Citizens). The Agreement established the terms for the sale of capacity and energy by Tucson to Citizens for the period commencing May 15, 1992 and ending September 30, 1992. On July 31, 1992 Tucson tendered for filing a Notice of Cancellation (the Notice of Cancellation) of the Agreement).

An amended filing is being made to withdraw the filing of the Notice of Cancellation. Tucson intends to file in another docket a notice extending the term of the Agreement.

The Parties request waiver of the Commission's regulations regarding filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ES92-52-000]

August 27, 1992.

Take notice that on August 19, 1992, UtiliCorp United Inc. (UtiliCorp) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authorization to issue up to and including 4,600,000 shares of common stock, par value $1.00 per share, up to and including $125 million of Debt Securities and up to and including $7 million of Pollution Control Bonds. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: September 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Arkansas Power & Light Co., et al.

[Docket No. EL92-36-000]

Arkansas Power & Light Co.

[Docket Nos. ER92-341-000 and EL92-35-000]

August 27, 1992.

Take notice that on August 24, 1992, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL92-36-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL92-36-000 will be 60 days after publication of this notice in the Federal Register.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21194 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-660-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP92-660-000]

August 26, 1992.

Take notice that on August 12, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-660-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point in Waupaca County, Wisconsin, for service to Wisconsin Gas Company (WGC), an existing customer, under the blanket certificate issued in Docket No. CP82-480-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

ANR proposes to construct and operate a new delivery point and meter station as an interconnection between ANR and WGC in Waupaca County, to be known as the Fremont Readfield meter station. ANR estimates that it would cost $200,000 to construct the proposed facilities. ANR would finance the construction of its proposed facilities with internally generated funds. ANR would use these facilities as an additional delivery point for firm sales service to WGC under ANR's FERC Rate Schedule CD-1. ANR states that addition of the proposed delivery point would not change WGC's current peak day and annual sales entitlements, so that the service proposed herein would not impact on the total quantities ANR is currently authorized to sell to WGC. ANR also states that the addition of this delivery point would not result in any detriment or disadvantage to ANR's other customers.

Comment date: October 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Co.

[Docket No. CP92-645-000]

August 26, 1992.

Take notice that on August 11, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-645-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas with Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes of abandon the exchange of up to 75,000 Dt equivalent of gas per day with Transwestern, which was authorized by the Commission in Docket No. CP79-326 and carried out pursuant to the provisions of an exchange agreement between WNG and Transwestern dated May 15, 1979, on file with the Commission as WNG's Rate Schedule X-16. WNG states that in a letter dated May 15, 1990, WNG informed Transwestern of its intention to terminate the exchange. It is asserted that the proposal involves no abandonment of facilities. It is stated that the abandonment would not cause any adverse impact on WNG's customers. It is explained that no gas has flowed under the agreement since 1984 and that no imbalance exists.

Comment date: September 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission

[Docket No. CP92-667-000]

August 26, 1992.

Take notice that on August 21, 1992, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252 filed a request with the Commission in Docket No. CP92-667-000 pursuant to 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate an existing tap which was initially constructed under section 311(a) of the Natural Gas Policy Act of 1978 (NGPA), under Midwestern's blanket certificate issued in Docket No. CP82-414-000, all as more fully set forth in the request which is open to public inspection.

Midwestern states that it constructed a 10-inch hot tap in Spencer County, Indiana, pursuant to section 311 of the NGPA in order to establish a delivery connection with Southern Indiana Gas and electric Company (SIGECO). It is asserted that since Midwestern also render jurisdictional transportation services under its subpart G blanket certificate, it is necessary that flexibility be attained as to the use of its facilities for the benefit of all customers on its system.

Comment date: October 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Co.

[Docket No. CP92-672-000]

August 27, 1992.

Take notice that on August 25, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP92-672-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two individually certificated transportation services for Florida Gas Transmission Company (FGT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that by order issued November 21, 1983, in Docket No. CP83-405-000, Northern was authorized to transport natural gas for FGT pursuant to two gas transportation agreements dated January 3, 1983 (Agreements). Northern further states that each Agreement provides for the receipt, transportation and delivery by Northern

of up to 45,000 Mcf of natural gas per day for the account of FGT on an interruptible basis. Northern asserts that it filed these Agreements as Rate Schedules T–33 and T–34 in Volume No. 2 of its FERC Gas Tariff.

Northern indicates that Northern and FGT have agreed that the Agreements shall be terminated upon the effective date of an order approving the instant application.

Comment date: September 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Co.

[Docket No. CP91–2206–003]

August 27, 1992

Take notice that on August 19, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252, filed a petition to amend in Docket No. CP91–2206–003 so as to amend the certificate of public convenience and necessity issued to Tennessee in this proceeding on May 20, 1992 and June 30, 1992, under section 7 of the Natural Gas Act and supart A of part 157 of the Commission's Regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to revise the initial rates that were approved by the Commission in the June 30, 1992 order to more accurately reflect the actual cost of constructing the certificated facilities. Tennessee states that the present cost estimate for the certificated facilities is $50.6 million, an $8.0 million increase over the original estimated cost. Tennessee attributes the increase in costs to higher materials cost, company and contractor costs related to environmental compliance that were higher than expected, other costs associated with installation, and inflation. Based on the increased facility costs, the revised initial rates, expressed as one-part demand rates (per Dth), are as follows:

Segment U	Segment 1	Segment 2	Segment 3
$12.47	$0.61	$24.04	$16.25

Tennessee also seeks in this petition to amend to establish Rate Schedule NET-Elgen. Tennessee had originally proposed to provide the service approved in the original application under Rate Schedule NET-EU, but it was later recognized that there were other services using this designation that had different rates and rate designs. Therefore, in order to promote the proper and efficient administration of its tariff, Tennessee has proposed to render the transportation service approved in the original application under the newly-designated Rate Schedule NET-Elgen. Further, Tennessee seeks to alter the straight fixed-variable rate design approved in the May 20, 1992 and June 30, 1992 orders. Tennessee now requests to allow negotiated rates for customers under Rate Schedule NET-Elgen on a non-discriminatory basis. Under the new proposal, Tennessee and the shipper may agree to any demand charge, up to the maximum demand rate stated in Tennessee's tariff. Costs not recovered in the negotiated demand rate will be recovered in a negotiated commodity rate, as long as the sum of the negotiated demand rate divided by 30.4 and the negotiated commodity rate is not higher than the 100 percent load factor derivative of the applicable demand rate stated in Tennessee's tariff. Any deviation from the standard 100 percent demand rate will be stated in the shipper's contract.

Comment date: September 17, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Co. and South Georgia Natural Gas Co.

[Docket No. CP92–668–000]

August 27, 1992.

Take notice that on August 24, 1992, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, and South Georgia Natural Gas Company (South Georgia), Post Office Box 2563, Birmingham, Alabma 35202–2563, (jointly referred to as Applicants), filed an application with the Commission in Docket No. CP92–668–000 pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to (1) construct, install, and operate certain jointly-owned main line looping and compression facilities, as well as related appurtenant facilities; (2) replace certain existing measurement and regulating facilities; (3) modify and upgrade an existing compressor unit, then retain the compressor unit on a stand-by basis; (4) operate certain compression facilities without operating mode restrictions; and (5) operate as jurisdictional facilities certain existing jointly-owned pipeline, metering, and appurtenant facilities originally constructed and operated pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and § 284.3 of the Commission's Regulations, all as more fully set forth in the application which is open to the public for inspection.

Applicants state that South Georgia has received long-term commitments for additional firm transportation service from the City of Cordele, Georgia; Florida Power Corporation; International Paper Company; Packaging Corporation of America; Peoples Gas System, Inc., and Procter & Gamble Paper Products Company (Shippers), for a total increase of 40,428 Mcf per day of natural gas.

Southern and South Georgia state that in order to provide the additional 40,428 Mcf per day of firm transportation service to the Shippers, Applicants need to construct, install, and operate (1) approximately 62.9 miles of 12-inch and 16-inch pipeline looping on South Georgia's 12-inch and 10-inch main lines in Alabama and Georgia; (2) one 1,340 H.P. turbine compressor unit at South Georgia's existing Albany, Georgia, compressor station; and (3) one 4,390 H.P. turbine compressor unit and appurtenant facilities near South Georgia's Adel Line in Brooks County, Georgia. All of these proposed facilities would be located on South Georgia's system and would be jointly-owned by Southern and South Georgia.

In order to accommodate the proposed increase in firm transportation volumes associated with this project, Southern proposes to replace certain measurement and regulating facilities located at the existing delivery point to South Georgia in Lee County, Alabama. In addition, South Georgia proposes minor modifications to its existing 1,100 H.P. reciprocating compressor at its Albany compressor station in order to operate the compressor unit at 1,232 H.P. and to retain it on a stand-by basis at the same location. South Georgia also requests the removal of the series operating mode restriction with respect to all compression facilities at the Albany compressor station.

In conjunction with this general expansion project, Southern and South Georgia propose to operate as jurisdictional facilities certain existing Florida pipeline, metering, and appurtenant facilities, known as the Jackonsville pipeline, which were originally constructed and operated pursuant to section 311 of the NGPA and § 284.3 of the Regulations. Applicants state that this conversion could be done without constructing or rearranging any facilities. Applicants also state that the Jacksonville pipeline facilities are jointly-owned by Southern and South Georgia.

Southern and South Georgia estimate that they would spend approximately $26,782,440 to construct, install, and modify the herein proposed facilities.

Comment date: September 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate 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 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 filing if no motion to intervene is filed with in the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that 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 applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21195 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST92-4619-000 through ST92-5089-000]

Columbia Gas Transmission Corp.; Self-Implementing Transactions

August 28, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipelines pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipeline pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST92-4619	Columbia Gas Transmission Corp.	Mountaineer Gas Co	06-30-92	B	580	N	I	06-01-92	Indef.
ST92-4620	Natural Gas P/L Co. of America.	Coastal Gas Marketing Co	06-30-92	G-S	75,000	N	I	06-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4621	Natural Gas P/L Co. of America.	Amoco Energy Trading Corp	06-30-92	B	10,000	N	I	05-01-92	Indef.
ST92-4622	Delhi Gas Pipeline Corp	Mississippi River Trans. Corp	07-01-92	C	500	N	I	06-01-92	Indef.
ST92-4623	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	07-01-92	C	250,000	N	I	06-03-92	Indef.
ST92-4624	ANR Pipeline Co	Highland Energy Co	07-01-92	G-S	8,000	N	I	06-03-92	Indef.
ST92-4625	ANR Pipeline Co	Exide Corp	07-01-92	G-S	750	N	I	06-10-92	Indef.
ST92-4626	ANR Pipeline Co	Fuel Services Group, Inc	07-01-92	G-S	2,000	N	I	06-04-92	Indef.
ST92-4627	ANR Pipeline Co	Aquila Energy Marketing Corp	07-01-92	G-S	150,000	N	I	06-06-92	Indef.
ST92-4628	Sipco Gas Transmission Corp	Natural Gas P/L Co. of America.	07-01-92	C	100,000	N	I	06-01-92	Indef.
ST92-4629	Sipco Gas Transmission Corp	Natural Gas P/L Co. of America.	07-01-92	C	100,000	N	I	06-01-92	Indef.
ST92-4630	Valero Transmission, L.P	Texas Gas Transmission Co	07-01-92	C	7,700	N	I	06-23-92	Indef.
ST92-4631	Valero Transmission, L.P	El Paso Natural Gas Co	07-01-92	C	50,000	N	I	06-01-92	Indef.
ST92-4632	Valero Transmission, L.P	Texas Eastern Transmission Corp.	07-01-92	C	12,000	N	I	06-01-92	Indef.
ST92-4633	Kern River Gas Transmission Co.	City of Burbank	07-01-92	G-S	20,000	N	I	06-05-92	Indef.
ST92-4634	Kern River Gas Transmission Co.	Canwest Gas Supply U.S.A. Inc.	07-01-92	G-S	300,000	N	I	06-06-92	Indef.
ST92-4635	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc	07-01-92	G-S	100,000	N	I	04-20-92	03-01-07
ST92-4636	Algonquin Gas Transmission Co.	Direct Gas Supply Corp	07-01-92	G-S	85,255	N	I	06-08-92	Indef.
ST92-4637	Algonquin Gas Transmission Co.	American Central Gas	07-01-92	G-S	800,000	N	I	06-13-92	Indef.
ST92-4638	Algonquin Gas Transmission Co.	Citizens Gas Supply Corp	07-01-92	G-S	200,000	N	I	05-12-92	Indef.
ST92-4639	Algonquin Gas Transmission Co.	O & R Energy, Inc	07-01-92	G-S	300,000	N	I	06-01-92	Indef.
ST92-4640	Algonquin Gas Transmission Co.	Unigas Energy, Inc	07-01-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4641	Algonquin Gas Transmission Co.	Union Pacific Fuels, Inc	07-01-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4642	Algonquin Gas Transmission Co.	Entrade Corp	07-01-92	G-S	9,700,000	N	I	05-09-92	Indef.
ST92-4643	Tennessee Gas Pipeline Co	Piedmont Natural Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4644	Tennessee Gas Pipeline Co	City of Holyoke	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4645	Tennessee Gas Pipeline Co	Delta Natural Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4646	Tennessee Gas Pipeline Co	Public Service Electric & Gas Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4647	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4648	Tennessee Gas Pipeline Co	Commonwealth Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4649	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4650	Tennessee Gas Pipeline Co	Valley Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4651	Tennessee Gas Pipeline Co	T.W. Phillips Gas Oil Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4652	Tennessee Gas Pipeline Co	Fitchburg Gas & Electric Light Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4653	Tennessee Gas Pipeline Co	Equitrans, Inc	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4654	Tennessee Gas Pipeline Co	City of Dickson	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4655	Tennessee Gas Pipeline Co	Pennsylvania and Southern Gas Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4656	Tennessee Gas Pipeline Co	National Gas and Oil Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4657	Tennessee Gas Pipeline Co	Transcontinental Gas P/L Corp.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4658	Tennessee Gas Pipeline Co	Granite State Gas Transmission.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4659	Tennessee Gas Pipeline Co	East Ohio Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4660	Tennessee Gas Pipeline Co	Connecticut Light and Power Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4661	Tennessee Gas Pipeline Co	Creole Gas Piperline Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4662	Tennessee Gas Pipeline Co	Trunkline Gas Co	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4663	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4664	Tennessee Gas Pipeline Co	Mountaineer Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4665	Tennessee Gas Pipeline Co	Boston Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4666	Tennessee Gas Pipeline Co	Central Hudson Gas & Electric Corp.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4667	Tennessee Gas Pipeline Co	Westfield Gas & Elect. Light Dept.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4668	Tennessee Gas Pipeline Co	New York State Elect. & Gas Corp.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4669	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4670	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4671	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4672	Tennessee Gas Pipeline Co	Natural Gas P/L Co. of America.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4673	Tennessee Gas Pipeline Co	Midwestern Gas Transmission Co.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4674	Tennessee Gas Pipeline Co	Varibus Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4675	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4676	Tennessee Gas Pipeline Co	Utilicorp United, Inc	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4677	Tennessee Gas Pipeline Co	Energy North, Inc	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4678	Tennessee Gas Pipeline Co	United Gas Pipe Line Co	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4679	Tennessee Gas Pipeline Co	Orange & Rockland Utilities, Inc.	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4680	Tennessee Gas Pipeline Co	North Penn Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4681	Tennessee Gas Pipeline Co	Berkshire Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4682	Tennessee Gas Pipeline Co	Eastern Shore Natural Gas Co	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4683	Tennessee Gas Pipeline Co	Essex County Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4684	Tennessee Gas Pipeline Co	North Alabama Gas District	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4685	Tennessee Gas Pipeline Co	Colonial Gas Co	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4686	Tennessee Gas Pipeline Co	CNG Transmission Corp	07-01-92	B	2,000,000	A	I	06-25-92	Indef.
ST92-4687	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4688	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp.	07-01-92	G	2,000,000	A	I	06-25-92	Indef.
ST92-4689	Tennessee Gas Pipeline Co	Enmark Gas Corp	07-01-92	G-S	78,750	N	I	06-01-92	Indef.
ST92-4690	Northern Natural Gas Co	Northwestern Public Service Co.	07-01-92	B	100	N	F	06-16-92	07-31-92
ST92-4691	Northern Natural Gas Co	Metropolitan Utilities District	07-01-92	B	500	N	F/I	06-04-92	Indef.
ST92-4692	Northern Natural Gas Co	Panhandle Trading Co	07-01-92	G-S	150,000	N	F/I	06-04-92	Indef.
ST92-4693	Northern Natural Gas Co	Western Gas Marketing, Inc	07-01-92	G-S	150,000	N	F/I	06-01-92	Indef.
ST92-4694	Channel Industries Gas Co	Enron Industrial Natural Gas Co.	07-02-92	C	50,000	N	I	06-16-92	Indef.
ST92-4695	Tennessee Gas Pipeline Co	Transok Gas Co	07-02-92	G-S	400,000	N	I	06-16-92	Indef.
ST92-4696	Kern River Gas Transmission Co.	Nevada Cogeneration Associates #1.	07-02-92	G-S	13,000	N	F	04-06-92	Indef.
ST92-4697	Superior Offshore Pipeline Co	UGI Corp	07-02-92	B	5,250	N	I	08-01-91	Indef.
ST92-4698	Superior Offshore Pipeline Co	Central Illinois Public Service	07-02-92	B	67,600	N	I	02-01-92	Indef.
ST92-4699	Superior Offshore Pipeline Co	Louisiana Gas System, Inc	07-02-92	B	10,000	N	I	11-01-91	Indef.
ST92-4700	Transcontinental Gas P/L Corp.	Endevco Oil and Gas Co	07-02-92	G-S	25,000	N	I	06-04-92	Indef.
ST92-4701	Southern Natural Gas Co	Direct Gas Supply	07-02-92	G-S	100,000	N	I	06-03-92	Indef.
ST92-4702	Transwestern Pipeline Co	Pacific Gas & Electric Co	07-02-92	B	100,000	N	I	06-07-92	Indef.
ST92-4703	Florida Gas Transmission Co	Shoreham Pipeline Co	07-02-92	G-S	2,000	N	I	06-01-92	Indef.
ST92-4704	KN Energy, Inc	Northern Gas Co	07-06-92	G-S	11,000	Y	I	06-17-92	Indef.
ST92-4705	Delhi Gas Pipeline Corp	Black Marlin Pipeline Co	07-06-92	C	250,000	N	I	06-09-92	Indef.
ST92-4706	Gas Co. of New Mexico	Marathon Oil Co	07-06-92	G-HT	11,997	N	I	06-03-92	02-28-93
ST92-4707	Trunkline Gas Co	Stellar Gas Co	07-06-92	G-S	50,000	N	I	06-18-92	Indef.
ST92-4708	Transok, Inc	Williams Natural Gas Co	07-06-92	C	10,000	N	I	06-02-92	Indef.
ST92-4709	Northern Natural Gas Co	Panda Resources, Inc	07-06-92	G-S	500,000	N	F/I	06-05-92	Indef.
ST92-4710	Williams Natural Gas Co	Vulcan Chemicals	07-06-92	G-S	13,000	N	I	06-01-92	Indef.
ST92-4711	Williams Natural Gas Co	Midcoast Ventures I	07-06-92	G-S	5,000	N	I	06-03-92	Indef.
ST92-4712	Gas Gathering Corp	Nasser Oil & Gas, Inc	07-06-92	G-S	500	N	I	07-01-92	Indef.
ST92-4713	Gas Gathering Corp	Graham Royalty, Ltd.	07-06-92	G-S	1,000	N	I	07-01-92	Indef.
ST92-4714	Transcontinental Gas P/L Corp.	Consolidated Edison Co. of NY, Inc.	07-06-92	B	500,000	N	F/I	06-08-92	Indef.
ST92-4715	Louisiana Resources P/L Co., LP.	Vesta Energy Co	07-06-92	C	60,000	N	I	07-01-92	Indef.
ST92-4716	Consumers Power Co	General Motors Corp	07-07-92	G-HT	1,500	N	I	06-15-92	Indef.
ST92-4717	Michigan Gas Storage Co	General Motors Corp	07-07-92	B	1,500	Y	I	06-15-92	Indef.
ST92-4718	Gateway Pipeline Co	Laser Marketing Co	07-07-92	G-S	100,000	Y	I	06-19-92	10-17-92
ST92-4719	United Gas Pipe Line Co	Texaco Gas Marketing Inc	07-07-92	G-S	366,800	N	I	06-24-92	10-22-92
ST92-4720	United Gas Pipe Line Co	Enron Gas Marketing, Inc	07-07-92	G-S	33,500	N	F	06-23-92	10-21-92
ST92-4721	United Gas Pipe Line Co	Coastal Gas Marketing Co	07-07-92	G-S	262,000	N	I	06-23-92	10-21-92
ST92-4722	United Gas Pipe Line Co	Shell Gas Trading Co	07-07-92	G-S	10,000	N	F	06-23-92	10-17-92
ST92-4723	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	07-07-92	G-S	209,600	N	I	06-24-92	10-22-92
ST92-4724	United Gas Pipe Line Co	Mobil Natural Gas Inc	07-07-92	G-S	52,400	N	I	06-23-92	10-21-92
ST92-4725	United Gas Pipe Line Co	Union Oil Co. of California	07-07-92	G-S	26,200	N	I	06-19-92	10-17-92
ST92-4726	United Gas Pipe Line Co	Delhi Gas Pipeline Corp	07-07-92	G-S	104,800	N	I	06-25-92	10-23-92
ST92-4727	United Gas Pipe Line Co	Enron Gas Marketing, Inc	07-07-92	G-S	524,000	N	I	06-23-92	10-21-92
ST92-4729	Natural Gas P/L Co. of America.	Minnegasco	07-07-92	G-S	200,000	N	F	05-01-92	04-30-07
ST92-4730	Kern River Gas Transmission Co.	Tosco Corp	07-07-92	G-S	60,000	N	I	06-11-92	Indef.
ST92-4731	Kern River Gas Transmission Co.	Neste Oy	07-07-92	G-S	20,000	N	I	06-12-92	Indef.
ST92-4732	ANR Pipeline Co	Sante Fe International Corp	07-07-92	G-S	50,000	N	I	06-17-92	Indef.
ST92-4733	ANR Pipeline Co	CNG Trading Co	07-07-92	G-S	10,000	N	I	06-10-92	Indef.
ST92-4734	ANR Pipeline Co	Mobil Natural Gas, Inc	07-07-92	G-S	100,000	N	I	06-18-92	Indef.
ST92-4735	Northern Natural Gas Co	Eastex Hydrocarbons, Inc	07-07-92	G-S	100,000	N	F/I	06-08-92	Indef.
ST92-4736	Kern River Gas Transmission Co.	Natural Gas P/L Co. of America.	07-08-92	G-S	250,000	N	I	06-13-92	Indef.
ST92-4737	Kern River Gas Transmission Co.	Oregon Natural Gas Develop. Corp.	07-08-92	G-S	100,000	N	I	06-10-92	Indef.
ST92-4738	Webb/Duval Gatherers	Texas Eastern Transmission Co.	07-09-92	C	5,000	N	I	04-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4739	Westar Transmission Co	Natural Gas P/L Co. of America.	07-09-92	C	42,000	N	I	01-01-92	Indef.
ST92-4740	Columbia Gas Transmission Corp.	Van Dyne Crotty, Inc	07-09-92	G-S	420	Y	I	06-10-92	Indef.
ST92-4741	Columbia Gas Transmission Corp.	Gulf Ohio Corp	07-09-92	G-S	78	Y	F	07-01-92	Indef.
ST92-4742	Viking Gas Transmission Co	Northern Minnesota Utilities	07-09-92	G-S	4,028	N	I	06-19-92	Indef.
ST92-4743	Kern River Gas Transmission Co.	Norcen Marketing Inc	07-09-92	G-S	30,000	N	I	06-13-92	Indef.
ST92-4744	Kern River Gas Transmission Co.	North Canadian Marketing Corp.	07-09-92	G-S	200,000	N	I	06-12-92	Indef.
ST92-4745	Kern River Gas Transmission Co.	Continental Energy Marketing Ltd.	07-09-92	G-S	100,000	N	I	06-14-92	Indef.
ST92-4746	Kern River Gas Transmission Co.	Citizens Gas Supply Corp	07-09-92	G-S	572	N	I	06-12-92	Indef.
ST92-4747	Kern River Gas Transmission Co.	Texas-Ohio Gas, Inc	07-09-92	G-S	27,300	N	I	06-12-92	Indef.
ST92-4748	Tennessee Gas Pipeline Co	Diamond Shamrock Offshore Part. L.P.	07-10-92	G-S	107,000	N	I	06-27-92	Indef.
ST92-4749	Kern River Gas Transmission Co.	Reliance Gas Marketing Co	07-10-92	G-S	50,000	N	I	06-13-92	Indef.
ST92-4750	Trunkline Gas Co	Tenaska Marketing Ventures	07-10-92	G-S	100,000	N	I	06-30-92	Indef.
ST92-4751	Trunkline Gas Co	Stellar Gas Co	07-10-92	G-S	50,000	N	I	06-30-92	Indef.
ST92-4752	United Gas Pipe Line Co	Equitable Resources Marketing Co.	07-10-92	G-S	262,000	N	I	06-26-92	10-24-92
ST92-4753	United Gas Pipe Line Co	Associated Intrastate Pipeline Co.	07-10-92	G-S	209,600	N	I	07-01-92	10-29-92
ST92-4754	United Gas Pipe Line Co	Aquila Energy Marketing Corp	07-10-92	G-S	52,400	N	I	07-01-92	10-29-92
ST92-4755	United Gas Pipe Line Co	Shell Gas Trading Co	07-10-92	G-S	209,600	N	I	06-29-92	10-27-92
ST92-4756	United Gas Pipe Line Co	Shell Gas Trading Co	07-10-92	G-S	10,480	N	I	06-29-92	10-27-92
ST92-4757	El Paso Natural Gas Co	Texaco Gas Marketing Inc	07-13-92	G-S	51,500	N	I	07-01-92	Indef.
ST92-4758	El Paso Natural Gas Co	Enogex Services Corp	07-13-92	G-S	50,000	N	I	06-17-92	Indef.
ST92-4759	El Paso Natural Gas Co	Northern Natural Gas Co	07-13-92	G	257,500	N	I	06-28-92	Indef.
ST92-4760	El Paso Natural Gas Co	Tenngasco Marketing Corp	07-13-92	G-S	41,200	N	I	07-01-92	Indef.
ST92-4761	El Paso Natural Gas Co	KN Gas Marketing, Inc	07-13-92	G-S	51,500	N	I	06-19-92	Indef.
ST92-4762	El Paso Natural Gas Co	NGC Transportation, Inc	07-13-92	G-S	309,000	N	I	06-13-92	Indef.
ST92-4763	El Paso Natural Gas Co	Bridgegas USA Inc	07-13-92	G-S	206,000	N	I	06-18-92	Indef.
ST92-4764	El Paso Natural Gas Co	Coastal Gas Marketing Co	07-13-92	G-S	150,000	N	I	06-18-92	Indef.
ST92-4765	CNG Transmission Corp	NGC Transportation, Inc	07-13-92	G-S	170,000	N	I	06-12-92	Indef.
ST92-4766	CNG Transmission Corp	Eastern American Energy	07-13-92	G-S	13,000	N	I	06-15-92	Indef.
ST92-4767	Kern River Gas Transmission Co.	Winward Energy Marketing Co	07-13-92	G-S	75,000	N	I	06-14-92	Indef.
ST92-4768	Kern River Gas Transmission Co.	Pacificorp	07-13-92	G-S	60,000	N	I	06-12-92	Indef.
ST92-4769	Kern River Gas Transmission Co.	Coastal Gas Marketing Co	07-13-92	G-S	100,000	N	I	06-12-92	Indef.
ST92-4770	Questar Pipeline Co	Coastal Gas Marketing Co	07-13-92	G-S	50,000	N	I	07-01-92	06-30-92
ST92-4771	Questar Pipeline Co	Enron Gas Marketing, Inc	07-13-92	G-S	100,000	N	I	07-07-92	09-30-92
ST92-4772	Louisiana Resources P/L Co., LP.	Sea Robin Pipeline Co	07-13-92	C	20,000	N	I	07-01-92	Indef.
ST92-4773	Enogex Inc	Arkla Energy Resources	07-13-92	C	75,000	N	I	07-01-92	Indef.
ST92-4774	Enogex Inc	ANR Pipeline Co	07-13-92	C	20,000	N	I	06-01-92	Indef.
ST92-4775	Tennessee Gas Pipeline Co	Channel Industries Gas Co	07-13-92	B	2,000,000	A	I	04-01-92	Indef.
ST92-4776	Tennessee Gas Pipeline Co	Tenngasco Corp	07-13-92	G-S	3,000,000	A	I	07-03-92	Indef.
ST92-4777	Tennessee Gas Pipeline Co	Chevron USA, Inc	07-13-92	G-S	1,000,000	A	I	07-01-92	Indef.
ST92-4778	Tennessee Gas Pipeline Co	Tenngasco Corp	07-13-92	G-S	2,000,000	A	I	03-03-92	Indef.
ST92-4779	Natural Gas P/L Co. of America.	Peoples Gas Light & Coke Co	07-13-92	G-S	102,600	N	F	12-01-90	11-30-95
ST92-4780	Natural Gas P/L Co. of America.	Western Gas Marketing, Inc	07-13-92	G-S	200,000	N	I	07-01-92	Indef.
ST92-4781	Lone Star Gas Co	Natural Gas P/L Co. of America.	07-14-92	C	10,000	N	I	07-01-92	Indef.
ST92-4782	Kern River Gas Transmission Co.	Tenngasco Marketing Corp	07-14-92	G-S	100,000	A	I	06-14-92	Indef.
ST92-4783	Tennessee Gas Pipeline Co	WES CANA Energy Marketing (U.S.).	07-14-92	G-S	1,500	N	I	07-02-92	04-01-92
ST92-4784	Tennessee Gas Pipeline Co	Union Pacific Resources Co	07-14-92	G-S	150,000	N	I	07-01-92	Indef.
ST92-4785	Tennessee Gas Pipeline Co	Citizens Gas Supply Corp	07-14-92	G-S	3,200,000	N	I	07-02-92	Indef.
ST92-4786	Tennessee Gas Pipeline Co	Philadelphia Electric Co	07-14-92	B	60,000	N	I	01-01-92	Indef.
ST92-4787	Texas Eastern Transmission Corp.	International Paper Co	07-14-92	G-S	400,000	N	I	06-25-92	Indef.
ST92-4788	Inland Gas Co., Inc	Ashland Hide Co	07-14-92	G-S	400	N	I	03-01-92	Indef.
ST92-4789	Tennessee Gas Pipeline Co	Enron Gas Marketing Inc	07-15-92	G-S	703,297	N	I	07-01-92	Indef.
ST92-4790	Kern River Gas Transmission Co.	Trinity Pipeline, Inc	07-15-92	G-S	39,900	N	I	06-15-92	Indef.
ST92-4791	Kern River Gas Transmission Co.	North American Resources Co	07-15-92	G-S	20,000	N	I	06-15-92	Indef.
ST92-4792	Transwestern Pipeline Co	Oasis Pipeline Co	07-15-92	B	100,000	A	I	06-12-92	Indef.
ST92-4793	Transwestern Pipeline Co	Santa Fe Energy Resources, Inc.	07-15-92	B	20,000	N	I	06-15-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4794	Columbia Gas Transmission Corp.	Columbia Gas Development Corp.	07-15-92	G-S	40	A	F	07-01-92	Indef.
ST92-4795	Columbia Gas Transmission Corp.	Transatlantic Gas Marketing Co.	07-15-92	G-S	40	N	I	07-10-92	Indef.
ST92-4796	Columbia Gas Transmission Corp.	OGLS Operations, Inc	07-15-92	G-S	2,499	N	I	07-10-92	Indef.
ST92-4797	Transcontinental Gas P/L Corp.	Long Island Lighting Co	07-15-92	B	60,000	N	I	11-21-89	Indef.
ST92-4798	Kern River Gas Transmission Co.	Amoco Energy Trading Corp	07-16-92	G-S	50,000	N	F	06-16-92	Indef.
ST92-4799	Kern River Gas Transmission Co.	CNG Producing Co	07-16-92	G-S	50,000	N	I	06-15-92	Indef.
ST92-4800	Tennessee Gas Pipeline Co	Providence Gas Co	07-16-92	B	60,000	N	I	07-01-92	Indef.
ST92-4801	Valero Transmission, L.P	El Paso Natural Gas Co	07-16-92	C	10,152	N	I	06-19-92	Indef.
ST92-4802	Valero Transmission, L.P	Natural Gas P/L Co. of America.	07-16-92	C	7,500	N	I	07-01-92	Indef.
ST92-4803	Algonquin Gas Transmission Co.	Endevco Oil and Gas Co	07-16-92	G-S	50,000	N	I	06-30-92	Indef.
ST92-4804	United Gas Pipe Line Co	NGC Transportation, Inc	07-16-92	G-S	157,200	N	I	07-09-92	11-06-92
ST92-4805	United Gas Pipe Line Co	MerCo Oil & Gas, Inc	07-16-92	G-S	50,000	N	I	07-07-92	11-04-92
ST92-4806	United Gas Pipe Line Co	O&R Energy, Inc	07-16-92	G-S	50,000	N	I	07-07-92	11-04-92
ST92-4807	United Gas Pipe Line Co	Marathon Oil Co	07-16-92	G-S	154,232	N	I	07-06-92	11-03-92
ST92-4808	United Gas Pipe Line Co	Shell Gas Trading Co	07-16-92	G-S	209,600	N	I	07-07-92	11-04-92
ST92-4809	United Gas Pipe Line Co	Shell Gas Trading Co	07-16-92	G-S	10,480	N	I	07-07-92	11-04-92
ST92-4810	Columbia Gulf Transmission Co.	GGR Energy	07-16-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4811	Columbia Gulf Transmission Co.	NGC Transportation, Inc	07-16-92	G-S	200,000	N	I	06-25-92	Indef.
ST92-4812	Columbia Gulf Transmission Co.	Superior Natural Gas Corp	07-16-92	G-S	60,000	N	I	07-01-92	Indef.
ST92-4813	Columbia Gulf Transmission Co.	Transco Energy Marketing Co	07-16-92	G-S	10,000	N	I	06-18-92	Indef.
ST92-4814	Superior Offshore Pipeline Co	Washington Gas Light Co	07-17-92	B	5,000	N	I	02-01-91	Indef.
ST92-4815	Williston Basin Inter. P/L Co	Coastal Gas Marketing Co	07-17-92	G-S	117,200	Y	I	06-19-91	06-18-94
ST92-4816	Oasis Pipe Line Co	El Paso Natural Gas Co	07-17-92	C	150,000	N	I	01-25-91	Indef.
ST92-4817	Oasis Pipe Line Co	El Paso Natural Gas Co	07-17-92	C	30,000	N	I	11-20-91	Indef.
ST92-4818	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co	07-17-92	C	1,550	N	I	07-13-92	Indef.
ST92-4819	Gulf Energy Pipeline Co	Trunkline Gas Co	07-17-92	C	1,550	N	I	06-01-92	Indef.
ST92-4820	Kern River Gas Transmission Co.	Questar Pipeline Co	07-17-92	G-S	500,000	N	I	06-19-92	Indef.
ST92-4822	Arkla Resources	Clinton Gas Transmission Inc	07-17-92	G-S	722	N	F	05-01-92	Indef.
ST92-4823	Arkla Energy Resources	Arkla Energy Marketing Co	07-17-92	G-S	20,000	A	F	06-01-91	Indef.
ST92-4824	Panhandle Eastern Pipe Line Co.	Union Gas Limited	07-17-92	G-S	20,000	N	F	11-01-91	Indef.
ST92-4825	Panhandle Eastern Pipe Line Co.	Missouri Public Service	07-17-92	G-S	5,018	N	F	05-29-92	Indef.
ST92-4826	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc	07-17-92	G-S	100,000	N	I	05-24-92	Indef.
ST92-4827	Colorado Interstate Gas Co	Montana Power Co	07-17-92	B	15,000	N	I	06-26-92	Indef.
ST92-4828	Colorado Interstate Gas Co	Amoco Energy Trading Corp	07-17-92	G-S	150	N	I	06-01-92	Indef.
ST92-4829	Colorado Interstate Gas Co	Texaco Gas Marketing, Inc	07-17-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4830	Colorado Interstate Gas Co	Access Energy Corp	07-17-92	G-S	20,000	N	I	06-06-92	Indef.
ST92-4831	Northern Natural Gas Co	Minnegasco, Inc	07-17-92	B	200,000	N	F/I	06-13-92	Indef.
ST92-4832	Northern Natural Gas Co	Helmerich & Payne Energy Service.	07-17-92	G-S	10,000	N	F	07-01-92	Indef.
ST92-4833	Transwestern Pipeline Co	Santa Fe Energy Resources, Inc.	07-17-92	G-S	20,000	N	I	06-18-92	Indef.
ST92-4834	Transwestern Pipeline Co	Tenaska Marketing Ventures	07-17-92	G-S	100,000	N	I	06-05-92	Indef.
ST92-4835	Transwestern Pipeline Co	Grand Valley Gas Co	07-17-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4836	Transwestern Pipeline Co	KN Gas Marketing, Inc	07-17-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4837	Transwestern Pipeline Co	Exogex Services Corp	07-17-92	G-S	50,000	N	I	06-18-92	Indef.
ST92-4838	Transwestern Pipeline Co	Gas Energy Development Co	07-17-92	G-S	30,000	N	I	07-01-92	Indef.
ST92-4839	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co	07-17-92	B	900,000	N	I	06-19-92	Indef.
ST92-4840	Natural Gas P/L Co. of America.	Conoco, Inc	07-17-92	G-S	5,000	N	I	03-21-92	Indef.
ST92-4841	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc	07-17-92	G-S	50,000	N	I	06-03-92	Indef.
ST92-4842	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc	07-17-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4843	Superior Offshore Pipeline Co	Tenngasco Corp	07-20-92	G-S	50,000	N	I	04-01-92	Indef.
ST92-4844	Northern Gas Co	Williston Basin Inter. P/L Co	07-20-92	G-HT	4,000	N	I	06-17-92	03-31-96
ST92-4845	Northern Gas Co	Williston Basin Inter. P/L Co	07-20-92	G-HT	11,000	N	I	06-17-92	Indef.
ST92-4846	Kern River Gas Transmission Co.	Kogas, Inc	07-20-92	G-S	200,000	N	I	06-25-92	Indef.
ST92-4847	Williston Basin Inter. P/L Co	Conoco, Inc.	07-20-92	G-S	15,993	N	I	06-21-92	05-31-94
ST92-4848	Colorado Intrstate Gas Co	Kiowa Gas Co	07-20-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4849	Colorado Intrstate Gas Co	Gasco, Inc	07-20-92	G-S	1,250	N	I	06-01-92	Indef.
ST92-4850	Colorado Intrstate Gas Co	Williams Gas Marketing Co	07-20-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4851	Sabine Pipe Line Co	Arco Oil and Gas Co	07-20-92	G-S	100,000	N	I	06-01-92	Indef.

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ST92-4852	Sabine Pipe Line Co	Aquila Energy Marketing Corp	07-20-92	G-S	250,000	N	I	06-10-92	Indef.
ST92-4853	Sabine Pipe Line Co	Cedar Energies, Inc	07-20-92	G-S	25,000	N	I	05-28-92	Indef.
ST92-4854	Northern Natural Gas Co	Tenaksa Marketing Ventures	07-20-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4855	Northern Natural Gas Co	Mobil Natural Gas Inc	07-20-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4856	Northern Natural Gas Co	Enron Gas Processing Co	07-20-92	G-S	20,000	Y	F/I	07-01-92	Indef.
ST92-4857	Northern Natural Gas Co	Centran Corp	07-20-92	G-S	1,150,000	N	F/I	07-03-92	Indef.
ST92-4858	Northern Natural Gas Co	New Ulm Public Utilit./Power Plant.	07-20-92	G-S	10,000	N	F/I	07-01-92	04-30-93
ST92-4859	Northern Natural Gas Co	Rahr Malting Co	07-20-92	G-S	20,000	N	F/I	07-08-92	Indef.
ST92-4860	Transwestern Pipeline Co	Tristar Gas Co	07-20-92	G-S	20,000	N	I	07-01-92	Indef.
ST92-4861	Transwestern Pipeline Co	Amarillo Natural Gas, Inc	07-20-92	G-S	200	N	I	06-30-92	Indef.
ST92-4862	Transwestern Pipeline Co	Vintage Gas, Inc	07-20-92	G-S	20,000	N	I	07-01-92	Indef.
ST92-4863	Transwestern Pipeline Co	Sioux Pointe, Inc	07-20-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4864	Transwestern Pipeline Co	Kimball Energy Corp	07-20-92	G-S	25,000	N	I	07-01-92	Indef.
ST92-4865	Algonquin Gas Transmission Co.	Polaris Pipeline Co	07-21-92	G-S	160,000	N	I	07-08-92	Indef.
ST92-4866	Algonquin Gas Transmission	Brooklyn Interstate Nat. Gas Corp.	07-21-92	G-S	900,000	N	I	07-12-92	Indef.
ST92-4867	East Texas Gas Systems	Arkla Energy Resources	07-21-92	C	30,000	N	I	02-01-92	Indef.
ST92-4868	ONG Transmission Co	Arkla Energy Resources	07-21-92	C	75,000	N	I	07-01-92	Indef.
ST92-4869	ONG Transmission Co	Arkla Energy Resources	07-21-92	C	20,000	N	I	07-01-92	Indef.
ST92-4870	ONG Transmission Co	Arkla Energy Resources	07-21-92	C	50,000	N	I	07-01-92	Indef.
ST92-4871	ONG Transmission Co	Arkla Energy Resources	07-21-92	C	10,000	N	I	07-01-91	Indef.
ST92-4872	Tennessee Gas Pipeline Co	AGF, Inc	07-21-92	G-S	5,000	N	I	07-01-92	Indef.
ST92-4873	Arkla Energy Resources	Arkla Energy Marketing Co	07-21-92	G-S	1,000	A	I	06-01-92	Indef.
ST92-4874	Arkla Energy Resources	Arkla Louisiana Gas Co	07-21-92	B	30,000	Y	I	03-01-92	Indef.
ST92-4875	Transcontinental Gas P/L Corp.	Tejas Power Corp	07-22-92	G-S	3,665,000	N	I	05-09-90	Indef
ST92-4876	Transcontinental Gas P/L Corp.	Virginia Natural Gas Co	07-22-92	B	170,000	N	I	06-24-92	Indef.
ST92-4877	Texas Eastern Transmission Corp.	Ledco, Inc	07-22-92	G-S	160,000	N	I	06-13-92	Indef.
ST92-4878	Texas Eastern Transmission Corp.	Samedan Oil Corp	07-22-92	G-S	300,000	N	I	07-01-92	Indef.
ST92-4879	Acadian Gas Pipeline System	ANR Pipeline Co	07-22-92	C	40,000	N	I	07-01-92	Indef.
ST92-4880	Tennessee Gas Pipeline Co	Mobil Natural Gas, Inc	07-22-92	G-S	100,000	N	I	06-23-92	Indef.
ST92-4881	United Gas Pipe Line Co	Hadson Gas Systems, Inc	07-22-92	G-S	20,000	N	I	06-23-92	10-21-92
ST92-4882	United Gas Pipe Line Co	Citrus Marketing, Inc	07-22-92	G-S	250,000	N	I	07-01-92	10-29-92
ST92-4883	Texas Gas Transmission Corp	O&R Energy, Inc	07-22-92	G-S	10,000	N	I	07-14-92	Indef.
ST92-4884	Texas Gas Transmission Corp	Total Minatome Corp	07-22-92	G-S	30,000	N	I	07-01-92	Indef.
ST92-4885	Texas Gas Transmission Corp	Coast Energy Group, Inc	07-22-92	G-S	50,000	N	I	07-14-92	Indef.
ST92-4886	Texas Gas Transmission Corp	Reliance Gas Marketing Co	07-22-92	G-S	15,000	N	I	07-01-92	Indef.
ST92-4887	TransAmerican Natural Gas Corp.	Trunkline Gas Co	07-23-92	C	20,000	N	I	03-01-92	Indef.
ST92-4888	TransAmerican Natural Gas Corp.	Truckline Gas Co	07-23-92	C	30,000	N	I	03-04-92	Indef.
ST92-4889	TransAmerican Natural Gas Corp.	Trunkline Gas Co	07-23-92	C	40,000	N	I	03-19-92	Indef.
ST92-4890	TransAmerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	07-23-92	C	15,000	N	I	03-04-92	Indef.
ST92-4891	TransAmerican Natural Gas Corp.	Texas Eastern Transmission Corp.	07-23-92	C	20,000	N	I	03-24-92	Indef.
ST92-4892	Florida Gas Transmission Co	Valero Transmission, L.P	07-23-92	B	500	N	I	07-11-92	Indef.
ST93-4893	ANR Pipeline Co	BP Gas Inc./Briggs & Stratton Corp.	07-23-92	G-S	3,053	N	F	06-01-92	Indef.
ST92-4894	Tennessee Gas Pipeline Co	Kerr McGee Corp	07-23-92	G-S	1,215,000	N	I	07-01-92	Indef.
ST92-4895	Tennessee Gas Pipeline Co	Access Energy Corp	07-23-92	G-S	50,000	N	I	07-02-92	Indef.
ST92-4896	Tennessee Gas Pipeline Co	Kerr McGee Chemical Corp	07-23-92	G-S	6,263	N	F	07-01-92	Indef.
ST92-4897	Tennessee Gas Pipeline Co	Orange & Rockland Utilities, Inc.	07-23-92	B	25,000	N	F	07-01-92	Indef.
ST92-4898	Tennessee Gas Pipeline Co	Niagara Mohawk Power Corp	07-23-92	B	200,000	N	I	07-01-92	Indef.
ST92-4899	Tennessee Gas Pipeline Co	Aquila Energy Marketing Corp	07-23-92	G-S	250,000	N	I	07-01-92	Indef.
ST92-4900	Tennessee Gas Pipeline Co	Central Hudson Gas & Elect. Corp.	07-23-92	B	16,126	N	F	07-01-92	Indef.
ST92-4901	Valero Transmission, L.P	Texas Eastern Transmission Co.	07-23-92	C	11,169	N	I	06-23-92	Indef.
ST92-4902	United Gas Pipe Line Co	Seagul Marketing Services, Inc	07-23-92	G-S	524,000	N	I	07-16-92	11-13-92
ST92-4903	United Gas Pipe Line Co	Union Oil Co. of California	07-23-92	G-S	26,200	N	I	07-16-92	11-13-92
ST92-4904	United Gas Pipe Line Co	Quivira Gas Co	07-23-92	G-S	6,288	N	I	07-10-92	11-07-92
ST92-4905	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	07-23-92	G-S	209,600	N	I	07-16-92	11-13-92
ST92-4906	United Gas Pipe Line Co	Division of Nukem, Inc	07-23-92	G-S	104,800	N	I	07-16-92	11-13-92
ST92-4907	United Gas Pipe Line Co	Aquila Energy Marketing Corp	07-23-92	G-S	52,400	N	I	07-10-92	11-07-92
ST92-4908	United Gas Pipe Line Co	Catex Energy Inc	07-23-92	G-S	52,400	N	I	07-11-92	11-08-92
ST92-4909	United Gas Pipe Line Co	Shell Gas Trading Co	07-23-92	G-S	209,600	N	I	07-13-92	11-10-92
ST92-4910	Panhandle Eastern Pipe Line Co.	Clinton Gas Transmission, Inc	07-23-92	G-S	5,000	N	I	07-01-92	Indef.
ST92-4911	Panhandle Eastern Pipe Line Co.	Aquila Gas Marketing Corp	07-23-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-4912	Panhandle Eastern Pipe Line Co.	Western Gas Marketing Inc	07-23-92	G-S	200,000	N	I	07-01-92	Indef.

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ST92-4913	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co	07-23-92	G-S	30,000	N	I	07-01-92	Indef.
ST92-4914	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp	07-23-92	G-S	150,000	N	I	07-01-92	Indef.
ST92-4915	Panhandle Eastern Pipe Line Co.	Peoria Nursing Center Inc	07-23-92	G-S	50	N	I	07-04-92	Indef.
ST92-4916	Panhandle Eastern Pipe Line Co.	New Mexico Natural Gas, Inc	07-23-92	G-S	100	N	I	07-01-92	Indef.
ST92-4917	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc	07-23-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4918	Panhandle Eastern Pipe Line Co.	Sherex Chemical Co	07-23-92	G-S	4,000	N	I	07-01-92	Indef.
ST92-4919	Valero Transmission, L.P	Texas Eastern Gas Pipeline Co.	07-24-92	C	6,500	N	I	06-01-92	Indef.
ST92-4920	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	07-24-92	G-S	31,212	N	F	07-01-92	Indef.
ST92-4921	Tennessee Gas Pipeline Co	City of Lawrenceburg	07-24-92	B	1,020	N	F	07-01-92	Indef.
ST92-4922	Tennessee Gas Pipeline Co	City of Holyoke Gas & Elect. Dept.	07-24-92	B	8,000	N	F	07-01-92	Indef.
ST92-4923	Tennessee Gas Pipeline Co	Energynorth Natural Gas, Inc	07-24-92	B	16,000	N	F	07-01-92	Indef.
ST92-4924	Tennessee Gas Pipeline Co	Hadson Gas Systems, Inc	07-24-92	G-S	200,000	N	I	07-06-92	Indef.
ST92-4925	Tennessee Gas Pipeline Co	Shell Gas Trading Co	07-24-92	G-S	500,000	N	I	07-09-92	Indef.
ST92-4926	Tennessee Gas Pipeline Co	Project Orange Associates, L.P.	07-24-92	G-S	5,000	N	I	07-08-92	Indef.
ST92-4927	Tennessee Gas Pipeline Co	City of Clarksville	07-24-92	G-S	5,900	N	F	07-01-92	Indef.
ST92-4928	Tennessee Gas Pipeline Co	Wes Canada Energy Marketing Inc.	07-24-92	G-S	1,500	N	F	07-02-92	Indef.
ST92-4929	Tennessee Gas Pipeline Co	Georgia-Pacific Corp	07-24-92	G-S	2,000	N	I	07-10-92	Indef.
ST92-4930	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	07-24-92	B	200,000	N	F	07-01-92	Indef.
ST92-4931	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	07-24-92	B	37,632	N	F	07-01-92	Indef.
ST92-4932	Tennessee Gas Pipeline Co	UGI Utilities, Inc	07-24-92	B	30,000	N	F	07-01-92	Indef.
ST92-4933	Tennessee Gas Pipeline Co	East Ohio Co	07-24-92	B	115,000	N	F	07-01-92	Indef.
ST92-4934	Tennessee Gas Pipeline Co	Long Island Light Co	07-24-92	B	5,202	N	F	07-01-92	Indef.
ST92-4935	Tennessee Gas Pipeline Co	Orange & Rockland Utilities, Inc.	07-24-92	B	31,356	N	F	07-01-92	Indef.
ST92-4936	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	07-24-92	B	32,652	N	F	07-01-92	Indef.
ST92-4937	Tennessee Gas Pipeline Co	Access Energy Corp	07-24-92	G-S	70,000	N	I	07-15-92	Indef.
ST92-4938	Tennessee Gas Pipeline Co	Eastman Chemical Co	07-24-92	G-S	9,836	N	F	07-01-92	Indef.
ST92-4939	Tennessee Gas Pipeline Co	United Cities Gas Co	07-24-92	G-S	64,586	N	F	07-01-92	Indef.
ST92-4940	Tennessee Gas Pipeline Co	AFG Industries, Inc	07-24-92	G-S	7,480	N	F	07-01-92	Indef.
ST92-4941	Tennessee Gas Pipeline Co	Yankee Gas Services Co	07-24-92	B	58,838	N	F	07-01-92	Indef.
ST92-4942	Tennessee Gas Pipeline Co	Rochester Gas & Electric Corp	07-24-92	B	30,725	N	F	07-01-92	Indef.
ST92-4943	Tennessee Gas Pipeline Co	Peoples Natural Gas Co	07-24-92	G-S	30,726	N	F	07-01-92	Indef.
ST92-4944	Tennessee Gas Pipeline Co	Boston Gas Co	07-24-92	B	94,000	N	F	07-01-92	Indef.
ST92-4945	Tennessee Gas Pipeline Co	Commonwealth Gas Co	07-24-92	G-S	12,000	N	F	07-01-92	Indef.
ST92-4946	Tennessee Gas Pipeline Co	Valley Gas Co	07-24-92	B	20,000	N	F	07-01-92	Indef.
ST92-4947	Tennessee Gas Pipeline Co	Quivira Gas Co	07-24-92	G-S	200,000	N	I	07-14-92	Indef.
ST92-4948	Kern River Gas Transmission Co.	Saguaro Power Co	07-24-92	G-S	30,000	N	I	06-25-92	Indef.
ST92-4949	Arkla Energy Resources	Energy Consultants Inc	07-24-92	G-S	1,200	N	F	05-01-92	Indef.
ST92-4950	Panhandle Eastern Pipe Line Co.	Citizens Gas Fuel Co	07-24-92	G-S	1,919	N	F	05-01-92	Indef.
ST92-4951	Panhandle Eastern Pipe Line Co.	Citizens Gas Fuel Co	07-24-92	G-S	4,188	N	F	05-01-92	Indef.
ST92-4952	Natural Gas P/L Co. of America.	Equitable Resources Marketing Co.	07-24-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-4953	Natural Gas P/L Co. of America.	Enserch Gas Co	07-24-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4954	Natural Gas P/L Co. of America.	Tejas Power Co	07-24-92	G-S	100,000	N	I	07-08-92	Indef.
ST92-4955	Natural Gas P/L Co. of America.	Philbro Energy, Inc	07-24-92	G-S	300,000	N	I	06-01-92	Indef.
ST92-4956	Natural Gas P/L Co. of America.	Amerada Hess Corp	07-24-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-4957	Natural Gas P/L Co. of America.	Gas Energy Development Co	07-24-92	G-S	10,000	N	I	05-03-92	Indef.
ST92-4958	Natural Gas P/L Co. of America.	Oxy USA Inc	07-24-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-4959	Natural Gas P/L Co. of America.	Philbro Energy Inc	07-24-92	G-S	300,000	N	I	06-05-92	Indef.
ST92-4960	Trailblazer Pipeline Co	Helmerich & Payne, Inc	07-24-92	G-S	50,000	N	I	07-14-92	Indef.
ST92-4961	Delhi Gas Pipeline Co	Arkla Energy Resources	07-27-92	C	10,000	N	I	07-01-92	Indef.
ST92-4962	Kern River Gas Transmission Co.	Enogex Services Corp	07-27-92	G-S	50,000	N	I	06-27-92	06-28-92
ST92-4963	East Tennessee Natural Gas Co.	Aluminum Co. of America	07-27-92	G-S	18,000	N	F	07-01-92	Indef.
ST92-4964	East Tennessee Natural Gas Co.	City of Lawrenceburg	07-27-92	G-S	1,000	N	F	07-01-92	Indef.
ST92-4965	East Tennessee Natural Gas Co.	UCAR Carbon Co., Inc	07-27-92	G-S	3,200	N	F	07-01-92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-4966	East Tennessee Natural Gas Co.	AFC Industries, Inc	07-27-92	G-S	7,300	N	F	07-01-92	Indef.
ST92-4967	East Tennessee Natural Gas Co.	Bowater Inc	07-27-92	G-S	2,500	N	F	07-01-92	Indef.
ST92-4968	East Tennessee Natural Gas Co.	Tennessee Eastman Co	07-27-92	G-S	9,600	N	F	07-02-92	Indef.
ST92-4969	East Tennessee Natural Gas Co.	United Cities Gas Co	07-27-92	G-S	63,000	N	F	07-02-92	Indef.
ST92-4970	ANR Pipeline Co	Peoples Natural Gas Co	07-27-92	B	20,000	N	I	07-01-92	Indef.
ST92-4971	ANR Pipeline Co	Hadson Gas Systems, Inc	07-27-92	G-S	100,000	N	I	07-02-92	Indef.
ST92-4972	ANR Pipeline Co	Triumph Gas Marketing Co	07-27-92	G-S	50,000	N	I	07-02-92	Indef.
ST92-4973	ANR Pipeline Co	Michigan Gas Utilities	07-27-92	B	200,000	N	I	07-02-92	Indef.
ST92-4974	ANR Pipeline Co	Wisconsin Gas Co	07-27-92	G-S	12,728	N	F	07-03-92	Indef.
ST92-4975	ANR Pipeline Co	ARCO Natural Gas Marketing, Inc.	07-27-92	G-S	30,000	N	I	07-01-92	Indef.
ST92-4976	ANR Pipeline Co	Coastal Gas Marketing Co	07-27-92	B	25,443	N	I	07-01-92	Indef.
ST92-4977	ANR Pipeline Co	Aluminum Co. of America	07-27-92	G-S	8,673	N	F	07-01-92	Indef.
ST92-4978	Tennessee Gas Pipeline Co	UCAR Carbon Co., Inc	07-27-92	G-S	3,265	N	F	07-01-92	Indef.
ST92-4979	Tennessee Gas Pipeline Co	Centran Corp	07-27-92	G-S	250,000	N	I	07-01-92	Indef.
ST92-4980	Tennessee Gas Pipeline Co	MG Natural Gas Corp	07-27-92	G-S	160,000	N	I	07-01-92	Indef.
ST92-4981	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	07-27-92	G-S	51,300	N	I	07-01-92	Indef.
ST92-4982	Tennessee Gas Pipeline Co	Chevron U.S.A., Inc	07-27-92	G-S	450,000	N	I	07-01-92	Indef.
ST92-4983	Tennessee Gas Pipeline Co	Premier Gas Co	07-27-92	G-S	1,000	N	I	07-02-92	Indef.
ST92-4984	Tennessee Gas Pipeline Co	KCS Energy Marketing, Inc	07-27-92	G-S	200,000	N	I	07-03-92	Indef.
ST92-4985	Tennessee Gas Pipeline Co	Conoco, Inc	07-27-92	G-S	6,000	N	F	07-01-92	Indef.
ST92-4986	Exxon Gas System, Inc	Moss Bluff Gas Storage Systems.	07-27-92	C	39,000	N	I	07-07-92	Indef.
ST92-4987	Sonat Intrastate-Alabama Inc	Tennessee Gas Pipeline Co	07-27-92	C	1,000	N	I	02-12-92	Indef.
ST92-4988	K N Energy, Inc	Signals Fuels Trading Corp	07-27-92	G-S	15,000	N	I	07-13-92	Indef.
ST92-4989	Gas Co. of New Mexico	El Paso Natural Gas Co	07-27-92	G-HT	1,000	N	I	06-01-92	05-31-93
ST92-4990	Gas Co. of New Mexico	El Paso Natural Gas Co	07-27-92	G-HT	10,000	N	I	06-01-92	06-17-94
ST92-4991	Natural Gas P/L Co. of America.	Utrade Gas Co	07-27-92	G-S	50,000	A	I	06-01-92	06-30-92
ST92-4992	Natural Gas P/L Co. of America.	Access Energy Corp	07-27-92	G-S	5,000	N	F	06-01-92	07-31-92
ST92-4993	Transwestern Pipeline Co	Williams Oil Co	07-27-92	G-S	200	N	I	07-01-92	Indef.
ST92-4994	Colorado Interstate Gas Co	North Central Oil Corp	07-27-92	G-S	25,000	N	I	07-13-92	02-01-96
ST92-4995	Colorado Interstate Gas Co	Union Pacific Resources Co	07-27-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-4996	Colorado Interstate Gas Co	Western Natural Gas & Trans. Corp.	07-27-92	G-S	4,900	N	I	07-09-92	Indef.
ST92-4997	Colorado Interstate Gas Co	Helmerich & Payne Energy Services.	07-27-92	G-S	50,000	N	I	07-14-92	Indef.
ST92-4998	Colorado Interstate Gas Co	Bridgegas U.S.A., Inc	07-27-92	G-S	25,000	N	I	07-17-92	Indef.
ST92-4999	Pacific Gas Transmission Co	Coastal Gas Marketing Co	07-27-92	G-S	101,500	N	I	07-01-92	Indef.
ST92-5000	Pacific Gas Transmission Co	Pan-Alberta Gas U.S., Inc	07-27-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-5001	Pacific Gas Transmission Co	Direct Energy Marketing Ltd	07-27-92	G-S	100,201	N	I	07-11-92	Indef.
ST92-5002	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	07-28-92	C	9,000	N	I	07-01-92	Indef.
ST92-5003	Delhi Gas Pipeline Corp	Arkla Energy Resources	07-28-92	C	15,000	N	I	07-01-92	Indef.
ST92-5004	Delhi Gas Pipeline Corp	Arkla Energy Resources	07-28-92	C	13,000	N	I	07-01-92	Indef.
ST92-5005	Delhi Gas Pipeline Corp	Northern Natural Gas Co	07-28-92	C	13,000	N	I	07-03-92	Indef.
ST92-5006	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	07-28-92	C	13,000	N	I	07-01-92	Indef.
ST92-5007	Delhi Gas Pipeline Corp	Arkla Energy Resources	07-28-92	C	28,000	N	I	07-01-92	Indef.
ST92-5008	Tennessee Gas Pipeline Co	Mobil Natural Gas, Inc	07-28-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-5009	Tennessee Gas Pipeline Co	Niagara Mohawk Power Corp	07-28-92	B	236,042	N	I	07-01-92	Indef.
ST92-5010	Tennessee Gas Pipeline Co	CNG Trading Co	07-28-92	G-S	650,042	N	I	07-01-92	Indef.
ST92-5011	Tennessee Gas Pipeline Co	Tenngasco Corp	07-28-92	G-S	20,000	A	F	07-01-92	Indef.
ST92-5012	Tennessee Gas Pipeline Co	Bowater Inc	07-28-92	G-S	2,551	N	F	07-01-92	Indef.
ST92-5013	Tennessee Gas Pipeline Co	American Central Gas Marketing Co.	07-28-92	G-S	200,000	N	I	07-01-92	Indef.
ST92-5014	Tennessee Gas Pipeline Co	Maxus Exploration Co	07-28-92	G-S	110,000	N	I	07-27-92	Indef.
ST92-5015	Tennessee Gas Pipeline Co	Entrade Corp	07-28-92	G-S	500,000	N	I	07-01-92	Indef.
ST92-5016	Tennessee Gas Pipeline Co	Brooklyn Union Gas Co	07-28-92	B	20,808	N	F	07-01-92	Indef.
ST92-5017	Channel Industries Gas Co	Natural Gas P/L Co. of America.	07-28-92	C	25,000	N	I	07-16-92	Indef.
ST92-5018	Gasdel Pipeline System Inc	Aquila Energy Marketing Corp	07-28-92	G-S	4,800	N	I	07-01-92	Indef.
ST92-5019	Northwest Pipeline Corp	Biomass One L.P	07-28-92	G-S	5,500	N	I	06-23-92	Indef.
ST92-5020	Algonquin Gas Transmission Co.	O & R Energy, Inc	07-28-92	G-S	100,000	N	I	07-18-92	Indef.
ST92-5021	Columbia Gas Transmission Corp.	Armco Advanced Materials Co	07-28-92	G-S	6,000	N	I	07-01-92	Indef.
ST92-5022	Columbia Gas Transmission Corp.	Miami Valley Resources, Inc	07-28-92	G-S	40,000	Y	I	07-01-92	Indef.
ST92-5023	Columbia Gas Transmission Corp.	Access Energy Corp	07-28-92	G-S	270	Y	F	07-01-92	05-31-93
ST92-5024	Northern Natural Gas Co	Texaco Gas Marketing, Inc	07-28-92	G-S	20,000	N	F/I	07-01-92	Indef.
ST92-5025	Northern Natural Gas Co	Kogas, Inc	07-28-92	G-S	100,000	N	F/I	06-25-92	Indef.
ST92-5026	Northern Natural Gas Co	Mobil Natural Gas, Inc	07-28-92	G-S	100,000	N	F/I	07-01-92	Indef.
ST92-5027	Northern Natural Gas Co	Enron Oil & Gas Co	07-28-92	G-S	50,000	Y	F/I	07-08-92	Indef.
ST92-5028	Northern Natural Gas Co	Western Gas Marketing	07-28-92	G-S	20,000	N	F/I	07-01-92	03-31-93

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate schedule	Date commenced	Projected termination date
ST92-5029	Northern Natural Gas Co	Tenaska Marketing Ventures	07-28-92	G-S	250,000	N	F/I	07-01-92	Indef.
ST92-5030	Northern Natural Gas Co	Santa Fe Minerals, Inc	07-28-92	G-S	100,000	N	F/I	07-04-92	Indef.
ST92-5031	Northern Natural Gas Co	Howard Energy Co., Inc	07-28-92	G-S	1,00 0	N	F/I	06-01-92	Indef.
ST92-5032	Northern Natural Gas Co	Iowa Electric Light & Power Co.	07-28-92	B	15,625	N	F/I	07-17-92	05-31-97
ST92-5033	Northern Natural Gas Co	Eastex Hydrocarbons, Inc	07-28-92	G-S	50,000	N	F/I	07-01-92	Indef.
ST92-5034	Northern Natural Gas Co	Transok Gas Co	07-28-92	G-S	21,740	N	F/I	07-01-92	03-31-93
ST92-5035	Northern Natural Gas Co	Northwestern Public Service Co.	07-28-92	B	100,000	N	F/I	07-01-92	Indef.
ST92-5036	Northern Natural Gas Co	Iowa Electric Light & Power Co.	07-28-92	B	50,000	N	F/I	07-19-92	07-19-93
ST92-5037	Arkla Energy Resources	Premier Gas Co	07-28-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-5038	Arkla Energy Resources	Eastex Hydrocarbons, Inc	07-28-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-5039	Tennessee Gas Pipeline Co	CNG Transmission Corp	07-29-92	G	531	N	F	07-01-92	Indef.
ST92-5040	Tennessee Gas Pipeline Co	North Penn Gas Co	07-29-92	B	1,075	N	F	07-01-92	Indef.
ST92-5041	Tennessee Gas Pipeline Co	Peoples Natural Gas Co	07-29-92	G-S	50,000	N	I	07-01-92	Indef.
ST92-5042	Tennessee Gas Pipeline Co	Public Service Electric and Gas Co.	07-29-92	B	36,414	N	I	07-04-92	Indef.
ST92-5043	Transok, Inc	Arkla Energy Resources	07-29-92	C	50,000	N	I	07-02-92	Indef.
ST92-5044	Transcontinental Gas P/L Corp.	American Central Gas Cos., Inc.	07-28-92	G-S	2,730,000	N	I	07-01-92	Indef.
ST92-5045	Transcontinental Gas P/L Corp.	United Texas Transmission Co	07-28-92	B	100,000	N	I	07-01-92	Indef.
ST92-5046	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co	07-28-92	B	240,000	N	I	07-01-92	Indef.
ST92-5047	Viking Gas Transmission Co	City of Perham	07-30-92	B	50,000	N	I	07-09-92	Indef.
ST92-5048	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	07-30-92	G-S	23,000	N	F	07-01-92	Indef.
ST92-5049	Tennessee Gas Pipeline Co	Transco Energy Marketing Co	07-30-92	G-S	225,000	N	I	07-01-92	Indef.
ST92-5050	Tennessee Gas Pipeline Co	Allied Signal Inc	07-30-92	G-S	25,000	N	F	07-01-92	Indef.
ST92-5051	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	07-30-92	B	15,000	N	F	07-01-92	Indef.
ST92-5052	Tennessee Gas Pipeline Co	Middle Tennessee Nat. Gas Utility.	07-30-92	G-S	3,061	N	F	07-23-92	Indef.
ST92-5053	Tennessee Gas Pipeline Co	Calcasieu Gas Gathering System.	07-30-92	G-S	6,000	N	I	07-08-92	Indef.
ST92-5054	Tennessee Gas Pipeline Co	NGC Transportation, Inc	07-30-92	G-S	200,000	N	I	07-01-92	Indef.
ST92-5055	Northern Natural Gas Co	Triumph Gas Marketing Co	07-30-92	G-S	10,000	N	F/I	07-01-92	Indef.
ST92-5056	Northern Natural Gas Co	Aquila Energy Marketing Corp	07-30-92	G-S	100,000	N	F/I	07-01-92	Indef.
ST92-5057	Williams Natural Gas. Co	Transok Gas Co	07-30-92	G-S	100,000	N	I	07-01-92	Indef.
ST92-5058	Iroquois Gas Trans. System, Inc.	Connecticut Natural Gas Co	07-30-92	B	400,000	A	I	07-01-92	10-31-92
ST92-5059	Williams Natural Gas Co	Gastrak Corp	07-30-92	G-S	37,000	N	I	07-01-92	Indef.
ST92-5060	Williams Natural Gas Co	Gas Energy Development Co	07-30-92	G-S	2,000	N	I	07-01-92	Indef.
ST92-5061	Williams Natural Gas Co	Continental Natural Gas, Inc	07-30-92	G-S	1,260	N	I	07-01-92	Indef.
ST92-5062	ANR Pipeline Co	Eastex Hydrocarbons, Inc	07-30-92	G-S	50,000	N	I	07-20-92	Indef.
ST92-5063	ANR Pipeline Co	Unigas Energy Inc	07-30-92	G-S	25,000	N	I	07-20-92	Indef.
ST92-5064	ANR Pipeline Co	Trinity Pipeline, Inc	07-30-92	G	50,000	N	I	07-10-92	Indef.
ST92-5065	ANR Pipeline Co	Northern Illinois Gas Co	07-30-92	B	15,000	N	I	07-14-92	Indef.
ST92-5066	ANR Pipeline Co	American Central Gas Cos., Inc.	07-30-92	G-S	100,000	N	I	07-16-92	Indef.
ST92-5067	ANR Pipeline Co	MG Natural Gas Corp	07-30-92	G-S	100,000	N	I	07-08-92	Indef.
ST92-5068	ANR Pipeline Co	Kerr-McGee Corp	07-30-92	G-S	100,000	N	I	07-08-92	Indef.
ST92-5069	ANR Pipeline Co	Wisconsin Gas Co	07-30-92	G-S	700,000	N	I	07-07-92	Indef.
ST92-5070	Columbia Gas Transmission Corp.	American Central Gas Cos., Inc.	07-30-92	G-S	100,000	N	I	07-10-92	Indef.
ST92-5071	K N Energy, Inc	Texaco Gas Marketing, Inc	07-31-92	G-S	5,000	N	I	07-20-92	Indef.
ST92-5072	Williston Basin Inter. P/L Co	Amerada Hess Corp	07-31-92	G-S	25,000	N	I	07-01-92	08-31-92
ST92-5073	Trunkline Gas Co	Central Illinois Public Service Co.	07-31-92	G-S	10,000	N	I	07-01-92	Indef.
ST92-5074	Trunkline Gas Co	CNG Transmission Corp	07-31-92	G	200,000	N	I	07-01-92	Indef.
ST92-5075	Trunkline Gas Co	Oryx Gas Marketing L.P	07-31-92	G-S	125,000	N	I	07-02-92	Indef.
ST92-5076	Trunkline Gas Co	Gasmark, Ltd	07-31-92	G-S	50,000	N	I	07-11-92	Indef.
ST92-5077	Trunkline Gas Co	Clinton Gas Transmission, Inc	07-31-92	G-S	5,000	N	I	07-01-92	Indef.
ST92-5078	Trunkline Gas Co	Arkla Energy Marketing Co	07-31-92	G-S	50,000	N	I	07-06-92	Indef.
ST92-5079	Trunkline Gas Co	Cental Illinois Public Service Co.	07-31-92	G-S	5,000	N	I	07-01-92	Indef.
ST92-5080	Trunkline Gas Co	Gasmark, Ltd	07-31-92	G-S	50,000	N	I	07-02-92	Indef.
ST92-5081	Trunkline Gas Co	Enserch Gas Co	07-31-92	G-S	50,000	N	I	07-14-92	Indef.
ST92-5082	Trunkline Gas Co	Citizens Gas Supply Corp	07-31-92	G-S	75,000	N	I	07-01-92	Indef.
ST92-5083	Texas Gas Transmission Corp	TXG Gas Transmission Co	07-31-92	G-S	200,000	N	I	07-16-92	Indef.
ST92-5084	Texas Gas Transmission Corp	Western Kentucky Gas Co	07-31-92	B	128	N	I	07-24-92	Indef.
ST92-5085	Texas Gas Transmission Corp	NGC Transportation, Inc	07-31-92	G-S	300,000	N	I	07-23-92	Indef.
ST92-5086	Texas Gas Transmission Corp	CMS Gas Marketing	07-31-92	G-S	100,000	N	I	07-17-92	Indef.
ST92-5088	Great Lakes Gas Trans. L.P	Western Gas Marketing Limited.	07-31-92	G-S	500,000	N	I	07-01-92	Indef.
ST92-5089	Great Lakes Gas Trans. L.P	Santanna Natural Gas Corp	07-31-92	G-S	150,000	N	I	07-01-92	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company in mmBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[Docket No. TM93-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

August 28, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on August 24, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) Sixth Revised Sheet No. 45 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1992.

Kentucky West states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0023 per MCF which represents a decrease of $.0001 per MCF. This rate is $.0021 per Dth as converted on Kentucky West's system.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 4, 1992. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21197 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-100-000]

Nora Transmission Co.; Proposed Change in FERC Gas Tariff

August 28, 1992.

Take notice that Nora Transmission Company (Nora) on August 25, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) Second Revised Sheet No. 5 to its FERC Gas Tariff, Original Volume No. 2, to become effective October 1, 1992.

Nora states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0023 per MCF which represents a decrease of $.0001 per MCF. This rate is $.0023 per Dth as converted on Nora's system.

Nora states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 4, 1992. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21198 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC92-8-000]

Northern Natural Gas Co.; Request for Limited Waiver of Settlement Provision

August 28, 1992.

Take notice that on August 12, 1992, Northern Natural Gas Company (Northern) filed Petition for a limited waiver of settlement provision to allow Northern additional time to file its updated Index of Large Volume Consumer Classifications (Index).

On July 31, 1979, Northern filed a Stipulation and Agreement in Docket Nos. RP76-52, *et al.* which was approved by the Commission on November 30, 1979 (Settlement). The Settlement involved Northern's curtailment plan and the priority of service categories for large volume consumers as contained in the Index. The Settlement provided that the Data Verification Committee would update the Index on August 27 of each year, with an effective date of September 27. Northern requests waiver of the provision and an extension of time until January 1, 1993, to file the updated Index.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 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 September 18, 1992.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21199 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-223-000]

Northwest Pipeline Corp.; Petition for Limited Waiver of Tariff

August 28, 1992.

Take notice that on August 25, 1992, Nothwest Pipeline Corporation (Northwest) petitioned the Commission for a limited waiver of the Commission's first-come, first-served policy as reflected in Section 1 of Northwest's TF-1 Rate Schedule and in the Priority Date provisions of section 12 of First Revised Volume 1-A of Northwest's FERC approved tariff, in order to allow the permanent assignment of firm transportation capacity presently held by Intermountain Gas Company (Intermountain) to Intermountain's affiliated, IGI Resources, Inc. (IGI).

Northwest seeks waiver of the Commission's first-come, first-served policy as reflected in section 1 of Northwest's TF-1 Rate Schedule and the Priority Date provisions of section 12 of First Revised Volume 1-A of its FERC approved Tariff in order to implement the permanent assignment to IGI of Intermountain's firm transportation capacity on Northwest's system under the Transportation Agreement and Replacement Transportation Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions

or protests should be filed on or before September 4, 1992. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21200 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-6-000]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 28, 1992.

Take notice that on August 26, 1992, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1 with a proposed effective date of October 1, 1992:

Thirty-Fifth Revised Sheet No. 4A
Twelfth Revised Sheet No. 4-A1
Eleventh Revised Sheet No. 4-A2

Sea Robin states that the proposed tariff sheets have been revised to reflect the Commission's change in the ACA charge from .24¢ per Mcf to .23¢ per Mcf effective October 1, 1992 pursuant to section 6 of Sea Robin's tariff and § 154.38(d)(6) of the Commission's Regulations.

Sea Robin notes that copies of the filing were served upon Sea Robin's shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before September 4, 1992. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21201 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-11-000]

Texas Eastern Transmission Corp.; Conference Location

August 28, 1992.

Take notice that the conference originally scheduled for August 26, 1992, that was rescheduled for September 8-9, 1992, will be held at the Holiday Inn Capitol Hill, Columbia Room, 550 C Street, SW., Washington, DC. The conference will begin at 1 p.m. on September 8, and at 9 a.m. on September 9. The conference is being convened so that Texas Eastern can explain, and all parties and staff can comment on, the tariff and rate changes made in the August 14, 1992 draft revisions package which would revise Texas Eastern's June 8, 1992 compliance filing. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information, interested parties can call Neil L. Levy at (202) 208-2794.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21202 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-48-020]

Transwestern Pipeline Co.; Compliance Filing

August 28, 1992.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 21, 1992 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective April 1, 1992

8th Revised Sheet No. 48
Substitute Original Sheet No. 51B
Original Sheet No. 94
9th Revised Sheet Nos. 95-104

Transwestern states that the above-referenced tariff sheets are being filed to comply with the Commission's Order ("Order") issued August 6, 1992 in Docket No. RP89-48-017. The Order required Transwestern to refile revised tariff sheets within fifteen (15) days to provide an additional exemption from assessment of the Production and Gathering ("P&G") charge for gas that is delivered into Transwestern's system on or after April 1, 1992. The Order required the additional exemption if the Shipper delivering said gas: (1) Gathers the gas to Transwestern's system, (2) delivers gas that meets Transwestern's quality specifications, and (3) reimburses Transwestern for measurement facilities.

Transwestern states that copies of the filing were served on its jurisdictional customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 4, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21203 Filed 9-2-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4201-6]

Acid Rain Advisory Committee: Subcommittee on Conservation Verification; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the acid deposition control title of the Clean Air Act Amendments of 1990.

At its December 3-4, 1991 meeting, the ARAC advised on the establishment of a Subcommittee on Conservation Verification to provide advice on the development of conservation verification protocols for electric utility energy conservation programs under Title IV of the Clean Air Act Amendments of 1990. The protocols, when issued, can be used to verify energy savings from conservation programs to earn bonus allowances from the Conservation and Renewable Energy Reserve under the proposed allowance system rule (40 CFR part 73, subpart F), and reduced utilization provision under the proposed permits rule (40 CFR part 72, subpart D).

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the ARAC Subcommittee on Conservation Verification will hold its second open meeting on September 23

from 10 a.m. to 5 p.m. and September 24 from 9 to 12 noon at the Ramada Renaissance Dulles Hotel, 13869 Park Center Road, Herndon, VA (703) 478–2900. The meeting will include discussions of the Subcommittee's comments on and revisions to the Conservation Verification Protocols, and the schedule for final revisions to the document and its publication as draft guidance.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting, including a more detailed meeting agenda, will be publicly available in limited numbers at the meeting. Thereafter, these documents will be available in EPA Air Docket Number A–90–39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 9:30 a.m. to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning the Subcommittee on Conservation Verification and its activities, contact Barry Solomon at (202) 233–9166.

Dated: August 18, 1992.

Edward Callahan,

Acting Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 92–21257 Filed 9–2–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4201–8]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; The Springfield Township, Michigan Superfund Site

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (U.S. EPA) is proposing to enter into an administrative consent agreement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9622(h). This proposed settlement is intended to resolve the liabilities under CERCLA of the settling parties for response costs incurred as of May 31, 1991 at the Springfield Township Site, Davisburg, Michigan.

DATES: Comments are due on or before October 5, 1992.

ADDRESSES: Comments should be addressed to Jackie Dillard, Docket Clerk, U.S. EPA, Region V, 77 West Jackson, Chicago, Illinois, 60604 and to Richard Clarizio, Office of Regional Counsel, U.S. EPA, Region V, 77 West Jackson, Chicago, Illinois 60604. Comments must refer to: In Re: Springfield Township, Michigan Superfund Site, U.S. EPA Docket No. V–W–92–C–160.

FOR FURTHER INFORMATION CONTACT: Richard J. Clarizio, U.S. EPA, Office of Regional Counsel, 77 West Jackson Street, Chicago, Illinois 60604, (312) 886–0559.

SUPPLEMENTARY INFORMATION: Notice of Administrative Settlement—In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Springfield Township hazardous waste site in Davisburg, Michigan. The proposed settlement agreement was approved by the United States Department of Justice and U.S. EPA, Headquarters. The settlement resulted from negotiations between U.S. EPA and the Respondents.

U.S. EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Section 122(h) authorizes administrative settlements with parties potentially liable under section 107 of CERCLA if the claim has not been referred to the Department of Justice for further action. Under this authority, the agreement proposes to settle the potential CERCLA section 107 liability of twelve parties in the Springfield Township Superfund Site. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties and U.S. EPA as of the time that this agreement becomes effective.

The agreement requires twelve parties to pay a total of $1,157,373.04 to the United States Superfund within 60 days of the effective date of the Order. In consideration of this payment, the agreement provides the parties with a covenant not to sue for all past response costs as of May 31, 1991, exclusive of $376,306 in potential credits obtained by the State of Michigan under section 104(c)(5)(C) of CERCLA, 42 U.S.C. 9604(c)(5)(C). The proposed settlement provides that U.S. EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. U.S. EPA has made a preliminary determination that the proposed settlement is in the public interest.

U.S. EPA will receive written comments relating to this agreement for 30 days from the date of publication of this notice. A copy of the proposed administrative settlement agreement may be obtained in person or by mail from Richard Clarizio, U.S. EPA, Region V, Office of Regional Counsel, 77 West Jackson, Chicago, Illinois, 60604. Additional background information relating to the proposed settlement is also available from Richard Clarizio.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601–9675.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 92–21365 Filed 9–2–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–955–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–955–DR), dated August 24, 1992, and related determinations.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, dated August 24, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 1992:

Collier County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–21223 Filed 9–2–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–956–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–956–DR), dated August 26, 1992, and related determinations.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana, dated August 26, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1992:

The parishes of Ascension, East Baton Rouge, Lafayette, St. Charles, St. Tammany, West Baton Rouge, and West Feliciana for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–21222 Filed 9–2–92; 8:45 am]

BILLING CODE 6718–02–M

Open Meeting; Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: October 9–11, 1992.

Place: National Emergency Training Center, National Fire Academy, Building G, Conference Room, Emmitsburg, MD 21727.

Time: October 9, 1992, 2 p.m.–5 p.m.; October 10, 1992, 9 a.m.–5 p.m.; October 11, 1992, 9 a.m.–2 p.m.

Proposed Agenda: October 9: Quarterly meeting—old business; October 10—Agenda completion; October 11—Participate in Fallen Firefighter Memorial Service.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before September 25, 1992.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 25, 1992.

Olin L. Greene,

U.S. Fire Administrator.

[FR Doc. 92–21221 Filed 9–2–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Federal Reserve Policy Statement on Payments System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has compiled an updated, comprehensive statement of its previously-adopted policies regarding payments system risk reduction, including policies to control Federal Reserve risk, policies for private-sector networks, and other related policies. This statement incorporates all of the policy modifications adopted by the Board since the last published comprehensive statement in 1987, and supersedes all other published statements. No new policies are included in this compilation.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Florence M. Young, Assistant Director (202/452-3955), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For the hearing impaired *only*: Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: During the past seven years, the Federal Reserve System has developed a program to address payments system risk. Risk can arise from transactions on the Federal Reserve's wire transfer system (Fedwire), from other types of payments, including checks and automated clearing house (ACH) transactions, and from transactions on private large-dollar networks that permit their participants to transmit payment messages throughout the day with settlement of net positions at the end of the day. The Federal Reserve has addressed primarily large-dollar payments systems but has also developed policies regarding certain small-dollar systems, such as national ACH net settlement and ATM networks

The Federal Reserve first published a policy statement on its payments system risk reduction program in 1985 (50 FR 21120, May 22, 1985) and published an updated "interim" statement in 1987 (52 FR 29255, August 6, 1987). Since 1987, the Board has made several additions to its payments system risk reduction policy, including policies regarding private delivery-against-payment securities systems, offshore dollar-clearing and netting systems, and rollovers and continuing contracts (54 FR 26104, 26092, 26107, respectively, June 21, 1989). In 1990, the Board modified the Federal Reserve risk reduction policy with respect to book-entry securities transactions, net debit caps, capital measurements, and application of the policy to agencies and branches of foreign banks (55 FR 22087, May 31, 1990).

The Board has compiled an updated, comprehensive statement of its previously-adopted policies regarding payments system risk reduction, including policies to control Federal Reserve risk, policies for private-sector networks, and other related policies. This statement incorporates all of the policy modifications adopted by the Board since the last published comprehensive statement in 1987, and supersedes all other published statements. No new policies are included in this compilation. The policy statement is set out below:

Federal Reserve System Policy Statement On Payments System Risk

Federal Reserve System Policy Statement on Payments System Risk

Introduction

The Federal Reserve System has developed this policy statement to address payments system risk. Risk can arise from transactions on the Federal Reserve's wire transfer system (Fedwire), from other types of payments, including checks and automated clearing house (ACH) transactions, and from transactions on private large-dollar networks that permit their participants to transmit payment messages throughout the day with settlement of net positions at the end of the day. This policy statement is addressed primarily to large-dollar payments systems[1] and incorporates the Federal Reserve's policies to reduce Federal Reserve risk as well as risk on various types of private-sector networks.

The Federal Reserve Banks face direct risks of loss should depository institutions[2] be unable to settle their intraday ("daylight") overdrafts in their Federal Reserve accounts before the end of the day. Moreover, systemic risk may occur if an institution participating on a private large-dollar payments network were unable or unwilling to settle its net debit position. If this were to occur, the institution's creditors on that network might also be unable to settle their commitments. Serious repercussions could, as a result, spread to other participants in the private network, to other depository institutions not participating in the network, and to the nonfinancial economy generally. A Reserve Bank could be exposed to an indirect risk if its policies did not address this systemic risk. Finally, depository institutions create risk by permitting their customers, including other depository institutions, to transfer uncollected balances in anticipation of their coverage before the end of the day.

The Board is aware that large-dollar networks are an integral part of the clearing and settlement systems and that it is of vital importance to keep the payments mechanism operating without significant disruption. It is because of the importance of avoiding such disruptions that the Board continues to seek to reduce the risks of settlement failures that could cause these disruptions. The Board is also aware that some intraday credit may be necessary to keep the payments mechanism running smoothly and efficiently. The reduction and control of intraday credit risks, although essential, must be accomplished in a manner that will minimize disruptions to the payments mechanism. The Board anticipates that, by relying largely on the efforts of individual institutions to identify, control, and reduce their own exposures, and by establishing guidelines for use by institutions, the goal of reducing and controlling risks will not unduly disrupt the smooth operation of the payments mechanism.

The Board emphasizes that it is not condoning daylight overdrafts in Federal Reserve accounts. Although some intraday credit may be necessary, the Board anticipates that, as a result of its policies, there will continue to be a reduction in the number of institutions consistently relying on intraday credit supplied by the Federal Reserve to conduct their business. The Board also expects to continue observing, over time, a reduction in the volume of intraday credit at those institutions with a pattern of substantial reliance on such credit. The Board will continue to monitor the effect of its policies on the payments system.

The general methods used to control intraday credit exposures are explained in the policies below. These methods include caps on net debits incurred by depository institutions in their accounts at Federal Reserve Banks, collateralization, in certain situations, of overdrafts at the Federal Reserve due to book-entry securities transactions, bilateral credit limits between institutions on private large-dollar networks, and credit and liquidity safeguards for private delivery-against-payment systems. To assist depository institutions in implementing the Board's policies, the Federal Reserve has prepared a *Users' Guide* to the policy statement. The *Users' Guide* explains in detail how the policies apply to various types of depository institutions, the self-assessment procedures for establishing a net debit cap, and the role of the institutions' boards of directors in overseeing the implementation of risk reduction efforts by the institutions. Depository institutions may obtain the *Users' Guide* from their local Reserve Bank.

I. Federal Reserve Policy

A. Daylight Overdraft Definition

A daylight overdraft occurs when a depository institution's Federal Reserve account is in a negative position during the business day. The Reserve Banks use an *ex post* system to measure daylight overdrafts, calculating intraday Federal Reserve account positions as follows: At the opening of business, each institution's closing balance from the previous day is adjusted by the net of all ACH transactions. Original issues of Treasury securities[3] are posted no earlier than 9:15 a.m. Eastern Time (ET), and redemption and interest payments for Treasury and government agency securities are posted by 9:15 a.m. ET. Funds and book-entry securities transfers are posted throughout the day as they are processed. After the close of business, all other transactions, such as check and currency and coin transactions, are totalled. If the net of these transactions is a credit, it is posted as though it occurred at the opening of business; if the net is a debit, it is posted as though it occurred at the close of business.

[1] In a changing technological and regulatory environment, it is not possible or desirable to adopt an all-inclusive and permanent definition of a "large-dollar payments system" for the purposes of Federal Reserve risk control policy. In determining whether any particular system is a "large-dollar" system, the Board will consider any of the following four factors: (1) the employment of multilateral netting arrangements, (2) the use of same-day settlement, (3) the routine processing of a significant number of individual payments larger than $50,000, and (4) the possibility that any one participant could be exposed to a net debit position at the time of settlement in excess of its capital.

[2] In this policy statement, the terms "depository institution" or "institution" will be used to refer not only to institutions defined as "depository institutions" by 12 U.S.C. 461(b)(1)(A), but also to U.S. branches and agencies of foreign banks, Edge and agreement corporations, and bankers' banks, unless the context indicates a different reading.

[3] New issues of government agency securities are posted as the securities are delivered over Fedwire.

B. [Reserved]

C. Capital

1. U.S. Chartered Institutions.

For depository institutions chartered in the United States, net debit caps are multiples of "qualifying" or similar capital measures that consist of those capital instruments that can be used to satisfy risk-based capital standards, as set forth in the capital adequacy guidelines of the federal financial regulatory agencies. All of the federal financial regulatory agencies collect, as part of their required reports, data on the amount of capital that can be used for risk-based purposes—"qualifying" capital for commercial and savings banks, "risk-based" capital for savings and loan associations, and total regulatory reserves for credit unions. Other U.S. chartered entities that incur overdrafts in Federal Reserve accounts should provide similar data to their Reserve Banks.

In some instances, further adjustments to capital are required. For example, virtually all Edge and agreement corporations are subsidiaries of depository institutions that may themselves use intraday credit. Capital would be double-counted if both the parent and the Edge or agreement corporation subsidiary used intraday credit based on their own capital bases. Accordingly, if a parent elects to permit its Edge or agreement corporation subsidiary to use daylight credit, any risk-based capital attributable to the Edge or agreement corporation subsidiary that is reflected on the parent's balance sheet must be subtracted from the parent's capital. The parent may choose, however, to use all of its capital for its own cap and to prohibit its Edge or agreement corporation subsidiary from using intraday credit.

2. U.S. Agencies and Branches of Foreign Banks.

For U.S. agencies and branches of foreign banks, net debit caps for uncollateralized overdrafts in Federal Reserve accounts are multiples of consolidated "U.S. capital equivalency."[4] All net debit caps are conditioned on the Reserve Bank's judgment that the U.S. agency or branch of the foreign bank has satisfactory U.S. funding capability and potential eligible collateral for a discount window loan, should it be unable to cover its daylight overdraft by the end of the day.

A foreign bank whose home-country supervisor adheres to the Basle Capital Accord may determine its uncollateralized daylight overdraft capacity by applying its cap multiple to a U.S. capital equivalency equal to the greater of 10 percent of worldwide capital or 5 percent of the total liabilities of each agency or branch, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank. In the absence of contrary information, the Reserve Banks presume that all banks chartered in G-10 countries meet the acceptable prudential capital and supervisory standards and will consider any bank chartered in any other nation that adopts the Basle Capital Accord standards (or requires capital at least as great and in the same form as called for by the Accord) eligible for the Reserve Banks' review for meeting acceptable prudential capital and supervisory standards.

To determine the net debit cap for uncollateralized overdrafts for all other foreign banks, cap multiples are applied to the U.S. capital equivalency measured as the greater of (1) the sum of the amount of capital (but not surplus) which would be required of a national bank being organized at each agency or branch location, or (2) the sum of 5 percent of the total liabilities of each agency or branch, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank.

All foreign banks, regardless of their cap for uncollateralized overdrafts, may incur total overdrafts up to an amount equal to their cap multiple times 10 percent of their worldwide capital, as long as the amount of the overdraft above the uncollateralized overdraft cap is collateralized. In addition, all foreign banks may elect to collateralize all or a portion of their overdrafts related to book-entry securities activity. This policy offers all foreign banks, under terms that reasonably limit Reserve Bank risk, a level of overdrafts based on the same proportion of their worldwide capital. Banks chartered in countries that follow the Basle Accord and that have demonstrated collateral and funding capacity that would result in a net debit cap based on 10 percent of worldwide capital are not permitted to incur overdrafts above their cap, except for book-entry securities overdrafts, even with collateral. All other foreign banks may incur overdrafts to the same extent as banks from Basle Accord countries, *i.e.*, up to their cap multiple times 10 percent of their worldwide capital, provided that sufficient collateral is posted for any overdrafts in excess of the cap based on their U.S. capital equivalency.

D. Net Debit Caps

To limit the aggregate amount of daylight credit extended by Reserve Banks, each institution that incurs daylight overdrafts in its Federal Reserve account must adopt a net debit cap, *i.e.*, a ceiling on the aggregate net debit position that it can incur during a given interval. Alternatively, if an institution's daylight overdrafts generally do not exceed the lesser of $10 million or 20 percent of capital, the institution may qualify for the exempt-from-filing status. Subject to the provisions for special situations described below, an institution must be financially healthy and eligible to borrow from the discount window in order to adopt a cap greater than zero or qualify for the filing exemption.

Cap categories and associated cap levels, set as multiples of capital, are listed below:

Net Debit Cap Multiples

Cap Category	Two-Week Avg.	Single Day
High	1.50	2.25
Above Avg.	1.125	1.875
Average	0.75	1.125
De Minimis	0.20	0.20
Exempt-from-filing	$10 million (0.20)	$10 million (0.20)
Zero	0.0	0.0

An institution is expected to avoid incurring net debits that, on average over a two-week period, exceed the two-week average cap, *and*, on any day, exceed the single-day cap. The two-week average cap provides flexibility, in recognition that fluctuations in payments can occur from day-to-day. The purpose of the higher single-day cap is to limit excessive daylight overdrafts on any day and to assure that institutions develop internal controls that focus on the exposures each day, as well as over time.

The two-week average cap is measured against the average, over a

[4] The term "U.S. capital equivalency" has been chosen merely as the most convenient term of art. The use of the term for purposes of this policy statement is not meant to suggest that the Board presently intends that this measure necessarily should be used to measure a foreign bank's capital position in the United States for prudential or other purposes.

two-week reserve maintenance period, of an institution's daily maximum net debit positions in its Federal Reserve account. In calculating the two-week average, individual days on which an institution is in an aggregate net credit position throughout the day are treated as if the institution was in a net position of zero. The number of days used in calculating the average is the number of business days the institution's Reserve Bank is open during the reserve maintenance period.

The Board's policy on net debit caps is based on a specific set of guidelines and some degree of examiner oversight. Under the Board's policy, a Reserve Bank may prohibit the use of Federal Reserve intraday credit if (1) an intstitution's use of daylight credit is deemed by the institution's supervisor to be unsafe or unsound, (2) an institution does not qualify for a cap exemption, does not perform a self-assessment, or does not file a board-of-directors-approved *de minimis* cap, and (3) an institution poses an excessive risk to a Reserve Bank.

The net debit cap provisions of this policy apply to foreign banks to the same extent as they apply to U.S. institutions. The Reserve Banks will advise home-country supervisors of banks with U.S. branches and agencies of the daylight overdraft capacity of banks under their jurisdiction, as well as of other pertinent conditions related to their caps. Home-country supervisors that request information on the overdrafts in the Federal Reserve accounts of their banks will be provided that information on a regular basis.

1. Cap Set Through Self-Assessment

An institution that wishes to establish a net debit cap category of high, above average, or average must perform a self-assessment of its own creditworthiness, credit policies, and operational controls, policies, and procedures.[5] The assessment of creditworthiness should address the overall financial condition of the institution, placing emphasis on conformance of the institution's capital with supervisory standards for capital adequacy. The institution should also assess its procedures for evaluating the financial condition of its customers and should establish intraday credit limits that reflect these assessments. Finally, an institution should ensure that its operational controls permit it to contain its use of Federal Reserve intraday credit and restrict its customers' use of credit to the limits it has established. The *Users' Guide* to the Board's Payments System Risk Reduction Policy, available from any Reserve Bank, includes a detailed explanation of the steps that should be taken by a depository institution in performing a self-assessment to establish a net debit cap.

Each institution's board of directors is expected to review the self-assessment and determine the appropriate cap category. The process of self-assessment, with board-of-directors review, should be conducted at least once in each 12-month period. A cap determination may be reviewed and approved by the board of directors of a holding company parent of a depository institution, or the parent of an Edge or agreement corporation, provided that (1) the self-assessment is performed by each entity incurring daylight overdrafts, (2) the entity's cap is based on the entity's own capital (adjusted to avoid double-counting), and (3) each entity maintains for its primary supervisor's review its own file with supporting documents for its self-assessment and a record of the parent's board-of-directors review.[6]

In applying these guidelines, each institution is expected to maintain a file for examiner review that includes (1) worksheets and supporting analysis developed in its self-assessment of its own risk category, (2) copies of senior management reports to the board of directors of the institution or its parent (as appropriate) regarding that self-assessment, and (3) copies of the minutes of the discussion at the appropriate board-of-directors meeting concerning the institution's adoption of a cap category.[7]

As part of its normal examination, the depository institution's examiners will review the contents of the self-assessment file.[8] The objective of this review is to assure that the institution has applied the guidelines seriously and diligently, that the underlying analysis and methodology were reasonable, and that the resultant self-assessment was generally consistent with the examination findings. Examiner comments, if any, should be forwarded to the board of directors of the institution. The examiner, however, would generally not require a modification of the self-assessment cap category unless the level of daylight credit used by the institution constitutes an unsafe or unsound banking practice.

The contents of the self-assessment cap category file will be considered confidential by the institution's examiner. Similarly, the actual cap level selected by the institution will be held confidential by the Federal Reserve and the institution's examiner. (However, cap information will be shared with the home country supervisor of agencies and branches of foreign banks.)

2. De Minimis Cap

Many depository institutions incur relatively small overdrafts and thus pose little risk to the Federal Reserve. To ease the burden on these small overdrafters of engaging in the self-assessment process and to ease the burden on the Federal Reserve of administering caps, the Board will allow institutions that meet reasonable safety standards to incur *de minimis* amounts of daylight overdrafts without performing a self-assessment. A depository institution may incur daylight overdrafts up to 20 percent of capital, if a board-of-directors resolution is submitted.

Reserve Banks will review the status of a *de minimis* cap institution that exceeds its cap on a single day or, on average, over a two-week reserve maintenance period and will decide if the *de minimis* cap should be

[5] This assessment should be done on an individual institution basis, treating as separate entities each commercial bank, each Edge corporation (and its branches), each thrift insti'ution, etc. An exception is made in the case of U.S. agencies and branches of foreign banks. Because these entities have no existence separate from the foreign bank, all the U.S. offices of foreign banks (excluding U.S. chartered bank subsidiaries and U.S. chartered Edge subsidiaries) should be treated as a consolidated family relying on the foreign bank's capital

[6] A foreign bank should undergo the same self-assessment process as a domestic bank in determining a net debit cap for its U.S. branches and agencies. Many foreign banks, however, do not have the same management structure as U.S. depository institutions, and adjustments should be made as appropriate. Where a foreign bank's board of directors hes a more limited role to play in the bank's management than a U.S. board, the self-asscssment and cep category should be reviewed by senior management at the foreign bank's head office that exercises authority over the foreign bank equivalent to the authority exercised by a board of directors over a U.S. depository institution. In cases where the board of directors exercises authority equivalent to that of a U.S. board, cap determination should be made by the board of directors.

[7] In most cases, it may not be possible for the U.S. examiners to review the minutes of the meeting of a foreign bank's board of directors or other appropriate management group at which the self-assessment was discussed. In lieu of this, the file on the self-assessment that is made available for examiner review by the U.S. offices of a foreign bank should contain the report on the self-assessment made to the foreign bank's senior manegement by the management of U.S. operations. In addition, the file should also contain a record of the appropriate senior management's response. As in the case of U.S. institutions. this review and confirmation should be completed every year.

[8] Between examinations, examiners or Reserve Bank staff may contact an institution about its cap if statistical or supervisory reports or *ad hoc* information suggest that there may have boen a change in the institution's position.

maintained or if the institution will be required to perform a self-assessment and file for a higher cap. An institution choosing to use a *de minimis* cap must submit to its Reserve Bank at least once each year a copy of the resolution of its board of directors (or its holding company's board) approving the depository institution's use of daylight credit up to the *de minimis* level.

3. Exemption From Filing

Depository institutions that only rarely incur overdrafts in their Federal Reserve accounts that exceed the lesser of $10 million or 20 percent of their capital are excused from performing self-assessments and filing board-of-directors resolutions with their Reserve Banks. This dual test is designed to limit the filing exemption to depository institutions that create only low-dollar risks to the Reserve Banks and that incur small overdrafts relative to their capital.

The Reserve Bank will review the status of an exempt depository institution that incurs overdrafts in its Federal Reserve account in excess of $10 million or 20 percent of capital on more than two days in any two rolling two-week reserve maintenance periods. The Reserve Bank will decide if the exemption should be maintained or if the institution will be required to file for a cap. Even for depository institutions meeting the size and frequency standards, the exemption would be granted at the discretion of the Reserve Bank.

4. Special Situations

Special risks are presented by the participation on Fedwire of Edge and agreement corporations, bankers' banks that do not maintain reserves, and institutions that have been assigned a cap of zero by their Reserve Bank. Some of these entities are major participants in privately-operated, large-dollar clearing and settlement systems, often making and receiving a large volume of payments on behalf of their affiliates and parent organizations. Most of these institutions lack regular discount window access. In developing its policy for these institutions, the Board has sought to balance the goal of reducing and managing risk in the payments system, including risk to the Federal Reserve, with that of minimizing the adverse effects on the payments operations of these institutions.

a. *Edge and Agreement Corporations.*[9] Edge and agreement corporations must fully collateralize all overdrafts in their Federal Reserve accounts. To protect the Reserve Banks from excessive risk in conjunction with the collateralization policy, the Board strongly urges each Edge or agreement corporation to restrain its use of intraday credit by establishing a net debit cap based on its own capital in the same manner as any other depository institution. For purposes of net debit caps, the Board suggests that all branches of an Edge or agreement corporation be consolidated. This policy reflects the lack of access of these institutions to the discount window and the possibility that the parent of an Edge or agreement corporation may be unable or unwilling to cover its subsidiary's overdraft on a timely basis.

At the same time, the Board believes it is preferable for Edge and agreement corporation subsidiaries of U.S. banks, together with their parents, to arrange their affairs in a way that would allow them to continue to service their customers and at the same time reduce risk exposures. Specifically, the Board notes that the parent of an Edge or agreement corporation could fund its subsidiary during the day over Fedwire and/or the parent could substitute itself for its subsidiary on private networks. Such an approach by the parent could both reduce systemic risk exposure and permit the Edge or agreement corporation to continue to service its customers. Edge and agreement subsidiaries of foreign banks are treated in the same manner as their domestically-owned counterparts.

b. *Bankers' Banks.*[10] Bankers' banks are exempt from reserve requirements and do not have regular access to the discount window. They do, however, have access to Federal Reserve payment services. To protect Reserve Banks from potential losses resulting from bankers' banks' daylight overdrafts, bankers' banks should refrain from incurring overdrafts and should post collateral to cover any funds or book-entry securities overdrafts they do incur. Bankers' banks may voluntarily waive their exemption from reserve requirements, thus gaining access to the discount window and avoiding the requirement to post collateral for all overdrafts. Such bankers' banks would be subject to the same policy as other depository institutions.

c. *Zero-Cap Depository Institutions.* Some depository institutions have caps of zero that are imposed by Reserve Banks because of the institutions' financially troubled status, because of Board policy (such as limited-purpose trust companies), or because the institution itself requested a zero cap. Regardless of whether it has access to the discount window, if a depository institution on which a Reserve Bank has imposed, or that has adopted, a zero cap incurred a funds-related overdraft, the Reserve Bank would counsel the institution and may monitor the institution's activity in real-time and reject or pend any Fedwire funds tranfer instruction that would cause an overdraft. Because the timing of book-entry securities transfers are not fully within the control of the receiving depository institution, the Board will allow depository institutions with caps of zero that have access to the discount window to continue to incur book-entry overdrafts, but will require that such overdrafts be collateralized even if they are infrequent and modest.

E. Book-entry Securities Transactions

1. Collateralization

A depository institution's funds and book-entry securities overdrafts are combined for purposes of determining an institution's compliance with its cap. Financially healthy depository institutions with positive caps that frequently exceed their caps by material amounts solely due to book-entry securities transactions are required to collateralize all of their book-entry securities overdrafts. To determine whether an institution exceeds its net debit cap due solely to book-entry securities activity, the Reserve Bank determines what activity in an institution's Federal Reserve account is attributable to funds transfers and other payment transactions and what activity is attributable to book-entry securities transactions. Book-entry securities balances are calculated by posting charges for original issues of Treasury securities and credits for interest and redemption payments for Treasury and government agency book-entry securities at 9:15 a.m. ET and posting credits and debits from transfers of book-entry securities as they occur. A book-entry securities overdraft occurs when an institution's book-entry securities balance, less any credit in its funds balance, is a net debit.

[9] These institutions are organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611-631) or have an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601-604a).

[10] For the purposes of this policy, a bankers' bank is a financial institution that is not required to maintain reserves under the Board's Regulation D (12 CFR part 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public and is not a depository institution as defined in the Board's Regulation A (12 CFR 201.2(a)).

For the purposes of this policy, "frequently" means more than three occasions in two rolling two-week reserve maintenance periods, and "material amounts" means in excess of 10 percent of cap. For example, a depository institution with a $50 million cap that meets the "frequent" and "material" tests and has a $70 million overdraft—$30 million due to funds transfers and $40 million due to book-entry securities transactions—will be required to collateralize the entire $40 million book-entry securities overdraft.

In addition, all financially healthy depository institutions with positive caps may *choose* to collateralize all or part of their book-entry securities overdrafts, even if they have not exceeded their caps. Such secured overdrafts shall not be included with those overdrafts measured against their caps. For example, a financially healthy depository institution with a $50 million cap and a $30 million overdraft—$15 million due to funds transfers and $15 million due to book-entry securities transfers—would ordinarily have excess capacity of $20 million. Such an institution may increase its excess capacity by $15 million by collateralizing all of its book-entry securities overdrafts (or may increase its excess capacity by less than $15 million by collateralizing some portion of its book-entry securities overdrafts). Such an institution may not increase its cap of $50 million by over-collateralizing its book-entry securities overdrafts or by collateralizing any part of its funds overdrafts. At the same time, if an institution that voluntarily collateralizes its book-entry securities overdrafts and those overdrafts become frequent and material, the institution will be required to collateralize 100 percent of its book-entry securities overdrafts.

Depository institutions have some flexibility as to the specific type of collateral they may pledge to secure book-entry securities overdrafts. The Reserve Banks will not give preference to a particular type of collateral, such as securities in transit, discount window collateral, or stable pools of collateral, unless a preference is desired by the depository institution. All collateral must be acceptable to the Reserve Bank.

2. Transfer Size Limit

Secondary market book-entry securities transfers on Fedwire are limited to a transfer size of $50 million par value. This limit is intended to induce multiple deliveries to reduce position-building by dealers, a major cause of book-entry securities overdrafts; participants may choose to limit their trade size as well. This limitation does not apply to:

(a) original issue deliveries of book-entry securities from a Reserve Bank to a depository institution or,

(b) transactions sent to or by a Reserve Bank in its capacity as fiscal agent of the United States, government agencies, or international organizations. Thus, requests to strip or reconstitute Treasury securities, or to convert bearer or registered securities to or from book-entry form, are exempt from this limitation. Also exempt are pledges of securities to a Reserve Bank as principal (*e.g.*, discount window collateral) or as agent (*e.g.*, Treasury Tax and Loan collateral).

F. Inter-Affilliate Transfers

Although the institutions affiliated through common holding company ownership are not permitted to consolidate their wire transfer activity and capital for the purpose of monitoring compliance with this policy, such institutions may engage in funds transfers over Fedwire that are intended to simulate consolidation among affiliated depository institutions and that create a pattern of daylight overdrafts up to the sending institution's net debit cap, provided the following conditions are met:

1. Each of the individual sending depository institutions' boards of directors approve, at least once each year, the intraday extension of credit to the specified affiliate(s),[11] and sends a copy of the directors' resolution to its Reserve Bank.

2. During the regular examination, the individual institution's primary federal supervisor reviews the timeliness of board-of-directors resolutions, the establishment by the institution of limits on credit extensions to each affiliate, the establishment by the institution of controls to assure that credit extensions stay within such limits, and notes whether credit extensions have in fact stayed within those limits.

The Board notes that the adoption of this policy regarding transfers among depository institution affiliates does not in any way change the treatment of depository institutions and their Edge and agreement corporation subsidiaries. The ability of a parent institution to fund its Edge or agreement subsidiaries on an intraday basis remains unchanged, so long as the parent remains within its own cap.

[11] The provision of this policy statement that allows a holding company to establish caps for its depository institution subsidiaries does not apply to this requirement.

G. Third-Party Access Arrangements

The Board will allow, under certain conditions, arrangements whereby a depository institution or other entity ("the service provider") could initiate Fedwire transfers from the Federal Reserve account of another depository institution. Such arrangements will be permitted provided:

1. The institution whose account is being charged (the "institution") retains control of the credit-granting process by individually approving each transfer or establishing credit limits within which the service provider can act.

2. The service provider must be an affiliate of the institution, or, if the institution approves each individual transaction, an unaffiliated company. All service providers must be subject to examination.

3. The service provider must not permit or initiate transfers that would exceed individual customer credit limits without first obtaining the institution's permission.

4. The service provider must have the operational ability to ensure that the aggregate funds transfer activity of the institution does not result in daylight overdrafts in excess of the institution's cap.

5. All Fedwire transfer activity must be posted to the institution's account, and the institution will remain responsible for its account.

6. The institution's board of directors must approve the specifics of the arrangement, including: (a) the operational transfer of its Fedwire transfer activity to the service provider; (b) the net debit cap for the activity to be processed by the service provider; and (c) the credit limits for any inter-affiliate funds transfers.

7. The institution and the service provider must execute an agreement with the relevant Reserve Banks delineating the terms of the agreement.

8. The institution must have adequate back-up procedures and facilities to cover equipment failure or other developments affecting the adequacy of the service being provided. This back-up must provide the Reserve Bank with the ability to terminate a service provider arrangement.

9. The institution must have the ability to monitor transfers being made on its behalf.

10. The institution must provide an opinion of counsel that the arrangement is consistent with corporate separateness and does not violate branching restrictions.

11. The primary supervisor must not object to the arrangement.

12. No individual with decision-making responsibilities relating to the Fedwire transfer area may hold such a position in more than one affiliated institution participating in an approved arrangement.

13. The institution must have in place an adequate audit program to review the arrangements at least annually to confirm that these requirements are being met.

In order to assure consistency with the Board's policy, each new arrangement should be reviewed by the Director of the Division of Reserve Bank Operations and Payment Systems prior to approval by the Reserve Bank.

H. Monitoring

1. Ex Post

Under the *ex post* monitoring procedure, an institution with a net debit position in excess of its cap will be contacted by its Reserve Bank.[12] The Reserve Bank will counsel the institution, discussing ways to reduce its excessive use of intraday credit. Each Reserve Bank retains the right to protect its risk exposure from individual institutions by unilaterally reducing Fedwire caps, imposing collateralization or clearing balance requirements, holding or rejecting Fedwire transfers during the day until the institution has collected balances in its Federal Reserve account, or, in extreme cases, taking the institution off-line or prohibiting it from using Fedwire.

2. Real Time

A Reserve Bank will apply real-time monitoring to an individual institution's position when the Reserve Bank believes that it faces excessive risk exposure, *e.g.*, from problem banks or institutions with chronic overdrafts in excess of what the Reserve Bank determines is prudent. In such a case, the Reserve Bank will control its risk exposure by monitoring the institution's position on a real-time basis, rejecting or delaying transfers if the account balance would otherwise be exceeded, and taking other prudential actions.

3. Multi-District Institutions

A depository institution that chooses to access Fedwire through accounts in more than one Federal Reserve district is expected to manage its accounts so that its aggregate net debit position across all accounts does not exceed its net debit cap. One Reserve Bank will act as administrative Reserve Bank and will have overall risk-management responsibilities for institutions maintaining accounts in more than one Federal Reserve district. In the case of families of branches and agencies of the same foreign bank, net debit cap compliance will be monitored by the Reserve Bank that exercises the Federal Reserve's oversight responsibilities under the International Banking Act.[13] The administrative Reserve Bank may determine, in consultation with Reserve Banks in whose territory other U.S. agencies or branches of the same foreign bank are located and with the management of the foreign bank's U.S. operations, that branches and agencies outside its district either will not be permitted to incur overdrafts in Federal Reserve accounts or must allocate part or all of the foreign family's net debit cap (and the responsibility for administering part or all of the collateral requirement) to a Reserve Bank in whose district one or more of the foreign offices operate.[14] For domestic depository institutions that have branches in multiple Federal Reserve districts, the administrative Reserve Bank generally will be the Reserve Bank where the head office of the bank is located.

4. ACH Controls

To reduce risk in the ACH mechanism associated with the origination of ACH credit transactions by institutions that are experiencing financial difficulties, the Reserve Banks:

(a) will monitor ACH credit payments originated by such depository institutions;

(b) may require advanced funding or other assurance of payment or may reject payments if it appears the originating depository institution will not have sufficient funds on the settlement day; and

(c) will review origination patterns for all ACH originators of debit and credit payments.

In addition, a Reserve Bank may defer the availability of some or all of the credit from debit payments originated by an institution that the Reserve Bank believes will not have sufficient balances to pay return items when they are presented.

Further details on Federal Reserve ACH controls are set out in the Uniform ACH Operating Circular, available from each Reserve Bank.

II. Policies For Private-Sector Networks

A. Private Large-Dollar Funds Transfer Networks.

Any large-dollar payments system obtaining net settlement services from a Federal Reserve Bank must establish liquidity and credit controls that provide a reasonable degree of assurance that settlement can be achieved on the settlement day. Under the Board's policy, no private large-dollar payments network is eligible for Reserve Bank net settlement services unless it:

(1) Requires each participant to establish bilateral net credit limits vis-a-vis each other participant on that network,[15]

(2) Establishes a system to reject or hold any payment that would exceed such limits, and

(3) Establishes and monitors in real time network-specific net debit limits.

In order that Reserve Banks may properly monitor the use of intraday credit, no future or existing large-dollar network will be permitted to settle on the books of a Reserve Bank unless its members authorize the network to provide position data to the Reserve Bank on request.

In setting bilateral net credit limits, each participant on a network must determine for itself the maximum dollar amount of net transfers (*i.e.*, the excess of the value received over the value sent) that it is willing to accept from each other participant on that network. The Board believes that bilateral net credit limits reduce risk by enabling an institution to identify and control the exposure it could face in the event of a settlement failure. The volume of daylight exposure that each participant is willing to accept from each other participant is likely to be quite large when aggregated across the network. Moreover, participants may be unaware of the credit made available to a given sender by other potential receivers. For this reason, bilateral net credit limits

[12] Even if the institution is not a state member bank, the Reserve Bank can make this contact when an overdraft occurs in a reserve or clearing account or when the institution is in a net debit position on a wire system that settles on the books of the Federal Reserve.

[13] 12 U.S.C. 3101-3108.

[14] As in the case of Edge and agreement corporations and their branches, with the approval of the designated administrative Reserve Bank, a second Reserve Bank may assume the responsibility of managing and monitoring the net debit cap of particular foreign branch and agency families. This would often be the case when the payments activity and national administrative office of the foreign branch and agency family is located in one district, while the oversight responsibility under the International Banking Act is in another district. If a second Reserve Bank assumes management responsibility, monitoring data will be forwarded to the designated administrator for use in the supervisory process.

[15] Bilateral net credit limits do not apply to Fedwire transfers because the Federal Reserve provides final credit to the receiver when the amount of the payment order is credited to the receiver's account or when the payment order is sent to the receiver, whichever is earlier (12 CFR 210.31(a)). Reserve Banks, however, may take action to reduce their credit exposure.

should be supplemented by network-specific net debit caps, which will limit the aggregate amount of risk a participant may present to the network.

The federal bank examiners will, during regular examinations, review and comment on the procedures used by each institution in establishing, monitoring, reviewing, and modifying bilateral net credit limits, and ensure that institutions understand their potential exposures with each other participant over more than one network and in more than one market.

Avoidance of Risk Reduction Measures

The Board believes that the use of Fedwire for the avoidance of Federal Reserve or private-sector risk reduction measures is not appropriate. The Board seeks to prevent institutions from participating in bilateral netting arrangements that provide only payments netting under which gross payment messages are exchanged during the day and settled at the end of the day by using Fedwire to adjust net positions bilaterally. Such arrangements would be difficult for Reserve Banks to detect and would be outside of Federal Reserve and private-sector risk control measures. They still, however, present the same risks to the payments mechanism that other net settlement arrangements present because settlement failures are possible, and such failures could have deleterious consequences to the payments system.

The Board realizes, however, that certain netting arrangements are not intended to avoid risk reduction measures and can, in fact, reduce risk. For example, institutions may, by means of novation, net transactions prior to settlement, with each participant legally obligated only for the resultant net position. This arrangement reduces risk because it replaces gross transactions with the smaller net obligation, and failures to settle would almost always involve smaller exposures (and less systemic risk) than with simple bilateral net settlement. The Board's policy on limiting avoidance techniques is not intended to restrict this kind of netting arrangement.

B. Private Delivery-Against-Payment Securities Systems

Private delivery-against-payment securities systems that settle on a net, same-day basis entail credit and liquidity risks for their participants and for the payments system in general. The Board believes that these systems should include risk-control features if they are to rely on Fedwire for ultimate settlement. The need for such risk controls is becoming increasingly important in view of these systems' potential for growth, their high volumes, and the possible future course of the Federal Reserve's payments system risk reduction program, e.g., pricing intraday Fedwire funds and book-entry overdrafts.

Delivery-against-payment securities systems, as described below, are expected to adopt appropriate liquidity and credit safeguards in order to ensure that settlement occurs in a timely fashion and that the participants do not face excessive intraday risks. In view of the continuing evolution of these systems, the Board has established general guidelines rather than specifying the exact form such safeguards should take. Reversals or "unwinds" of funds and securities transfers, however, are not considered appropriate liquidity control measures.

The policy addresses four issues:

(1) Liquidity safeguards for ensuring settlement;

(2) Provisions for reversals;

(3) Credit safeguards, such as collateral and netting features; and

(4) Open settlement accounting. These components, and the scope and regulatory implications of this policy, are described below.

Scope of the Policy

This policy is specifically targeted at large-scale private delivery-against-payment securities systems that settle their obligations on a net, same-day basis over Fedwire, either directly or indirectly. These systems settle securities transactions for their participants by transferring securities and the accompanying payment obligations on the books of a clearing corporation or a depository institution operating the system and arrange for final settlement of the funds positions on a net basis at the end of the processing day. Settlement on a "net basis" means that the funds obligations are netted among all participants, so that a participant can settle obligations to or from many counterparties by making a single transfer to or from the system. "Same-day" settlement means that the appropriate funds and securities transfers are settled on the day that a delivery-against-payment request is entered into the system. "Large-scale" systems are those systems that routinely process a significant number of individual transfers larger than $50,000 or that would permit any one participant to be exposed to a net debit position at the time of settlement in excess of its capital.

This policy applies to systems that function primarily as a means of transferring securities and funds between participants. If a firm or bank is providing clearing services to a customer, and these services focus primarily on the bilateral relation between the clearer and the customer, the firm or bank would not be viewed as a system under this policy. Moreover, at least initially, a system that is an integral component of a full service bank, such that obligations that settle on an item-by-item basis are the direct obligations of the bank, will not be subject to this policy because of the existing supervisory oversight of a bank's liquidity and credit resources.

This policy applies to systems in the United States that transfer debt and equity securities, including those not eligible for Fedwire. The policy does not apply to systems dealing with other financial instruments, such as futures and options.

This policy is directed at limiting the risks arising out of the intraday credit generated in private delivery-against-payment systems. The policy does not address other potential sources of risk in these systems, such as inadequate management or facilities. The Board expects that these systems will be subject to regulatory oversight because they are typically clearing agencies subject to supervision by the Securities and Exchange Commission, or because they are limited purpose trust companies subject to state or federal banking supervision, or both. These supervisors have broad responsibility for ensuring the safety and integrity of these systems.

Liquidity Safeguards

Because they give rise to the extension of intraday credit, private delivery-against-payment systems rely on payments by participants with net obligations to the system ("net debtor" participants) in order to make settlement payments to participants with net obligations due from the system ("net creditor" participants). In the absence of appropriate safeguards, the failure by a single participant with a net debit position may delay settlement of the system. The result of a system's failure to settle in a timely manner will be that participants do not receive the transfers of funds and securities that they expected and that they, therefore, may not be able to conclude other transactions outside the system. Because settlement typically occurs at the end of the day, the system and net creditor participants will have relatively little time to react to any failure that may occur.

This policy seeks to ensure that private systems settle in a timely manner, so that participants can rely on

the funds or securities obtained as a result of transfers through the system. The importance of ensuring reliable transfers is due in part to the fact that these systems generally allow participants to re-transfer funds credits or securities acquired during the day. If, for example, a participant sold securities early in the day and later used his funds credits to purchase other securities, then a failure in the settlement of the earlier transaction could result in a failure of the settlement of the later transaction.

The Board believes that private systems should protect timely settlement by adopting safeguards that are commensurate with the risk of settlement failure. The Board recognizes that a private system relying on intraday credit will not be able to guarantee timely settlement of funds and securities transfers under all conceivable circumstances and, therefore, that such a system cannot make an absolute guarantee of settlement finality. At a minimum, however, a system must have sufficient safeguards so that it will be able to settle on time if any one of its major participants defaults. In addition, the Board strongly encourages systems to adopt settlement safeguards beyond this required minimum.

Liquidity arrangements that will enable a system to make end-of-day settlement payments are crucial settlement safeguards. Liquidity safeguards adopted by private delivery-against-payment systems should include provisions that give the system access to sources of readily available funding that will support timely settlement in case a participant is unable to settle its obligation. Funding sources could, for example, include prearranged lines of credit or a pool of funds contributed by the participants. The system should limit, on an intraday basis, the size of potential net debit positions to ensure that these liquidity sources will be adequate.

Because settlement risks and structure may vary in different systems, the Board does not consider it appropriate to specify the exact structure of acceptable safeguards. One example of an appropriate liquidity safeguard may be a cap on the net debit funds position that may be incurred by an individual participant, which is tied to the liquidity resources available to the system and/or to the participant. If such a cap is used, it may be appropriate for it to be administered in a flexible manner, with due regard for liquidity and credit risks and for the efficient operation of the system.

Reversals

Currently, certain systems permit reversals of transfers of funds and securities to facilitate settlement if a participant defaults. By reversing transactions, the systems try to reduce the obligations of the defaulting participant. However, settlement with reversals will not ease the liquidity problems caused by a default; reversals will simply transfer a liquidity shortfall from the defaulter to another participant and will do so at the end of the day, when it may be difficult to arrange for alternate sources of liquidity. The return of securities, with the resulting reversal of a funds credit, may cause the participant receiving the returned securities to default on its obligations. Thus, settlement using reversals will not achieve this policy's objective, because participants will not be able to rely on transfers of funds and securities if transfers may be reversed.

Because the Board does not view reversals as a satisfactory liquidity safeguard, the systems covered by this policy should not use reversals as a substitute for liquidity arrangements, such as those discussed above, in order to ensure timely settlement.

Credit Safeguards

As stated above, these systems effectively allow participants to use intraday credit when receiving securities. All participants may be affected by one participant's failure to repay this credit. The Board, therefore, believes that these systems should adopt clear loss-allocation rules and should minimize credit risks incurred through the system. Methods of reducing credit risk may vary in different systems. Appropriate methods include requiring contributions by all participants to a fund that may be used in the event of a default or requiring the pledging of a sufficient volume of marked-to-market collateral. The loss allocation schedule should not increase risks to the system. In particular, the system should calculate the loss resulting from a default on the basis of the net obligations of the defaulter rather than on the basis of the underlying gross obligations between the defaulter and its counterparties. Thus, the Board would find a loss allocation scheme to be unacceptable if it reversed all transactions between the defaulter and other participants.

This policy, including the restriction on reversals, is not intended to prevent a system from allocating credit losses to the counterparty of a defaulter based on the business dealings between the counterparty and the defaulter. It may be appropriate and prudent for a system to have rules that would require participants who have dealt with the defaulter to be responsible, after settlement, for the related loss. These arrangements could well include returning securities to the counterparty to help absorb the loss.

Open Settlement Accounting

As delivery-versus-payment systems grow in size and volume, the timely and orderly completion of end-of-day settlements takes on an increased importance for the settlement of other large-dollar payments systems. As a general matter, the Board believes that it will be easier for market participants and supervisors to monitor and protect against settlement risks if current information is readily available. Participants in a delivery-against-payment system should therefore have up-to-date information on their net position and on the settlement progress of the system, and appropriate market supervisors should have ready access to current intraday information on both the system's settlement and participants' positions. For those systems wishing to use Fedwire payments as a means of settlement, the Board encourages the use of Federal Reserve Bank net settlement services rather than individual wire payments that cannot be distinguished from all other Fedwire payments. This policy is in no way intended to broaden access to Federal Reserve services; neither Fedwire nor net settlement services will be available, as a general matter, to non-member, non-depository institutions.

C. Offshore Dollar-Clearing and Netting Systems[16]

For some time, the Board has been sensitive to the risks associated with the actual and potential development of netting and clearing arrangements for U.S. dollar payments located outside the United States. In particular, the Board has been concerned that the steps being taken to reduce systemic risk in U.S. large-dollar payments systems may themselves induce the further development of "offshore" dollar payments systems. These offshore systems can settle through payments on the Federal Reserve's wire transfer system (Fedwire) or the New York Clearing House's Clearing House Interbank Payments System (CHIPS), but may operate without adequate

[16] The Board adopted this policy statement in June 1989 as an interim measure to address offshore clearing and netting systems until an international consensus is reached among central banks and bank supervisory authorities.

procedures for the management of risks and without any form of official oversight. The Board also recognizes that the development of offshore clearing and netting arrangements raises issues of concern which go beyond the immediate question of payment risks in the U.S. banking system.

Banks in all countries have been experiencing strong incentives to reduce payment flows and credit exposures. As an apparent consequence, there is an increasing number of proposed or actual interbank netting arrangements which affect an offset or netting of amounts due between banks, arising not only from payment instructions but also from the settlement of foreign exchange and other financial contracts, on either a bilateral or multilateral basis. When located outside the country of issue of the currency subject to the netting, these arrangements have the potential to alter significantly the structure of the international interbank clearing and settlement process.

In response to these developments, the Group of Experts on Payments Systems from the G-10 central banks, meeting at the Bank for International Settlements (BIS) in Basle, Switzerland, studied a variety of payment and currency netting arrangements. The BIS Payments Experts' "Report on Netting Schemes" primarily addresses the allocation of credit and liquidity risk in various netting structures and draws general conclusions as to whether these risks are increased or decreased by the different "institutional forms" of netting. The Board believes that, in so doing, the Report of the Payments Experts provides a valuable starting point for the consideration of risk in the international payment process.

In addition, the Report notes that a number of broader monetary, financial, and supervisory policy implications are associated with the further development of netting arrangements for interbank markets. Netting systems for foreign currency payments and contracts have the potential to create changes in the financial character of affected interbank markets, as well as in the cross-border relationships between national banking systems. These changes, in turn, raise questions about the extent and quality of central banks' oversight and supervision of settlements in their respective currencies, including the allocation of supervisory responsibility among various central banks and national supervisory authorities.

On the basis of this preliminary work, the Governors of the G-10 central banks have determined that a further study of these broader issues be undertaken with a view toward establishing an international understanding of the monetary, financial, and supervisory issues raised by the development of offshore or cross-border netting arrangements.[17]

At the same time, the Board recognizes that the technological, market, and regulatory incentives that are giving rise to the growth of these arrangements will continue to operate. The Board believes that it is important, therefore, to begin to address the potential policy concerns raised by the further development of offshore netting and clearing systems for U.S. dollar payments and the risks that these systems may create. This is particularly the case in light of the significant steps that have been and are being taken by the Federal Reserve and the U.S. banking industry to address payment risk issues. These include both the Board's ongoing payments system risk reduction program and the efforts of the New York Clearing House Association to improve CHIPS participants' awareness of payment risks, to control the level of daylight exposures within CHIPS, and now to adopt settlement finality procedures.[18]

Offshore clearing of U.S. dollar payments, for subsequent net settlement in the United States, may create transaction and other efficiencies for participants in such offshore systems. If, however, the allocation of credit and liquidity risks associated with the netting and settlement is not clearly understood or defined, offshore dollar clearing arrangements may well obscure, or even increase, the level of systemic risk in U.S. large-dollar payments systems as well as in the international dollar settlement process generally. The BIS Report notes that this shifting of risk "can be particularly troubling where the transaction cost efficiencies are enjoyed by banks located in one country, but the credit and liquidity risks associated with the settlement of payments resulting from that netting system may be experienced in the banking system of another country." This is precisely what can happen when U.S. dollar payments are netted in systems outside of the United States and subsequently settled through CHIPS or Fedwire.

Because of the potential for offshore dollar clearing systems both to shift risk to U.S. large-dollar payments systems and to be used to avoid the Board's domestic risk reduction policies, the Board believes that it is appropriate for it to provide preliminary guidance on the framework within which offshore dollar systems should operate. The Board recognizes that the question of the degree of oversight and supervision of offshore clearing and netting systems can only be fully addressed on a cooperative basis among central banks and national bank supervisory authorities. In the interim, the Board's approach to offshore dollar clearing and netting systems will be guided by the following general principles:

1. An offshore dollar clearing or netting system, which settles directly or indirectly through CHIPS or Fedwire, should at a minimum be subject to oversight or supervision, as a system, by a relevant central bank or supervisory authority.

2. The participants should be responsible for clearly identifying the operational, liquidity, and credit risks created within the system and for assuring the prudent management of these risks.

3. The system should have arrangements in place that provide for the finality of settlement obligations and the practical means to assure the timely satisfaction of these obligations.

4. The direct or indirect settlement of the system's obligations through CHIPS or Fedwire should be conducted by an identified settlement agent, in the United States, so that satisfaction of the settlement obligations can be readily ascertained by the participants, the Federal Reserve, and other relevant central banks and supervisory authorities.

Consistent with the foregoing interim principles, the Federal Reserve is prepared to work with the central bank and/or supervisory authorities of the country in which an offshore dollar clearing or netting system is located, on a cooperative basis, to assure the continuing adequacy of the system's procedures for controlling risk.

The Board believes that these interim principles are consistent with the concerns identified by the BIS Payments Experts Group. The minimal conditions that they would impose on offshore clearing and netting systems are similar to the risk-reduction procedures that have been established for CHIPS. These principles should not be regarded as establishing a policy of either encouraging or discouraging the operation of offshore dollar payments systems. Rather, they represent an initial attempt by the Board to indicate the minimum structural features that the

[17] In November 1990, the "Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries" was published by the BIS. Federal Reserve staff is reviewing the Board's policies on offshore dollar-clearing and netting systems.

[18] CHIPS adopted settlement finality procedures in October 1990.

Board believes are appropriate for offshore dollar clearing arrangements. These principles also presume a cooperative international approach to the supervision of offshore clearing and netting arrangements.

D. Private Small-Dollar Clearing and Settlement Systems

1. National ACH Net Settlement

In October 1990, the Board approved a proposal under which the Federal Reserve would provide net settlement services to depository institutions participating in a national, multilateral automated clearing house (ACH) clearing arrangement. The factors considered by the Board in 1990, discussed below, would also apply to any future proposals for national ACH net settlement services.

Assurance of settlement. The ACH is generally considered a small-dollar payment mechanism, and the settlement positions of ACH participants tend to be small relative to capital. Additionally, unlike large-dollar funds transfer systems, such as CHIPS, ACH payments typically are exchanged in batches before the settlement day. Payments received by ACH participants, therefore, generally are not used to fund subsequent payments to participants within the system. These two factors—the relatively low value of payments and the single flow of payments—result in less systemic credit and liquidity risk for participants in ACH clearing arrangements than for participants in large-dollar payments systems.

Nevertheless, a national ACH network that receives settlement services from the Federal Reserve should take steps to minimize the risk exposure of its participants should one of the participants be unable to fund its net debit position at the designated settlement time. The Board does not mandate specific risk control provisions but will consider the effectiveness of provisions suggested by the participants in a clearing and settlement arrangement. Among the types of credit and liquidity controls that should be considered by such clearing and settlement arrangements are (a) objective admission criteria and ongoing monitoring of participants' adherence to those criteria, (b) bilateral credit limits, (c) net debit caps, and (d) gross origination caps.

For example, an ACH network might control credit risk by evaluating the creditworthiness of participants and setting specific credit criteria for admission or by requiring each participant to establish bilateral credit limits with each other participant in a multilateral clearing arrangement. If a relatively large number of institutions use a national ACH clearing arrangement, however, setting and maintaining bilateral limits may be difficult operationally. On the other hand, setting net debit settlement caps provides a means to limit the risk that any one participant can impose upon the group. Gross origination caps serve a similar purpose.

Recasts and unwinds. Because of the potential systemic risks, the Board will examine closely any ACH clearing arrangements that provide for recasting or unwinding the settlement in the event of a participant default. Generally, the Board does not view recasts or unwinds as satisfactory liquidity controls. It is important to determine the degree of systemic risk associated with a multilateral ACH clearing arrangement in order to assess whether a settlement guarantee should be required or whether a settlement recast would be an acceptable alternative. For example, if simulations of a participant's failure to settle indicate that the degree of systemic risk associated with the recast is relatively low and that participants should be able to cover the changes in their settlement positions caused by a recast, the Board may conclude that a settlement guarantee is not necessary to avoid potential systemic problems. Moreover, a relatively wide distribution of ACH payments would tend to limit the exposure of any one participant to the inability of another participant to settle.

Although the degree of systemic risk associated with ACH clearing arrangements is relatively low, a network's reliance upon a complete unwind, if a settlement cannot be achieved in an orderly fashion, raises concerns. If such an event were to occur, it would cause disruption because a potentially large number of payments would not be made as planned. A national ACH network seeking Federal Reserve settlement services should incorporate appropriate risk controls and should be able to demonstrate that the possibility of an unwind would be remote.

Finality of payment. The Board will consider the extent to which settlement entries under the national ACH network are final. For example, use of Fedwire by participants to make settlement payments would provide finality for net settlement entries by the designated settlement time, which could be relatively early in the day, assuming that all participants in net debit positions are able to fund their positions. The use of Fedwire for settlement may also reduce temporal risk, again assuming all net debtors are able to fund their positions. Additionally, the Reserve Banks' risk is minimized because of the controls used to monitor Fedwire.

Operational concerns. The national ACH network should be able to assure the Board that settlement through a Reserve Bank would not cause serious operational problems for the network or any service provider to the network. In addition to operating capabilities, the Board will consider a service provider's financial viability and its ability to demonstrate that it can provide efficient ACH processing services.

2. Small-Dollar ATM Networks

A small-dollar electronic funds transfer or automated teller machine (ATM) network may request settlement services from a Federal Reserve Bank. The Board has delegated to the Director of the Division of Reserve Bank Operations and Payment Systems, with the concurrence of the General Counsel, authority to approve such arrangements under the following conditions: The standard net settlement service agreement must stipulate that net settlement entries are to be considered provisional until the business day following the presentment of a statement to the Federal Reserve in order to ensure the settling depository institutions' ability to cover their net debit positions. The network must agree that large-dollar payments will not be processed under any circumstances and that the Federal Reserve may terminate net settlement services immediately if there is any indication that the network is being used for large-dollar transfers. The network must agree to provide information to the Federal Reserve regarding its operations and transactions when requested. The Federal Reserve has the right to modify or terminate the agreement at any time.

III. Other Policies

A. Rollovers and Continuing Contracts

The Board believes that the use of market innovations, such as federal funds or Eurodollar rollovers or continuing contracts, to reduce daylight overdrafts in Federal Reserve accounts and on the New York Clearing House's Clearing House Interbank Payments System (CHIPS) is consistent with the Board's policy concerning daylight overdrafts. The Board urges market participants to consider using such innovations for these and other financial instruments where feasible. In doing so, participants should be mindful that implementing changes of this type may

involve incremental costs, at least transitionally, and modified risk positions. Accordingly, participants should evaluate these factors and take them into account when selecting and negotiating with counterparties.

Many overnight interbank federal funds and other similar purchases and sales are negotiated in the morning with the funds being sent over Fedwire in the afternoon. Typically, the previous day's overnight borrowings are returned to the seller in the early morning, thus leaving a midday time gap of three or more hours between the morning repayment and the receipt of that same day's new borrowing. Often these transactions are between the same two banks for the same amount. This funding time gap can contribute to daylight overdrafts for the borrowing institution and create risk to Reserve Banks.

Rollovers are interbank overnight transactions where the principal does not change and is not returned the next day to the seller but, instead, is rolled over for the next overnight period. The overnight interest rate is negotiated daily between buyer and seller. The maturity is one business day, or no maturity is specified, and the arrangement may be cancelled at any time by either party. The Board understands that national bank lending limits would not apply to federal funds transactions that have a maturity of one business day or no stated maturity and require no advance notice for termination. Because the rollover procedure eliminates the daily movement of principal on Fedwire and the corresponding time gap that could otherwise exist between repayment of the previous day's borrowings and receipt of new reborrowing, daylight overdrafts are reduced.

Continuing contracts are similar to rollovers. With a rollover, the size of each day's sale is the same. With a continuing contract, the size of each day's sale can vary, and only the difference in principal from the previous day's borrowing is moved over Fedwire or CHIPS. Such arrangements reduce the size of the daily movement of principal on Fedwire and CHIPS and also eliminate the time gap that could otherwise exist between repayment of the previous day's borrowings and receipt of new reborrowing, thereby reducing daylight overdrafts in Federal Reserve accounts or net debits on CHIPS. When the same maturity conditions apply to a continuing contract as apply to a rollover (one business day or unspecified maturity and cancellation at any time by either party) national bank lending limits do not apply.

Each participant should satisfy itself that it has the flexibility to negotiate amounts, rates, and maturity options before using these practices for federal funds, Eurodollars, or other financial instruments. Either of these practices, rollovers or continuing contracts, can reduce daylight overdrafts or intraday net debits, and their prudential use by the banking industry is consistent with the Federal Reserve's policy of reducing intraday exposures on Fedwire and CHIPS. When borrowing banks reduce their daylight overdrafts by use of these practices, some extra operational costs and risks may be incurred by either party compared to current arrangements in the overnight market. For example, sellers of federal funds and other instruments may have to develop alternative audit trail procedures and may accept some additional risk of repayment since funds would not be returned each day before they would be relent. In addition, buyers of federal funds and other instruments may experience some extra initial operating costs to set up rollover arrangements between themselves and lending banks and may have to pay a higher rate to induce lenders to commit their funds for a longer time. However, these costs and risks, if any, should be reflected in the rate or rate spread received and paid. Although it is unclear whether rates on daily interbank funds transactions will fall relative to rates paid for rollovers, continuing contracts, or term funds, or whether the reverse will occur, the Board believes that the negotiation of terms relative to the use of these arrangements should be left to the free operation of the private market.

The Board also supports efforts to encourage timely return of overnight federal funds and other borrowings and encourages operational improvements that would consistently allow timely receipt of funds purchased soon after a seller negotiates a sale. Similar arrangements and industry standards were suggested for federal funds by the American Bankers Association in July 1986.

By order of the Board of Governors of the Federal Reserve System, August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-21207 Filed 9-2-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a two-day meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, September 23, and Thursday, September 24, 1992 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the August 19 meeting, a discussion of "Uses and Objectives of Federal Accounting," a discussion of recommended changes to the "Statement of Recommended Accounting Standards Number 1," a discussion of inventory issues, and a review of the Board's project agenda. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., Room 302, Washington, DC 20001, or call (202) 504-3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a/)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: August 31, 1992.

Ronald S. Young,

Staff Director.

[FR Doc. 92-21273 Filed 9-2-92; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 6]

Federal Travel Regulation; Actual Subsistence Expense Reimbursement in Presidentially Declared Disaster Areas in Florida and Louisiana

August 28, 1992

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida and Louisiana.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew. This special rate may be applied retroactively to claims for reimbursement covering travel during the periods of August 24 through September 22, 1992 for designated Florida areas, and August 26 through September 24, 1992 for designated Louisiana areas.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR 301-8) permits the Administrator of General Services to establish a higher actual subsistence expense reimbursement rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances, such as a natural disaster resulting in a Presidential disaster declaration, result in an extreme increase in subsistence costs for a temporary period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301-8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Florida and Louisiana localities designated as Presidentially declared disaster areas as a result of Hurricane Andrew. For travel during the 30-day period, August 24 through September 22, 1992 for Florida, and August 26 through September 24, 1992 for Louisiana, agencies may approve actual subsistence expense reimbursement not to exceed 300 percent of the applicable maximum per diem rate for the affected Florida counties and Louisiana parishes listed in paragraph 4, below.

4. *Affected localities.* The special reimbursement rate described in paragraph 3, above, applies for travel to the following areas of Florida and Louisiana:

FLORIDA

Counties of Broward, Dade, and Monroe.

LOUISIANA

Parishes of Assumption, Iberia, Iberville, Lafourche, St. John the Baptist, St. Martin, St. Mary, and Terrebonne.

5. *Expiration date.* This bulletin expires on December 31, 1992.

6. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial 703–305–5253.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 92–21260 Filed 9–2–92; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0341]

Drug Export; White Nitrong® (Nitroglycerin) 6.5 mg Sustained-Release Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that U.S. Ethicals, Inc., has filed an application requesting approval for the export of the human drug White Nitrong® (nitroglycerin) 6.5 mg Sustained-Release Tablets to Sweden.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that U.S. Ethicals, Inc., 500 Arcola Rd., P.O. Box 1200, Collegeville, PA 19426, has filed an application requesting approval for the export of the human drug White Nitrong® (nitroglycerin) 6.5 mg Sustained-Release Tablets to Sweden. This product is used for the prophylactic treatment of angina pectoris. The application was received and filed in the Center for Drug Evaluation and Research on March 13, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 14, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 25, 1992.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92–21227 Filed 9–2–92; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting September 10, 1992, 8:30 a.m., National Institutes of Health, Building 1, Wilson Hall, of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, National Institute of Arthritis and Musculoskeletal and Skin Diseases, which was published in the **Federal Register** on August 10, 1992, 57 FR 35598.

The meeting will be open to the public from 1 p.m. to 3 p.m.

Dated: August 31, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-21391 Filed 9-3-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-4320-10]

Emergency Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Colorado, 31 Mile Creek Ranch Vehicle Use Designation Order.

SUMMARY: Notice is hereby given that effective September 1, 1992, all public lands described below are closed to all vehicle access and travel with the exception of Park County Road Number 88. This action is in accordance with title 43 CFR part 8341.2 and in conformance with the principles established by the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976. This closure affects 1,600 acres of land located 30 miles northwest of Canon City, Colorado, 3 miles west of Highway 9 and along County Road 88 in Park County. The Bureau of Land Management has recently acquired fee title to the 31-Mile Creek Ranch and is in the process of formulating a management plan which will include an OHV designation plan that will outline the Bureau's land management goals for this property. Until this plan is completed, access to the property will be via County Road 88. All other vehicular traffic and OHV use will be prohibited on the property. When the management plan is implemented, additional roads and trails may be opened to provide better access to remote portions of the property. These restrictions do not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM.

The purpose of this closure is to protect sensitive values including wildlife habitat, riparian vegetation, watersheds, erosive soils and cultural resources.

Maps of this designation are posted along with this notice in the Canon City District Office, 3170 E. Main St., Canon City, Colorado 81212. Maps of the designated area are also available.

The legal description of the affected lands are:

Sixth Principal Meridian

Township 15 South, Range 73 West
- Section 19: All
- Section 20: SW¼; S½NW¼; SW¼NE¼
- Section 29: N½NW¼
- Section 30: Lots 1, 2 and 7

Township 15 South, Range 74 West
- Section 24: Lots 1, 2 and 3; N½SE¼; E½NE¼
- Section 25: Lots 1, 2, 3, 8 and 9; SE¼NE¼, N½SE¼, except the real boundaries lying in the following described boundaries: commencing at a point from which the Northwest corner of said Section 19, Twp. 15 S., R. 73 W. of the 6th P.M. bears North 21°50' West 669.8 feet; thence South 972.7 feet; thence South 79°17' West 913.3 feet; thence North 1126.2 feet; thence North 89° East 897.4 feet to the place of the beginning;

containing 21.66 acres, more or less, County of Park, State of Colorado.

DATES: This closure becomes effective September 1, 1992.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200 Canon City, CO 81215-2200.

FOR FURTHER INFORMATION CONTACT: Tom Grette, Range Conservationist, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 2200, Canon City, Colorado 81215-2200; Phone: (719) 275-0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 92-21242 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4320-02]

Canon City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 9 a.m. Thursday, September 24, 1992 at the Affiliated National Bank, 146 G Street, Salida, Colorado. The purpose of this meeting will be:

1. Prioritization of Range Improvement projects.
2. Initiate, conduct and settle business pertaining to the expenditure of Range Betterment Funds.
3. Update Board on status of ongoing resource management planning efforts in the Canon City District.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. Any member of the public may file with the Board a written statement concerning matters to be discussed. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Donnie R. Sparks, District Manager, Bureau of Land Managment, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275-0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 92-21241 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4212-14]

Realty Action; Competitive Sale of Public Land in Conejos County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC-54051, COC54052, COC54053, Competitive Sale of public Land in Conejos County, Colorado.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701) at no less than the appraised fair market value.

New Mexico Principal Meridian, Colorado

T. 33N., R.9E.
- Section 32: E½E½SE¼, E½W½E½SE¼, E½W½W½E½SE¼ containing 70 acres more or less. This parcel may be divided in half prior to appraisal and sale.

T. 33N., R.9E.
- Section 32: W½W½W½SE¼,

containing 30 acres more or less.

The lands described above are hereby segregated from appropriation under the public land laws, including the mining laws for 2 years or until the patent is issued. The patent or patents, when issued, will be subject to existing rights-of-way. Simultaneous conveyance of mineral rights

will be determined prior to sale. All parcels that are not sold on the sale day will continue to be available for public bid until sold or the sale is canceled.

DATE: The sale will be held on November 4, 1992 at the Canon City District BLM Office.

ADDRESS: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: Detailed bidding instructions and other information about the sale may be obtained by contacting Bill Miller at (719) 589–4975.

SUPPLEMENTARY INFORMATION: On or before October 13, 1992, interested parties may submit comments to the District Manager, Canon City District, at the above address. In the absence of any objections, this proposal will become the final determination of the Department of Interior.

Donnie R. Sparks,

District Manager.

[FR Doc. 92–21240 Filed 9–2–92; 8:45 am]

BILLING CODE 4310–JB–M

[CO–050–4212–13]

Realty Action; Supplemental Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplement to notices of realty action COC–53506, COC–53540 and COC–44110, exchange of public land in Park, Fremont, Custer and Chaffee Counties, Colorado.

SUMMARY: Three exchange proposals under consideration need additional or alternate public land in order to equalize values so the exchange can be completed. The following described land has been examined and identified as suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 USC 1716:

T.49N., R.11E., N.M.P.M.
  Section 12: Lot 3;
T.49N., R.12E.,
  Section 6: Lot 9;
  Section 7: Lots 8, 9, 10, 13, SE¼NW¼;
T.6S., R.73W., 6th P.M.
  Section 35: SE¼;
T.8S., R.75W.,
  Section 18: Lot 1;
T.14S., R.78W.,
  Section 23: S½SW¼
  Section 26: W½NE¼, E½NW¼;
T.15S., R.72W.,
  Section 6: Lot 7;
  Section 7: Lot 1;
T.15S., R.73W.,
  Section 1: Lots 17, 18, 19, 21, 22, 25, 26, 27, 28, 29, SE¼SE¼
  Section 12: Lot 9, SE¼NE¼
T.16S., R.72W.,
  Section 18: NE¼NW¼, NE¼SE¼;
T.20S., R.73W.,
  Section 33: Lot to be assigned;
T.21S., R.73W.,
  Section 21: SE¼SE¼;
  Section 22: SW¼SW¼;
T.21S., R.71W.,
  Section 24: NE¼NE¼;
  Section 26: Lots 4, 6, 7, 8, 13, 14, 15, 16, 17, 18, 19;
T.22S., R.72W.,
  Section 16: Lot to be assigned;
  Section 23: SW¼NE¼;
T.32S., R.65W.,
  Section 21: SE¼NE¼, NE¼NW¼, NE¼SE¼;
Section 28: W½E½, SE¼SW¼
T.33S., R.65W.,
  Section 6: SE¼NE¼;
Containing approximately 1,600 acres.

The purpose of the exchanges are to acquire private lands containing important public values including recreation, wildlife and riparian areas, while disposing of scattered, difficult to manage tracts with little or no public value. The exchanges are consistent with the objectives of the land use plans for the affected areas.

DATES: Interested parties may submit written comments to the Canon City District Manager on or before October 19, 1992.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: Stu Parker, (719) 275–0631.

SUPPLEMENTARY INFORMATION: The exchange will involve both the surface and subsurface estates and will be subject to valid existing rights on both the offered and selected lands. This notice segregates the public lands described above from entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for 2 years from publication or until patent issues. Any adverse comments will be evaluated by the District Manager who may vacate, modify, or continue this realty action and issue a final determination.

Donnie R. Sparks,

District Manager.

[FR Doc. 92–21235 Filed 9–2–92; 8:45 am]

BILLING CODE 4310–JB–M

[OR 48644; OR–080–02–4212–14: GP2–422]

Realty Action; Proposed Direct Sale; Oregon

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 10 S., R. 4 W.,
  Sec. 21, Lot 5.

The above-described parcel contains 2.61 acres in Benton County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the Federal Register. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the amount may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining law, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relative small size, its best use is to merge it with the adjoining ownership. Use of direct sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering this land for sale.

The parcel is being offered only to Roy and Dorothy Ashling (owners of Tax lot 1100, Map 10–4–21 and Tax Lot 1600, Map 10–4–21C) using direct sale procedures authorized under 43 CFR 2711.3–3.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The Ashlings will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. The mineral interests being offered for conveyance have no known mineral

value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. The Ashlings must include with their bid deposit a nonrefundable $50 filing fee for the conveyance of the mineral estate.

3. The deed will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

b. All valid existing rights and reservations of record.

If the land identified in this notice is not sold, the sale will be canceled. Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comment to the Alsea Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: August 26, 1992.

John H. Mears,

Alsea Area Manager.

[FR Doc. 92-21245 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-33-M

[MT-060-4333-10]

James Kipp Recreation Area Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Completed James Kipp Recreation Area Management Plan.

SUMMARY: BLM has completed the management plan for the James Kipp Recreation Area which is located where Highway 191 crosses the Upper Missouri National Wild and Scenic River; T. 22 N., R. 24 E., Sec. 31, Lots 3, 4, 7, 9, Section 12, SE¼NW¼ and NW¼SE¼ containing 210.3 acres. This area was previously a component of the Montana State Park system, but is now managed by the Bureau of Land Management.

The management plan defines specific actions designed to maximize safe, enjoyable recreation for a wide variety of users and establishes a sequence for implementing the improvements. These actions will be phased in over the next several years depending on budget capabilities and will include an improved access road, parking areas, day use areas, handicapped fishing access, overnight camping areas and interior access roads.

Restrictions in the recreation area will include the control of pets and livestock (pack horses and mules). Hunting and discharging firearms or other deadly weapons are prohibited within the area. Vehicles will be restricted to the identified access roads and parking areas. These restrictions will become effective upon publication in the **Federal Register.**

A copy of the management plan is available for review at the Lewistown District BLM Office, Airport Road, Lewistown, Montana.

LOCATION: Lewistown District BLM Office, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Judith Resource Area Manager, Bureau of Land Management, Box 1160, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: Those wishing to review the management plan may do so at the Judith Resource Area Office, Bureau of Land Management, 1160 Airport Road, Lewistown, Montana.

Dated: August 26, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-21236 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-DN-M

[MT-060-4333-13]

Camping Stay Limit on Public Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a camping stay limit for public lands administered by the BLM, Lewistown District, Montana.

SUMMARY: Persons may occupy any one site or multiple sites within a 5-mile radius on the Lewistown District for a total period of not more than 14 days during any 28 day period. Following the 14-day period, persons may not relocate within a distance of five (5) miles of the site that was just previously occupied until completion of an additional 14-day period. The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation of a site. Under special circumstances and upon request, the authorized officer may grant written permission for an extension of the 14-day limit.

Additionally, no person may leave personal property unattended in designated campgrounds or other recreation developments for a period of more than 24 hours (1 day) or elsewhere on public lands within the Lewistown District for a period of more than 48 hours (2 days) without written permission from the authorized officer.

DATES: This camping stay limit will be effective September 3, 1992.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established to assist the Bureau in preventing long-term occupancy trespass conducted under the guise of camping on public lands within the Lewistown District. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

FOR FURTHER INFORMATION CONTACT: Gary Slagel, Lewistown District Office, Airport Road, Lewistown, Montana 59457, telephone (406) 538-7461.

Authority for this stay limit is contained in CFR title 43, chapter II part 8365, subparts 8365.1-2, 8365.1-6 and 8365.2-3.

Dated: August 25, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-21176 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-DN-M

[NM-940-02-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico on September 28, 1992. San Antonio Missions National Historical Park, within the city of San Antonio, Bexar County in the State of Texas, accepted August 7, 1992 for Group 3 TX.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to

the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: August 25, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92–21175 Filed 9–2–92; 8:45 am]

BILLING CODE 4310–FB–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927–5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to Ed Clark, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. When submitting comments, refer to the OMB number or the Title of the Form.

Type of Clearance: Extension of the expiration date of a currently approved collection without any charge in the substance or in the method of collection.

Bureau/Office: Office of Compliance and Consumer Assistance.

Title of Form: Financial Responsibility—Trucking (and Freight Forwarding).

Agency Form Number: BMC–32, 34, 35, 36, 40, 82, 83, 84, 85, 90, 91 and 91X.

Frequency: On occasion.

Respondents: ICC regulated transportation entities.

No. of Respondents: 45,000.

Total Burden Hours: 22,350 (average amount of time to file BMC–40 is 120 hours, all other forms average 15 minutes).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–21266 Filed 9–2–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–377x]

Buffalo Ridge Railroad, Inc.; Exemption

Buffalo Ridge Railroad, Inc. (Buffalo Ridge) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its line of railroad between milepost 41.1. at Manley, MN, and milepost 49.0 at Brandon, SD, a distance of 7.6 miles in Rock County, MN and Minnehaha County, SD.

Buffalo Ridge has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic will be rerouted on other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on October 3, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by September 14, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 23, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John D. Heffner, Mary Todd Carpenter, Gerst, Heffner, Carpenter & Precup, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Buffalo Ridge has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by September 8, 1992. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 20, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92–21267 Filed 9–2–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 427X)]

CSX Transportation, Inc.—Abandonment Exemption—Manatee County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts, CSX Transportation, Inc., from the prior approval requirements of 49 U.S.C. 10903–10904 to abandon its 0.61-mile rail line between milepost 869.13, at Ellenton Junction, and milepost 869.74, at Ellenton, in Manatee County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 3, 1992. Formal expressions of intent to file an offer [1] of financial assistance

[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[1] See Exempt. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

under 49 CFR 1152.27(c)(2) must be filed by September 13, 1992, petitions to stay must be filed by September 18, 1992, and petitions for reconsideration must be filed by September 28, 1992. Requests for a public use condition must be filed by September 23, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 427X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 26, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92–21268 Filed 9–2–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Superfund (CERCLA)

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 25, 1992, a proposed Consent Decree in *United States* v. *Henry Link Corporation* was lodged with the United States District Court for the Middle District of North Carolina. This Consent Decree resolves the defendant Henry Link Corporation's violations of the Prevention of Significant Deterioration ("PSD") regulations under the Clean Air Act and the North Carolina State Implementation Plan ("SIP") at Plant No. 2, its furniture manufacturing plant in Lexington, North Carolina. Defendant failed to obtain a PSD permit before commencement of construction of Plant No. 2, in violation of the federally enforceable SIP, 40 CFR 52.1778. The complaint seeks civil penalties and injunctive relief under Section 113(b)(2) of the Act, 42 U.S.C. 7413(b)(2), for defendant's violations of that SIP and Section 110 of the Act, 42 U.S.C. 7410. Under the proposed Decree, defendant will pay a civil penalty of $115,000 and implement appropriate injunctive relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Henry Link Corporation*, D.J. Ref. 90–5–2–1–1394.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Middle District of North Carolina, L. Richardson Preyer Federal Building, 324 West Market Street, Greensboro, North Carolina; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia; and (3) the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (telephone (202) 347–2072). Copies of the proposed Decree may be obtained by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington, DC 20004. Please enclose a check for $2.25 ($.25 per page reproduction charge) payable to "Consent Decree Library."

Vicki O'Meara,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–21238 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to The Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on Aug. 13, 1992 two proposed consent decrees in *United States* v. *Primeacre Land Corporation and David Yurkovich d/b/a Yurkovich Industries*, Civ. Action No. 90–0089–W(S), were lodged with the United States District Court for the Northern District of West Virginia. The action was brought under sections 112 and 113(b) of the Clean Air Act, 42 U.S.C. 7412 and 7413(b), for violations of the National Emissions Standards for Hazardous Air Pollutants codified at 40 CFR part 61.

The parties to the first consent decree are United States and David Yurkovich, d/b/a Yurkovich Industries ("Yurkovich"). The proposed consent decree requires Yurkovich to pay civil penalties in the amount of $15,000.00 and implement a future compliance program.

The parties to the second consent decree are United States and Primeacre Land Corporation ("Primeacre"). The proposed consent decree requires Primeacre to pay civil penalties in the amount of $75,000.00 and implement a future compliance program.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of thirty (30) days from the date of this publication. The proposed consent decrees may be examined at the Office of the United States Attorney, room 247, Federal Building, 1125 Chapline Street, Wheeling, West Virginia 26003 and at the Region III Office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia 19107. The proposed consent decrees may also be examined at the Consent Decree Library, 601 Pennsylvania Ave., NW, Box 1097, Washington, DC 20004, (202) 347–2077. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $3.50 (25 cents per page reproduction costs) for the Yurkovich decree and $2.75 (25 cents per page reproduction costs) for the Primeacre decree payable to Consent Decree Library.

John C. Cruden,

Environment and Natural Resources Division.

[FR Doc. 92–21237 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clear Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 21, 1992 a proposed partial consent decree in *United States* v. *In-Tek Constructors, et al.*, Civil Action No. CIVS–92 353 WBS–JFM, was lodged with the United States District Court for the Eastern District of California. This is an action brought pursuant to the Clean Air Act, 42 U.S.C. 7401–7632, and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") asbestos, promulgated under Section 112 of the Act, 42 U.S.C. 7412. Under the terms of the proposed partial consent decree, the settling defendants In-Tek Constructors Inc., and In-Tek Wreckers, Inc. (collectively "In-Tek" agree to pay a civil penalty of $40,000, to submit to an extensive asbestos management program and to comply with certain injunctive provisions designed to insure that it does not violate the revised NESHAP in

the future. The decree includes stipulated penalties in the event that In-Tek fails to comply with the provisions of the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530. Comments should refer to *United States v. In-Tek Constructors, et al.*, D.O.J. Ref. 90–5–2–1–1521.

The proposed partial consent decree may be examined at the Office of the Assistant United States Attorney, Eastern District of California, 3305 Federal Building, 650 Capitol Mall, Sacramento, CA 95814, and at the Consent Decree Library, 601 Pennsylvania Ave., Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed partial consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, P.O. Box 1097, Washington, DC 20004. In requesting a copy by mail, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–21239 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 91–36]

Nathaniel Armstrong, M.D.; Continuation of Registration

On August 9, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nathaniel Armstrong, M.D. (Respondent), of Brunswick, Georgia, proposing to revoke his DEA Certificate of Registration, AA5720873, and to deny any pending applications for renewal. The statutory basis for seeking the revocation of the registration was that Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and in 21 U.S.C. 824(a)(4). The Order to Show Cause alleged that Respondent had been arrested in Brunswick, Georgia, on August 9, 1989, for possession of crack cocaine, that the Georgia Composite State Medical Board (Medical Board) summarily suspended Respondent's license, and that a hearing officer for the Medical Board determined that Respondent's arrest for cocaine possession constituted a violation of Georgia statute.

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner.

Following prehearing procedures, a hearing was held in Atlanta, Georgia, on January 14, 1992. On July 8, 1992, in her opinion and recommended ruling, findings of fact, conclusions of law, and decision, the administrative law judge recommended that the Respondent's DEA Certificate of Registration not be revoked.

No exceptions were filed to Judge Bittner's opinion. On August 10, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on April 28, 1989, Respondent was arrested by Glynn County Police on a charge of possession of crack cocaine which was seized from a motel room occupied by a woman with whom he had visited. As a result of the arrest, the Medical Board conducted an inquiry relative to Respondent's medical license. They determined that Respondent had been arrested for possession of cocaine; a psychiatric evaluation was inconclusive; and chronic chemical abuse could not be established. As a result of these findings, Respondent's medical license was placed on two years probation.

The Government argued that Respondent ought to be found to have possessed the cocaine constructively. The administrative law judge found that since Respondent was not in the room at the time of seizure of the substance, and other persons had access to the room, that he did not possess the cocaine. She further found that the Government failed to meet its burden of proof that Respondent's registration is not in the public interest. Accordingly, Judge Bittner concluded that Respondent's registration should not be revoked.

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competition State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320A–7(a) of title 42.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten, the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988).

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AA5720873, issued to Nathaniel Armstrong, M.D., be, and it

hereby is, continued in active standing, and that any pending applications for registration be, and they hereby are, granted. This order is effective September 3, 1992.

Dated: August 27, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–21178 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By notice dated June 11, 1992, and published in the Federal Register on June 22, 1992, (57FR27790), GANES Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–21252 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By notice dated July 9, 1992, and published in the Federal Register on July 22, 1992, (57 FR 32566), Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 27, 1992.

T. Semneca,

Deputy Director of Office of Diversion Control.

[FR Doc. 92–21282 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By notice dated June 11, 1992, and published in the Federal Register on June 22, 1992, (57FR27790), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Hydromorphone (9150), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–21253 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–08]

Edward A. Langford, M.D.; Revocation of Registration

On October 7, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Edward A. Langford, M.D. (Respondent), of Buffalo, New York, proposing to revoke his DEA Certificate of Registration, AL6921515, and to deny any pending applications for registration as a practitioner. The statutory basis for seeking the revocation was that he had been convicted of a felony related to controlled substances, and that his continued registration would be inconsistent with the public interest. 21 U.S.C. 824(a)(2), 824(a)(4) and 823(f).

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Buffalo, New York, on April 21, 1992. On June 15, 1992, in his opinion and recommended decision, the administrative law judge recommended that the Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied.

No exceptions were filed to the opinion. On July 15, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on May 8, 1991, Respondent was found guilty in the United States District Court for the Western District of New York of ten counts of illegal distribution and unlawfully aiding and abetting the distribution of Nodular, Tussionex, Tylenol with Codeine #4, Valium 10 mg., and Talwin NX in violation of 21 U.S.C. 841(a)(1); and one count of conspiracy in violation of 21 U.S.C. 846. Judge Tenney further found that these convictions constituted felony offenses related to controlled substances for purposes of 21 U.S.C. 824(a)(2).

Respondent entered into an agreement with the New York State Department of Health on June 16, 1989, in which he admitted that on at least 50 occasions between September 1983 and October 1985, he prescribed Dilaudid in excessive amounts to patients for whom he either did not have any records, or whose records did not contain sufficient information to justify his diagnosis or warrant the prescribing of controlled substances. Respondent was assessed a $10,000 civil penalty, of which $5,000 was suspended contingent on compliance with State law. He was also given a five year suspension from

writing New York State prescription forms for Schedule II controlled substances.

On May 11, 1990, the New York State Department of Education also found Respondent guilty of prescribing Dilaudid excessively. As a result, Respondent's license and registration to practice medicine was suspended for three years, the suspension stayed, and his license and registration placed on five years probation.

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320A–7(a) of title 42.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988).

The administrative law judge concluded that Respondent's conduct fell within the provisions of 21 U.S.C. 824(a)(2) and 824(a)(4), and constituted violations of the public interest factors contained in 21 U.S.C. 823(f)(3), 823(f)(4), and 823(f)(5). Judge Tenney also noted that no evidence was offered in rebuttal or in avoidance of the evidence offered by the Government and that the Respondent filed no post-hearing documents on his behalf.

The Administrator adopts the findings of fact, conclusions of law and recommended order of the administrative law judge in their entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AL6921515, previously issued to Edward A. Langford, M.D., be and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective October 5, 1992.

Dated: August 27, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–21180 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–07]

Richard J. Lanham, M.D.; Revocation of Registration

On October 16, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard J. Lanham, M.D., (Respondent) of Buffalo, New York, proposing to revoke his DEA Certificate of Registration, BL2400682, and to deny any pending applications for renewal. The statutory basis for seeking the revocation of the registration was that Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and in 21 U.S.C. 824, and as evidenced by the fact that Respondent had, during the period January 1987 through November 1988, been unable to account for 22,700 dosage units of controlled substances; that he had falsified his June 1990 DEA application for registration by failing to disclose a prior revocation of his State medical license; and that his previous DEA registration had been revoked.

Respondent filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Rochester, New York on March 17, 1992. On May 22, 1992, in his opinion and recommended decision, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied.

The Government filed exceptions and Respondent filed a letter in response to Judge Tenney's opinion. On June 29, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Ohio Medical Board revoked Respondent's Certificate to Practice Medicine and Surgery on June 2, 1989, after Respondent had executed a consent to revocation. The Administrator of the Drug Enforcement Administration revoked Respondent's previous DEA Certificate of Registration, AL6866339, on April 2, 1991, based upon his lack of authorization to handle controlled substances in the State of Ohio. 21 U.S.C. 824(A)(3). On June 20, 1990, Respondent submitted a new application for registration as a practitioner in Schedules II through V for his current address in New York. Respondent failed to indicate on the application that his previous Ohio state medical license had been revoked. The application was approved, based on the representations made and DEA Certificate of Registration, BL2400682, was issued to Respondent on August 27, 1990.

The administrative law judge further found that during the period September 1987 through September 1988, Respondent purchased in excess of 20,000 dosage units of the Schedule III and IV controlled substances Darvon, acetaminophen with codeine, lorazepam, propoxyphene chlordiazepoxide, and Ativan. Respondent admitted that he had no disposition records for the controlled substances he had purchased, and that

they were for his personal use. Respondent admitted that he used the controlled substances to allow him to perform his daily functions and used combinations of drugs to enhance analgesic qualities. Respondent stated that he did not believe that his personal use of controlled substances had been excessive. Respondent admitted that he took no special precautions in the storage or handling of the controlled substances that he ordered, and stated that he had been treating himself symptomatically for chronic fatigue syndrome.

The Administrator may revoke or suspend a DEA Certifiifate of Registration under 21 U.S.C. 824(A), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent state authority and is no longer authorized by state law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent state authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320A–7(a) of title 42.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988).

After reviewing the evidence presented, the administrative law judge concluded that Respondent's continued registration would be inconsistent with the public interest. The administrative law judge found that Respondent had falsified his application for registration in violation of 21 U.S.C. 824(a)(1). Judge Tenney further found that Respondent's conduct fell within the factors in 21 U.S.C. 823 (f)(4) and (f)(5) in that his possession of controlled substances in his home, an uncontrolled and unsecured location, was in violation of 21 CFR 1301.71 and 1301.75; that his failure to keep adequate records violated 21 CFR 1304.24; and his personal detoxification without a separate registration violated 21 CFR 1306.07(a).

The administrative law judge also found, *inter alia*, that Respondent's chronic fatigue syndrome abated in December 1988, that he ceased taking medication, that he returned to New York following his illness, and that there were no indications of any difficulties concerning his current medical practice. The Government took exception to those findings, arguing that such a finding would allow an inference that Respondent had been rehabilitated, whereas the evidence indicated that Respondent was still in a denial stage by failing to acknowledge that his drug use has been excessive. The Administrator does not agree with this finding of fact by the administrative law judge, and adopts the Government position that Respondent has failed to acknowledge the excessive nature of his drug use.

Additionally, the Administrator does not adopt the conclusion of law by the administrative law judge that Respondent dispensed the controlled substances for self-treatment of chronic fatigue syndrome and thus his conduct did not fall within 21 U.S.C. 823(f)(2). The Administrator finds that Respondent's conduct should be considered under 21 U.S.C. 823(f)(2), and hereby adopts the exception filed by the Government that Respondent diverted and dispensed Schedule III and IV controlled substances for his own use in excessive quantities without a valid medical reason, and without observing any protocols in the course of legitimate medical practice.

In addition to recommending that Respondent's Certificate of Registration be revoked, the administrative law judge also recommended that favorable consideration be given to Respondent's reapplication for registration after one year, and that the Administrator waive the provisions of 21 CFR 1301.76(a) with regard to Respondent's future employment in health care facilities. Given the extent of Respondent's abuse of controlled substances and failure to fully acknowledge such abuse, the Administrator declines to adopt either of these two recommendations.

Lastly, Respondent, in his letter protesting the administrative law judge's recommendation that his registration be revoked, asserted that his employment would be jeopardized and that he had been adequately punished by his eight year illness. He recommended that a $1,000.00 fine would be suitable in lieu of revocation. The Administrator rejects this view. These proceedings are not punitive in nature. The Administrator is charged by law with determining and protecting the public health and safety.

The Administrator adopts the opinion and recommended decision of the administrative law judge except as noted above. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BL2400682, previously issued to Richard J. Lanham, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are denied. This order is effective October 5, 1992.

Dated: August 27, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–21179 Filed 9–2–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By notice dated June 22, 1992, and published in the **Federal Register** on July 9, 1992, (57FR30512), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21254 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By notice dated June 11, 1992, and published in the **Federal Register** on June 22, 1992, (57FR 27791), Noramco of Delaware Inc., Division McNeilab Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 28, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21255 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated July 9, 1992, and published in the **Federal Register** on July 22, 1992, (57 FR 32567), Radian Corporation, 8501 Mo-Pac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulation § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: August 27, 1992.

T. Senneca,

Deputy Director of Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21281 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By notice dated July 9, 1992, and published in the **Federal Register** on July 22, 1992, (57 FR 32568), Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: August 27, 1992.

T. Senneca,

Deputy Director of Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21280 Filed 9-2-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202-523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 (202-395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

National Survey of Users of Employment and Unemployment Statistics
BLS–CS–1
Annually
Individuals or households; state or local governments; farms; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations 825 respondents; 15 minutes per response; 206 total hours; 1 form

The National Survey of Users of Employment and Unemployment Statistics measures " customer satisfaction" of all users of such data in order to provide strategic guidance to a quality improvement program.

Revision

Employment and Training Administration
Customer Survey Data Request
1205–0190; ETA 8562
On occasion
Businesses or other for-profit; small businesses or organizations 19,251 respondents; 1 hour per respondent; 19,251 total burden hours; 1 form

Information needed for Secretary of Labor to make determinations of eligibility for petitioning workers to apply for trade adjustment assistance in accordance with sections 222, 223 & 249 of the Trade Act of 1974 as amended, affecting manufacturers, wholesalers, retailers and distributors.

Departmental Management—Assistant Secretary for Policy 15 National Agricultural Workers Survey (NAWS)
1225–0044
Annually
Individuals or households; farms; businesses or other for profit 2,600 respondents; 1 hour per response; 2,600 total burden hours; 1 form
1,250 respondents; 30 minutes per response; 625 total burden hours; 1 form

The National Agricultural Workers Survey (NAWS) provides data to public and private service programs and data analysts which are used for planning, implementing and evaluating farmworker programs. Analysis provides an understanding of the manpower resources available to U.S. agriculture and the importance of immigrants in the labor market. It is the only national source of demographic and employment characteristics of farmworkers.

Extension

Employment Standards Administration
Regulations, 29 CFR Part 4—Labor Standards for Federal Service Contracts
1215–0150
On occasion
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations
54,800 respondents; 5 minutes to 1 hour per response; 35,234 total hours;
Recordkeeping and incidental reporting requirements in Service Contract Act regulations applicable to employers performance on service contracts with the Federal government.

Employment Standards Administration
Application for Approval of a Representative's Fee
1215–0171; CM–972
As needed
Businesses or other for-profit; small businesses or organizations 1,600 respondents; 42 minutes per response; 1120 total hours; 1 form

A black lung claimant may arrange to have an attorney represent his/her interests during the claims process. The purpose of CM Form 972 is to collect pertinent information to determine if the services rendered and the amounts charged can be paid under the Black Lung Benefits Act.

Mine Safety and Health Administration
Operation Under Water
1219–0020
On occasion
Businesses or other for profit; small businesses or organizations 30 respondents; 5 hours per response; 150 total burden hours

Requires coal mine operators to obtain a permit to mine under a body of water if, in the judgment of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners.

Mine Safety and Health Administration
Escape and Evacuation Plans
1219–0046
Semi-annually
Businesses of other for profit; small businesses or organizations 945 respondents; 8 hours per response; 7,560 total burden hours.

Requires operators of underground coal mines to keep records of the results of mandatory weekly examinations of emergency escapeways. The records are used to determine that the integrity of the escapeways is being maintained.

Signed at Washington, DC this 27th day of August, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–21262 Filed 9–2–92, 8:45 am]
BILLING CODE 4510–43–M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202–523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/

PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 (202–395–6880).

Any member of the public who wants to comment on the survey requirements which have been submitted to OMB should advise Mr. Mills of this intent no later than September 15, 1992.

Revision (Amendment)

Bureau of Labor Statistics

Annual Survey of Occupational Injuries and Illnesses 1220–0045; BLS 9300

Form	Affected public	No. of Respondents	Frequency	Average time per respondent
BLS 9300	State and local government (as per State law), Farms, businesses of other for-profit, non-profit institutions, small businesses or organizations.	280,000	Annually	54 minutes. 250,000 total hours.

The Annual Survey of Occupational Injuries and Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. Survey data are used to evaluate the effectiveness of Federal and State programs and to prioritize scarce resources.

The 1992 Annual Survey form has been redesigned for easier entry of the injury and illness totals collected in past years and for gathering additional information about the worker and the circumstances of injuries and illnesses that involved days away from work.

Signed at Washington D.C. this 27th day of August, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–21263 Filed 9–2–92; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 14, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 14, 1992.

The petitions filed in this case are available for inspection at the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Hughes Christianson Company (USWA)	Houston, TX	08/24/92	08/11/92	27,684	Oilwell drilling bits.
Granite-Finishing Plant (8/13/92)	Haw River, NC	08/24/92	08/13/92	27,685	Fabrics.
Corrugated Paper Corp. (workers)	Westborough, MA	08/24/92	08/10/92	27,686	Corrugated paper products.
Union Pacific Resources Co. (Co.)	Fort Worth, TX	08/24/92	08/14/92	27,687	Oil and gas.
Robertshaw Controls Co. (workers)	El Paso, TX	08/24/92	07/27/92	27,688	Control values for water heaters.
Petroleum Helicopters, Inc. (workers)	Lafayette, LA	08/24/92	08/06/92	27,689	Transporting oil and gas.
Reltoc Manufacturing Co. (ACTWU)	Winfield, AL	08/24/92	08/12/92	27,690	Casual slacks.
Die Mesh Corp. (Co.)	Mount Vernon, NY	08/24/92	08/13/92	27,691	Battery components.
Laurel Metal Processing (workers)	Johnstown, PA	08/24/92	08/11/92	27,692	Steel industry services.
Joyce Manufacturing (workers)	Sayre, PA	08/24/92	08/11/92	27,693	Ladies dresses, jackets and skirts.
Credence Systems Corp (workers)	Beaverton, OR	08/24/92	07/28/92	27,694	Semiconductor test equipment.
Credence Systems Corp (workers)	Fremont, CA	08/24/92	07/28/92	27,695	Semiconductor test equipment.
Credence Systems Corp (workers)	Billerica, MA	08/24/92	07/28/92	27,696	Semiconductor test equipment.
Coombs Machinery (workers)	Whitehall, PA	08/24/92	08/24/92	27,697	Buying & selling used textile machinery.
The Timken Company (USWA)	Canton, OH	08/24/92	08/11/92	27,698	Bearings and steel.
Flory Fashions, Inc. (workers)	Smoyersville, PA	08/24/92	08/05/95	27,699	Ladies' dresses and suits.
B-W Footwear Co., Inc. (Co.)	Webster, MA	08/24/92	08/14/92	27,700	Men's and womens' leather shoes.
Lumber Systems, Inc. (workers)	Vancouver, WA	08/24/92	08/09/92	27,701	Lumber handing machinery.
Little Falls Footwear (Co.)	St. Johnville, NY	08/24/92	08/12/92	27,702	Sandals.
Philips Consumer Electronics Co. (IUE)	Greeneville, TN	08/24/92	08/10/92	27,703	Color TV sets.
U.S. Shoe Component Company (workers)	Vanceburg, KY	08/24/92	08/12/92	27,704	Leather shoe uppers, component parts.
Union Oil of California (workers)	Lafayette, LA	08/24/92	08/14/92	27,705	Oil, gas expoloration.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Prestolite Electric, Inc. (CWA)	Gainesville, GA	08/24/92	08/13/92	27,706	Heavy duty electric motors and regulators.
GeoQuest Technology Corp (Co.)	Houston, TX	08/24/92	07/29/92	27,707	Oil and gas exploration services.
Pride Petroleum Services, Inc. (Co.)	Alice, TX	08/24/92	08/12/92	27,708	Oil and gas.
Pride Petroleum Services, Inc. (Co.)	Freer, TX	08/24/92	08/12/92	27,709	Oil and gas.
Pride Petroleum Services, Inc. (Co.)	Rio Grande City, TX	08/24/92	08/12/92	27,710	Oil and gas.
South Texas Swabbing (Co.)	Corpus Christi, TX	08/24/92	08/12/92	27,711	Oil and gas.
Dresser Industries, Inc., Security (USWA)	Dallas, TX	08/24/92	08/11/92	27,712	Oilwell drilling bits.
Reed Tool Company (USWA)	Houston, TX	08/24/92	08/11/92	27,713	Oilwell drilling bits.
Dresser Industries, Inc., Guiberson (USWA)	Dallas, TX	08/24/92	08/11/92	27,714	Packers—oil drilling equipment.

[FR Doc. 92-21264 Filed 9-2-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27,336]

R&S Tong Service Odessa, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 9, 1992 applicable to all workers of R&S Tong Service. The certification notice was published in the Federal Register on July 28, 1992 (57 FR 33368).

At the request of the State Agency the Department reviewed the subject certification. New information from the company shows that the workers were R&S Tong Service employees before being leased back to R&S Tong Service.The intent of the Department's certification is to include all workers of R&S Tong Service, Odessa, Texas who were adversely affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA-W-27,336 is hereby issued as follows:

"All workers of R&S Tong Service, Odessa, Texas, (including leased employees engaged in activities related to the exploration and drilling of crude oil and natural gas) who became totally or partially separated from employment by R&S Tong Service on or after May 20, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC, this August 27, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-21265 Filed 9-2-92; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

Meeting

AGENCY: National Advisory Council on the Public Service (NACPS)

CHANGE: Meeting Location.

SUMMARY: The meeting of the National Advisory Council on the Public Service scheduled for Thursday, September 10, 1992 (8:45 a.m.–1), which was published in the Federal Register on Friday, August 21, 1992, has changed the meeting location to the National Capital Planning Commission, suite 301, 801 Pennsylvania Avenue, NW., Washington, DC. All other information remains the same.

FOR FURTHER INFORMATION CONTACT: Jane Riddleberger, NACPS, suite 420, National Press Building, 529 14th Street, NW., Washington, DC 20045 (202–724–0796).

DATED: August 31, 1992.

Jean M. Curtis,

Executive Director.

[FR Doc. 92–21274 Filed 9–2–92; 8:45 am]
BILLING CODE 7525-01-M

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge, Overview, and Project Grants for Organizations, Design Education, Heritage Conservation, Arts Facilities Design, and Rural and Small Communities Sections) to the National Council on the Arts will be held on September 14, 1992 from 9 a.m.–7 p.m., September 15 from 9 a.m.–6 p.m., September 16 from 9 a.m.–7:30 p.m. and September 17–18 from 9 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 18 from 9 a.m.–5 p.m. for an overview of the program.

The remaining portions of this meeting on September 14 from 9 a.m.–7 p.m., September 15 from 9 a.m.–6 p.m., September 16 from 9 a.m.–7:30 p.m. and September 17 from 9 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panel which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 31, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–21285 Filed 9–2–92; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Single Music Presenters and Festivals Section) to the National Council on the Arts will be held on September 14–16, 1992 from 9 a.m.–5:30 p.m. and September 17–18 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 17 from 4 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on September 14–16 from 9 a.m.–5:30 p.m., September 17 from 9 a.m.–4 p.m., and September 18 from 9 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: August 31, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–21284 Filed 9–2–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322]

Long Island Power Co.; Shoreham Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the NRC or Commission) is considering issuance of an amendment to Facility License No. NPF–82 issued to Long Island Power Company (LIPA or the licensee) for the possession of the Shoreham Nuclear Power Station, Unit 1 (SNPS or the facility) located in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change license conditions and Technical Specifications (TS) to reflect the administrative changes resulting from the February 29, 1993 transfer of the SNPS license from the Long Island Lighting Company (LILCO) to LIPA and to add a condition that the license revert to LILCO in the event LIPA ceases to exist or is otherwise found to be unqualified. Additionally, the TS are being revised to eliminate the requirement for LIPA to maintain 10 CFR part 55 licensed operators.

The proposed action is in accordance with the licensee's and LILCO's joint application dated June 28, 1990, and as supplemented June 13, June 27, October 31, and December 5, 1991, and March 27, and April 10, 1992.

The Need for the Proposed Action

Under the 1989 Settlement Agreement between New York State and LILCO, LILCO was contractually committed never to operate Shoreham as a nuclear facility and to transfer the Shoreham facility to LIPA for decommissioning. The SNPS Facility Operating License (Possession Only License or POL) was transferred to LIPA by Order dated February 29, 1992. The proposed amendment would implement administrative changes to reflect the SNPS license transfer and elimination of the TS requirement for the licensees to maintain 10 CFR part 55 licensed operators. There will be no physical changes to the Shoreham facility associated with this amendment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the license conditions and TS. The proposed changes are administrative changes reflecting the transfer of the Possession Only License from LILCO to LIPA and the elimination of the TS requirement to maintain 10 CFR part 55 licensed operators. Under the proposed amendment, all responsibilities and obligations associated with the Possession Only License, Technical Specifications, as well as applicable plans, procedures, and programs referenced therein will be transferred to LIPA. Accordingly, LIPA's activities after license transfer are consistent with the Defueled Safety Analysis Report (DSAR) and the established safety margins. The direct environmental impacts of LIPA's activities under the license transfer are within those previously evaluated by LILCO in their DSAR and authorized by the Commission's approval of the POL on June 14, 1991 and issuance of the Decommissioning Order on June 11, 1992. Thus, there will be no significant change in the activities conducted at the site and there will be no changes to the facility or the environment as a result of the license amendment and the corresponding administrative changes to the TS reflecting the change in ownership and elimination of the TS requirement to maintain 10 CFR part 55 licensed operators consistent with the permanently defueled condition of the plant. Accordingly, the Commission concludes that this action would result in no radiological or non-radiological environmental impact.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of resources not considered in the Final Environmental Statement for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

A Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 20, 1991, (56 FR 11781). On April 19, 1991, the Scientists and Engineers for Secure Energy and the Shoreham Wading River Central School District (the petitioners) filed petitions and comments to intervene and request for hearing concerning the license transfer application. The petitioners in their letter dated June 3, 1992, requested permission to withdraw their opposition in accordance with their settlement agreement with the licensee. The ASLB in its Order, LBP–92–14, dated June 17, 1992, granted the petitioners' motion to dismiss, with prejudice, and terminated the proceeding. The NRC staff addressed the petitioner's comments in their Safety Evaluation concerning this amendment and concluded that nothing in the petitioner's comments affects the staff's proposed no significant hazards consideration.

For further details with respect to this action, see the request for amendment dated June 28, 1990, and supplements of June 13, June 27, October 31, and December 5, 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697.

Dated at Rockville, Maryland this 27th day of August, 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–21215 Filed 9–2–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–445]

TU Electric Utilities Co.; (Comanche Peak Steam Electric Station, Unit 1); Exemption

I. The Texas Utilities Electric Company (TU Electric) is the holder of Facility Operating License No. NPF–87, which authorizes operation of the Comanche Peak Unit 1 reactor at a steady-state power level not in excess of 3425 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Somervell County, Texas. This license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission.

II. Section VI(4)(d) of Appendix E to 10 CFR 50, states that "Each licensee shall complete implementation of the ERDS [Emergency Response Data System] by February 13, 1993, or before initial escalation to full power, whichever comes later."

By letter dated June 1, 1992, the licensee requested a schedular exemption from the requirements of section VI(4)(d) of appendix E. The licensee stated that they planned a replacement of the Comanche Peak Steam Electric Station, Unit 1 computer system during the third refueling outage scheduled during the fourth quarter of 1993.

III. The licensee's request for a schedular exemption from the requirement of appendix E to 10 CFR 50 section VI(4)(d) is based on a planned change-out of the computer system which drives the ERDS. The change-out is to be completed by fourth quarter of 1993. The licensee states that if the exemption is not granted, it would be required to install two different ERDS for the same reactor within one year, and that this would result in redundant and unnecessary costs.

The purpose of the rule requiring installation of ERDS is to assure that all power reactors, except for Big Rock Point, install an ERDS in a timely manner. The licensee stated that it will install an ERDS within four months after installation of a new computer, thus it will comply with the intent of the regulation. The ERDS is informational only, and does not affect plant safety.

For these reasons, we conclude that granting a scheduling exemption from appendix E, section VI(4)(d) of 10 CFR 50 will relieve the licensee from unnecessary hardship and redundant costs of installing and testing two ERDS systems within one year. Therefore, the licensee's request is granted.

IV. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this 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. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(iii), are present justifying the exemption. The exemption would provide only temporary relief from the applicable regulation in that the licensee has extended the installation of the ERDS to allow replacement of its Unit 1 computer system.

Accordingly, the Commission hereby grants an exemption as described in Section III above from appendix E, Section VI(d)(4) of 10 CFR part 50 to extend the completion date of the ERDS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (57 FR 38884).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of August 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–21216 Filed 9–2–92; 8:45 am]

BILLING CODE 7590–1–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Amended notice of meeting.

CHANGES: The President's Council of Advisors on Science and Technology (the "Council") is currently holding a series of public meetings around the country as announced in 57 FR 23604–605 (June 4, 1992). This amendment is to provide notice of the precise location for the last of these public meetings.

DATE AND LOCATION: On September 24, 1992, the Council will meet at Northwestern University from 8:30 a.m. to 3:30 p.m. following the agenda set out in the **Federal Register** notice referenced above. This meeting will be held at Hardin Hall, Rebecca Crown Center located at 633 Clark Street.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Tenuta, Office of Science and Technology Policy, 744 Jackson Place, NW., Washington, DC 20506 at (202) 395–3170, fax number (202) 395–5076.

Dated: August 28, 1992.

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92–21269 Filed 9–2–92; 8:45 am]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31079; International Series Release No. 439; File No. SR-Amex-92-25]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Index Warrants Based on a Basket of Japanese Traded Stocks

August 24, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1992, the American Stock Exchange, Inc. ("Amex" 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 Amex. 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 Amex proposes to approve for listing and trading under section 106 of the Amex Company Guide warrants on an index of not less than twenty-five common stocks actively traded on the Tokyo Stock Exchange; and to add commentary .04 to Rule 411 to provide that such warrants shall only be sold to accounts approved for options trading pursuant to Exchange Rule 921.[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex 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 Amex 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 Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] On August 19, 1992, the Amex submitted an amendment to increase the minimum number of stocks in the proposed index from 20 to 25. See letter from Benjamin D. Krause, Senior Vice President, Amex to Sharon Lawson, Assistant Director, Division of Market Regulation, dated August 19, 1992.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Section 106 of the Amex Company Guide sets forth guidelines applicable to listing warrants based on foreign and domestic stock indexes. Pursuant to section 106, the Amex proposes to list and trade warrants on a basket of at least twenty-five common stocks actively traded on the Tokyo Stock Exchange (the "Basket").

The market value of the proposed basket of stocks will be calculated once a day based upon the closing prices of the component stocks on the Tokyo Stock Exchange and disseminated each morning before the opening of trading in the United States. At inception, each of the component stocks will be represented in the Basket in approximately equal percentages and market values.

The number of shares of each component stock in the Basket will remain fixed during the life of the warrant, except in the event of certain types of corporate actions such as (i) the payment of a cash dividend or distribution in excess of 10% of the price of the component security (as of the closing of trading on the declaration date); or (ii) a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks in excess of 10% of the outstanding number of shares. In the event of such corporate actions, the number of shares of the security in the Basket may be adjusted to maintain the component's relative weight in the Basket at the level immediately prior to the corporate action. In the event of a merger, consolidation, dissolution or liquidation of a component security, the price of the component stock will be fixed at the closing price on the Tokyo Stock Exchange on the last day of trading. Advance notice of such action shall be disseminated by the Exchange. Thereafter, this stock will remain in the Basket and its value will remain static for the duration of the term of the warrant.

As noted above, the Basket will initially be constituted with not less than 25 component stocks. Each component stock will (1) have a minimum market value (in U.S. dollars) of at least $500 million, and (2) have an average monthly trading volume during the preceding six months of not less than 1,000,000 shares. In addition, not less than 75% of the component stocks will have a market value of at least $1 billion.

Warrant issues on the Basket will conform to the listing guidelines under section 106, which generally provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earning requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000. In addition, the warrant issuer and/or guarantor shall be expected to have shareholders' equity in excess of $100,000,000.

These warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Basket has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Basket has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

In addition, the Exchange proposes to add Commentary .04 to Exchange Rule 411 to ensure that transactions in warrants on the Basket will not be effected in a customer's account which has not been approved for options trading pursuant to Exchange Rule 921.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and 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 Amex believes 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 reason 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21189 Filed 9-2-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31118; File No. SR-Amex-91-07]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 127-Minimum Fractional Changes

August 28, 1992.

I. Introduction

On April 24, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Amex Rule 127 in order to increase, from $1 to $5, the price level below which equity securities are traded in sixteenths, and at or above which equity securities are traded in eighths.

Notice of the proposed rule change was published in the **Federal Register** in Securities Exchange Act Release No. 29183 (may 9, 1991), 56 FR 22741 (May 16, 1991). One comment was received on the proposal.[3]

II. Description of the Proposal

The proposed rule change increases, from $1 to $5, the threshold level at or above which securities trade in eighths. The proposal requires, therefore, that securities selling between $0.25 and $5 be traded in sixteenths, while securities selling at or above $5 be traded in eighths. Securities trading below $0.25 will continue to be traded in thirty-seconds.[4]

Prior to approval of this proposed rule change, Amex Rule 127 provided that equity securities selling below $0.25 trade in thirty-seconds, while equity securities selling between $.25 and $1 trade in sixteenths, and those selling at or above $1 trade in eighths. Furthermore, Rule 127 provides that the Exchange may fix different minimum fractional changes for securities traded on its floor. Pursuant to this authority, the Exchange stated that it has established sixteenths trading in foreign issues selling at less than $5 and in foreign currency warrants selling at less than $3. According to the Exchange, it also has used this exemptive authority, from time to time, generally at the request of a specialist seeking to improve market quality, to establish sixteenths trading in certain stocks selling above $1.[5]

At the time of publication of the Commission's release noticing this proposal, ITS was not equipped to accommodate trading in sixteenths. However, at the February 18, 1992 meeting of the ITS Operating Committee, the ITS participants approved enhancements to ITS to permit trading in sixteenths for B issues[6] priced under $5.00. Amex represents that these system modifications have been made and the system now is able to accommodate trading in sixteenths.[7]

III. Comments Received

The Commission received one comment letter regarding the proposal.[8] The commenter generally supported the Amex's proposal, but suggested that the proposal be extended to all equity securities, not just low-priced securities. According to the commenter, the restriction limiting orders to 1/8 of one dollar per share minimum variations deprives brokers and customers of the opportunity to transact at prices between the resultant spread. Among other things, the commenter strongly suggested that all the national stock exchanges, in addition to the National Association of Securities Dealers, Inc., be required to eliminate any commission variation above $.01.

IV. Discussion

After careful consideration, the Commission finds that the Amex's proposed rule change to increase, from $1 to $5, the price level below which equity securities are traded in sixteenths, and at or above which equity securities are traded in eighths, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, specifically, sections 6(b) and 11A of the Act.[9] The

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] *See infra* note 7 and accompanying text.

[4] The proposed amendments to Rule 127 do not pertain to bond issues which will continue to be dealt in at 1/8 of 1%.

[5] See discussion *infra* on the requirements to submit a proposed rule change under section 19(b) of the Act if Amex were to set different minimum fractional changes pursuant to Amex Rule 127.

[6] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), compiles last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. Amex-listed stocks and qualifying regional listed stocks are reported on CTA Tape B.

[7] See letter from Thomas B. Demchak, Director, Securities Information Automation Corporation, to Elizabeth MacGregor, Branch Chief, Division of Market Regulation, SEC, dated August 25, 1992.

[8] See letter from James L. Rothenberg, to Jonathan G. Katz, Secretary, SEC, dated May 31, 1991.

[9] 15 U.S.C. 78f and 78k-1 (1988).

Commission believes that the proposal is consistent with the section 6(b)(5) [10] requirement that the rules of the Exchange be 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. Additionally, the Commission believes that the proposal is consistent with section 11A which requires the Commission to facilitate the establishment of a national market system. Pursuant to section 11A, a national market system should assure, among other things, fair competition between the exchanges, economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.

The Commission believes that market quality should be enhanced by applying a minimum fractional change of 1/16, rather than 1/8, to securities selling below $5. The Commission believes that decreasing such trading variations should help to produce more accurate pricing of such securities and can result in tighter quotations. In addition, if the quoted markets are improved by the reduced minimum tick fluctuations, the change could result in added benefits to the market such as increased liquidity in lower priced stocks.

Furthermore, the Amex has represented that 40% of all equity securities presently traded on the Amex sell for under $5 per share.[11] The Commission believes that the tighter quotation resulting from trading these securities in sixteenths should provide customers with the most competitive market and the best possible execution of their transactions in these low-priced securities.

In addition, the Commission believes that the proposal should lead to increased competition between the exchanges pursuant to Section 11A of the Act. As noted above, ITS participants will have the capability to trade in sixteenths in Amex issues.[12] By ensuring that all ITS participants can quote in sixteenths, customers should be able to receive a better, more competitive price in securities priced below $5.00.

While the Commission understands the objective of the commenter's opinion that the proposed minimum fractional change should be made applicable to all equity securities, not just those selling below $5, the Commission finds that approval of the Amex's proposal in its current form is appropriate and consistent with the Act. In particular, we note that lower priced stocks (the ones covered by the Amex proposal) should benefit the most from trading in sixteenths. Moreover, Amex has not proposed sixteenth trading for all stocks, and the Commission does not believe that it should force Amex at this time to go to sixteenth trading for all stocks trading on its market. Nevertheless, we would recommend the Amex to examine its experience with sixteenth trading to assess whether it has provided benefits to its markets that should be expanded to other classes of stocks traded on the Amex.

Finally, as indicated above, Rule 127 provides that the Exchange may fix different minimum fractional changes for securities traded on its floor. Pursuant to this authority, the Exchange stated that it has established sixteenths trading in foreign issues selling at less than $5 and in foreign currency warrants selling at less than $3. According to the Exchange, it also has used this exemptive authority to establish sixteenths trading in certain stocks selling above $1. The Commission emphasizes that any future attempt to alter the minimum fraction change for securities traded on the exchange must first be submitted to the Commission as a proposed rule change pursuant to section 19(b) of the Act, and Rule 19b–4 thereunder.

V. Conclusion

For the reasons set forth above, the Commission finds that the Amex's proposed rule change is consistent with sections 6 and 11A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) [13] of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 92–21224 Filed 9–2–92; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] Indeed, with the advent of the newly implemented Emerging Company Marketplace ("ECM"), the exchange should attract additional companies whose securities currently sell at or below $5.

[12] See notes 5 and 6 and accompanying text, *supra.*

[13] § 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–31111; File No. SR–Phlx–92–18]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Reduction of Trading Increments for Long-Term, Reduced Value Index Options

August 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange, pursuant to Rule 19b–4 under the Act, proposes amend Exchange Rule 1034 regarding minimum tick fluctuations for premiums. Specifically, the Exchange proposes to reduce from one-eighth point to one-sixteenth point, the minimum tick fluctuation for premiums between $3.00 and $5.00 for long term options on the reduced value Value Line Composite Index ("VLE").[1] The Exchange believes that narrowing the minimum fractional change to one-sixteenth (1/16) will provide the potential opportunity for market participants to make better markets in long-term, reduced value VLE options trading below $5.00 per index option.[2]

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 self-regulatory organization included

[1] On August 18, 1992, the Phlx amended its filing to clarify that the proposed narrower tick fluctuations will only apply to long-term, reduced value index options on the VLE trading between $3 and $5. Currently, under Exchange Rule 1034, the one-sixteenth minimum tick fluctuation only applies to option contracts trading under $3. See Letter from Murray L. Ross, Secretary, Phlx, to Stephen Youhn, Staff Attorney, Options Regulation, Division of Market Regulation, SEC, dated August 18, 1992.

[2] Under Phlx rules, a long-term stock index option is one with a duration greater than twelve months. These options are also known as Long Term Equity Anticipation Securities, or "LEAPs."

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 self-regulatory organization 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 proposed rule change was recommended to the Board of Governors of its Options Committee in response to a corresponding filing by the American Stock Exchange, Inc. ("Amex") respecting minimum fractional changes for dealing in LEAPs on the Amex's reduced value Major Market Index ("MXI"). In order to offer investors a competitive pricing interval in LEAPs respecting the VLE, the Phlx Board of Governors authorized and approved the proposed rule filing. The Phlx believes that narrowing the minimum fractional change to one-sixteenth (1/16) will provide the potential opportunity for market participants to make better markets in long-term, reduced value VLE options trading between $3 and $5.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of its proposed rule change.

The Commission believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, because the reduced value VLE underlying VLE LEAPs is one-tenth of the value of the full value VLE, the Commission believes the Exchange's proposal may result in enhanced pricing efficiency and price continuity for LEAPs on the reduced value VLE, thereby promoting the public interest and protecting investors. The Commission also believes that the narrow minimum tick fluctuation may result in enhanced market maker performance and tighter market for LEAPs on the reduced value VLE.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission notes that the Phlx's proposal is substantially identical to the Amex's proposal to reduce the trading increments for LEAPs on its reduced value stock index options. The Amex's proposal was subject to the full notice and comment period and the Commission did not receive any comments. Accordingly, the Commission does not believe that there are any new or different regulatory issues arising out of the current Phlx proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-92-18 and should be submitted by September 24, 1992.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [3] that the proposed rule change (SR-Phlx-92-18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21190 Filed 9-2-92; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78s(b) (1988).

[Rel. No. IC-18912; 812-7909]

Balanced Fund, et al., Application

August 27, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Balanced Fund, a series of Commonwealth Investment Trust (the "Trust"), and Financial Industrial Income Fund, Inc. ("Financial Fund").

RELEVANT ACT SECTIONS: Exemption requested under section 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order permitting Financial Fund to acquire substantially all of the assets and certain liabilities of Balanced Fund.

FILING DATE: The application was filed on April 27, 1992 and amended on August 4, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 21, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Financial Industrial Income Fund, Inc., 7800 East Union Avenue, suite 800, Denver, Colorado 80237, Attention: Glen A. Payne, Esq., and c/o Gardner and Preston Moss, Inc., 101 Federal Street, Boston, Massachusetts 02110, Attention: Carmine A. Greco, Esq.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779, or Nancy M. Rappa,

Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representatives

1. Each of the Trust and Financial Fund is registered under the Act as an open end, diversified management investment company. Balanced Fund is one of two series of the Trust.

2. Balanced Fund's investment adviser is Gardner and Preston Moss, Inc. ("Gardner"). Financial Fund's investment adviser is INVESCO Funds Group, Inc. ("INVESCO"). Both Gardner and INVESCO are wholly-owned subsidiaries of INVESCO MIM North American Holdings, Inc., which in turn is a wholly-owned subsidiary of INVESCO MIM PLC.

3. Pursuant to an Agreement and Plan of Reorganization (the "Plan"), Financial Fund proposes to acquire all of the assets of Balanced Fund, subject to all of the liabilities of Balanced Fund reflected on an unaudited statement of assets and liabilities, in exchange for Financial Fund shares at a closing described in the Plan (the "Closing").

4. As of December 31, 1991, Balanced Fund had net assets of approximately $47.7 million, and Financial Fund had net assets of approximately $1.6 billion.

5. Financial Fund will assume all liabilities, expenses, costs, and reserves reflected on an unaudited statement of assets and liabilities of Balanced Fund prepared as of the close of business on the day preceding the Closing in accordance with generally accepted accounting principles consistently applied from the prior audited period. Financial Fund will not assure any other liabilities of Balanced Fund, whether absolute or contingent, known or unknown, around or unaccrued.

6. At or prior to the Closing, Balanced Fund will declare a dividend or dividends which, together with all previous such dividends, shall have the effect of distributing to Balanced Fund's shareholders all of Balanced Fund's investment company taxable income and net capital gains realized for all taxable years ending at or prior to the Closing.

7. The aggregate net asset value of full and fractional Financial Fund shares to be issued to Balanced Fund shareholders will equal the aggregate net assets of Balanced Fund as of the close of business on the day preceding the Closing. The number of Financial Fund shares to be issued to Balanced Fund will be determined by dividing (a) the aggregate value of Balanced Fund's net assets by (b) the net asset value per share of Financial Fund. Portfolio securities of Balanced Fund and Financial Fund will be valued in accordance with the valuation practices of Financial Fund.

8. At or as soon as practicable after the Closing, Balanced Fund will liquidate and distribute *pro rata* to its shareholders of record as of the close of business on the Valuation Date the full and fractional Financial Fund shares received by Balanced Fund.

9. Balanced Fund and Financial Fund will not bear any expenses of the Plan. Gardner and INVESCO will bear the reorganization expenses of Balanced Fund and Financial Fund.

10. Balanced Fund imposes a maximum front-end sales charge of 7½% of the offering price, and does not have a rule 12b–1 plan. Financial Fund does not impose a front-end sales charge, but has adopted a rule 12b–1 distribution plan authorizing monthly payments to INVESCO of up to 0.25% of its average daily net assets. Neither Balanced Fund nor Financial Fund imposes a sales charge in connection with the redemption of shares.

11. Balanced Fund's investment objectives are safety of principal, continuity of income and long-term capital growth. Financial Fund's investment objective is to seek the best possible current income while following sound investment practices by investing its assets in securities that will provide a relatively high yield and stable return and which, over a period of years, may also provide capital appreciation.

12. Pursuant to the Plan, Financial Fund may instruct the Trust to sell securities held by Balanced Fund that Financial Fund in its discretion deems inappropriate for its portfolio, and the Trust may sell or elect not to transfer such securities to Financial Fund. Financial Fund intends to request that the Trust sell securities constituting approximately 35% of Balanced Fund's portfolio. As a result of such sales, Balanced Fund will realize taxable gains of approximately $2 million. The proceeds of such sales will be held in short-term interest bearing instruments pending transfer to Financial Fund.

13. The expense ratios of Financial Fund and Balanced Fund have been similar over a six-year period. Based upon net assets as of March 31, 1992, Balanced Fund's ratio of expenses to net assets is approximately 0.981% per annum and Financial Fund's is 0.964%. INVESCO projects that the combined funds will have an expense ratio of approximately 0.961% following the reorganization.

14. At meetings held on January 29, 1992 and January 22, 1992, respectively, the Plan was approved by the Board of Trustees of the Trust and the Board of Directors of Financial Fund. In determining whether to approve the Plan, the Trustees of the Trust and the Directors of Financial Fund considered the following factors, among others: (a) The capabilities and resources of Financial Fund's investment adviser, sub-investment adviser, and principal underwriter in the areas of investment management and marketing; (b) the compatibility of the funds' investment objectives, policies, and restrictions, as well as service features available to shareholders of the respective funds; (c) expense ratios and published information regarding the fees and expenses of Balanced Fund and Financial Fund and similar funds; (d) sales charges, distribution fees and methods of distribution of the funds; (e) the comparative investment performance of Balanced Fund and Financial Fund, as well as the performance of similar funds; (f) the terms and conditions of the Plan and whether the reorganization would result in dilution of shareholder interests; (g) the advantages to the shareholders of Balanced Fund and Financial Fund as well as to Gardner and INVESCO and their respective affiliates of eliminating the management of the assets of Balanced Fund as a separate portfolio; (h) the costs of the Plan to be borne by the respective investment advisers; (i) the tax consequences of the Plan; and (j) the compatibility, suitability, and acceptability of the assets of Balanced Fund which are to be exchanged for Financial Fund shares.

15. The minutes of the January 29 and January 22 meetings reflect that the Trustees and Directors determined that the reorganization would not be dilutive to shareholders of their respective funds after discussions with management of the funds and an analysis of the *pro forma* estimated operating expenses of the combined entity after the proposed reorganization. Information that was of particular importance in making these determinations was that: (1) The aggregate net asset value of the Financial Fund shares that Balanced Fund would receive in the exchange would equal the fair market value of the aggregate net assets of Balanced Fund; (2) neither Balanced Fund nor Financial Fund would incur any expenses with respect to the proposed reorganization; and (3) the expense ratio of the combined funds was projected over time

to be incrementally lower than that of either fund operating separately.

16. The minutes of the January 29, 1992 meeting reflect that the Trustees of the Trust determined that the proposed reorganization would be in the best interest of Balanced Fund by focusing on: (1) INVESCO's success in distributing shares of Financial Fund, compared with the continued inability of Balanced Fund's distributor to attract retail brokerage firms to distribute Balanced Fund shares; (2) Balanced Fund's increase in net redemptions; (3) Financial Fund's higher average annual total returns and its historical record among equity income funds; (4) services available to Financial Fund shareholders that are not available to Balanced Fund shareholders, including Financial Fund's exchange privileges with twenty-four other portfolios; and (5) the fact that Financial Funds does not charge a front-end sales load (although it does charge a rule 12b-1 fee of 0.25%), while Balanced Fund charges a front-end sales load of 7.5% to 1%.

17. The minutes of the January 22, 1992 meeting reflect that the Directors of Financial Fund determined that the Plan is in the best interests of Financial Fund by focusing upon: (1) The compatibility of Balanced Fund's assets with Financial Fund's investment objectives, policies, and restrictions; (2) the willingness of Financial Fund's adviser and subadviser to acquire and, at least initially, maintain Balanced Fund's assets; (3) the fact that the exchange would not have an adverse effect, and might have a minor beneficial effect, on Financial Fund's expense ratio; and (4) the recognition that the exchange would not dilute the interests of Financial Fund's shareholders, impose any cost or expense on Financial Fund, or cause any taxable gain or loss to Financial Fund.

18. Applicants submit that the proposed reorganization is consistent with the policy of each of Balanced Fund and Financial Fund. Consistent with their investment objectives, both seek income and capital growth, without undue risk. Although Financial Fund's objective emphasizes securities with a "relatively high yield," this approach is tempered by references to "sound investment practices" and "stable return," concepts that are consistent with Balanced Fund's references to "safety of principal" and "continuity of income." Similarly, Financial Fund invests in securities which "over a period of years, may also provide capital appreciation," while Balanced Fund seeks "long term capital growth." Although Financial Fund is classified as an equity income fund rather than a balanced fund, and thus does not have a fundamental policy requiring it to maintain at least 25% of its assets in fixed income senior securities, as Balanced Fund does, Financial Fund normally invests between 60% and 70% of its assets in dividend paying common stocks of domestic industrial issuers, in addition to convertible bonds and preferred stocks. The Trustees determined that the historical asset allocation between common stocks and fixed income senior securities of Financial Fund were generally similar to those of Balanced Fund at the prior four calendar year-ends. Although capital appreciation is the secondary objective of Financial Fund and one of three primary objectives for Balanced Fund, the Trustees observed that Financial Fund and Balanced Fund had benefited to a similar degree from the capital appreciation of their respective portfolio securities. In addition, for the most recent six years, the ratio of net investment income to average net assets of Financial Fund and Balanced Fund ranged generally between 4% and 5%, and Financial Fund's ratio ranged between approximately 108% and 88% of Balanced Fund's ratio.

19. Although Financial Fund intends to request that the Trust sell securities constituting 35% of the value of Balanced Fund's portfolio, such sales will be undertaken primarily to eliminate holdings. (1) That would represent relatively small percentages of Financial Fund's net assets and would require a disproportionate allocation of management's resources for the relative size of such holdings in comparison with Financial Fund's other securities; (2) in industries or sectors where Financial Fund holds alternative issues and expects that such issues will provide a better contribution to investment performance than Balanced Fund's positions in such industries or sectors; and (3) in industries or sectors to which Financial Fund currently is giving limited emphasis or in which Financial Fund is not participating.

20. Consummation of the Plan was contingent upon receipt of the affirmative vote of the holders of at least a majority (as defined in the Act) of the outstanding shares of Balanced Fund, which approval was received at a special meeting of shareholders called for that purpose on July 28, 1992.

21. Consummation of the Plan is not contingent upon receipt of a favorable opinion of counsel regarding the tax consequences of the reorganization. However, management of Balanced Fund and Financial Fund anticipate that Balanced Fund and Financial Fund, respectively, will be able to make the representations necessary for counsel to issue a favorable opinion at the Closing.

Applicants' Legal Analysis

1. Balanced Fund and Financial Fund may be deemed to be affiliated persons of one another, within the meaning of section 2(a)(3) of the Act, because their respective investment advisors, Gardner and INVESCO, are under the common control of INVESCO MIM North American Holdings, Inc. and INVESCO MIM PLC.

2. The exchange of Balanced Fund assets for Financial Fund shares may be prohibited under section 17(a), which among other things, forbids affiliated persons of an investment company to buy or sell securities or property from or to the affiliated investment company.

3. Rule 17a–8 under the Act provides an exemption from section 17(a) for mergers, consolidations, purchases or sales of substantially all the assets of registered investment companies that are affiliated with one another solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. While Applicants do not have the same investment adviser, their investment advisers are under common control.

4. Applicants believe that the Plan is consistent with the policies and purposes underlying rule 17a–8, notwithstanding that the rule by its terms does not apply. The Trustees of the Trust and the Directors of Financial Fund have concluded, after considering the factors listed in the representations above, that the Plan would be in the best interests of the respective funds, and that the interests of existing shareholders would not be diluted by the transaction.

5. Applicants believe that the terms of the Plan satisfy the standards of section 17(b), which provides that the Commission shall exempt transactions prohibited by section 17(a) if evidence establishes that (1) the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy, as recited in the registration statement and reports filed under the Act, of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the Act.

Applicants' Condition

If the requested order is granted, applicants agree to the following condition:

1. The proposed reorganization described in the application will conform to the requirements of rule 17a-8 under the Act, as follows:

a. The Trustees of the Trust and the Directors of Financial Fund, including a majority of the Trustees and Directors who are not interested persons of the funds, shall have determined:

i. That participating in the transaction is in the best interests of the respective funds after consideration of the factors specifically enumerated in the application; and

ii. That the interests of existing shareholders of the funds shall not be diluted as a result of effecting the transaction.

b. Such findings, and the basis upon which the findings were made, shall have been recorded fully in the minute books of each fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21191 Filed 9-2-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1683]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group C; Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group C will meet on October 8, 1992 at the Morristown location of Bellcore, 445 South Street. The room number is MRE 2K140. The meeting will begin at 9:30 a.m. and end at 4 p.m.

The agenda for the October meeting will include consideration of optical fibers, and optical fiber system issues in preparation for the November 2-10, 1992 meeting of working parties of Study Group XV in Geneva, Switzerland, including review and approval of U.S. Contributions and any other matters within the purview of Study Group C.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should also advise Madeleine Widuch on (908) 234-8624.

Dated: August 19, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 92-21172 Filed 9-2-92; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice 1684]

Ad Hoc Task Group 4/4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the U.S. CCIR Ad Hoc Task Group 4/4 will hold an open meeting on Wednesday September 30, 1992, commencing at 9:30 a.m. in the 10th floor Conference Room at 1899 L St., NW., Washington, DC.

In response to Resolution 4/1, agreed at WARC-92, Torremolinos, Spain, the CCIR has established Task Group 4/4 to reconfirm sharing criteria among the Radio Services sharing the spectrum allocation 13.75-14.0 GHz. The international chairman of this Task Group is Mr. William Long, of the United States. The first meeting of Task Group 4/4 will take place at the headquarters of the International Telecommunication Union, Geneva on November 23 & 24, 1992.

U.S. CCIR Ad Hoc Task Group 4/4 has been established to prepare for and participate in the November meeting. Mr. Donald Jansky, Jansky/Barmat Telecommunications, Inc., Washington, DC has been appointed the Chairman. The purpose of the September meeting is to consider contributions to the November meeting.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Persons planning to attend the meeting must announce this no later than one day before the meeting to Donald Jansky, phone (202) 467-6400.

Dated: August 20, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92-21173 Filed 9-2-92; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice 1686]

Russian, Eurasian and East European Studies Advisory Committee; Meeting

The Department of State announces that the Russian, Eurasian and East European Studies (Title VIII) Advisory Committee will convene a Workshop on New Directions in Russian, Eurasian and East European Studies, on October 13-14, 1992, beginning at 8:30 a.m. at the Meridian International Center, 1630 Crescent Place, NW., Washington, DC.

The purpose of the workshop is to assess new needs and opportunities for research and training in the Russian, Eurasian and East European fields in the US, in connection with the Soviet-Eastern European Research and Training Act of 1983. The agenda will include sessions on the impact of the new states on the fields; how traditional disciplines are adapting to the changed environment and the need to incorporate new areas of study; how to improve the infrastructure for training; new sources for scholarly research; new demands and opportunities for language training; and how workshop findings impact the Title VIII program.

This meeting will be open to the general public; however, attendance will be limited to the seating available and must be arranged in advance. Those wishing to attend must notify Joanne Bramble, INR/RES, US Department of State, (202) 736-9050, by October 1, 1992.

Dated: August 20, 1992.

Kenneth E. Roberts,

Executive Director and DFO, Russian, Eurasian and East European Studies Program.

[FR Doc. 92-21174 Filed 9-2-92; 8:45 am]

BILLING CODE 4710-32-M

[Public Notice 1685]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on October 21, 1992, at 9:30 a.m. in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirty-third session of the Marine Environment Protection Committee (MEPC 33) of the International Maritime organization to be held October 26-30, 1992. Proposed U.S. positions on the agenda items for MEPC 33 will be discussed.

The major items for discussion will be the following:

1. Adoption of amendments to Annexes II and III of The International Convention for the Prevention of Pollution from Ships, 1973, as modified

by the Protocol of 1978 (MARPOL 73/78).

2. Uniform Interpretation of MARPOL 73/78.

3. Comprehensive Manual on Reception Facilities. At MEPC 32 work began on a comprehensive manual on reception facilities. Work will continue at MEPC 33.

4. Prevention of Oil Pollution from Machinery Spaces. A working group will convene to determine guidelines for the use of detergents.

5. Prevention of Air Pollution from Ships. This will include further discussion of emission limits on nitrogen oxides, sulfur oxides, chlorofluorocarbons, and volatile organic carbons from ships. This topic will also touch on fuel oil quality and the impact it has on air pollution.

6. Prevention of Pollution by Noxious Solid Substances in Bulk and Possible Development of a New Annex VI of MARPOL 73/78.

7. Enforcement of Pollution Conventions.

8. Implementation of Annexes III, IV, and V of MARPOL 73/78 and Amendments to the International Maritime Dangerous Goods Code (IMDG Code) to Cover Pollution Aspects.

9. Prevention of oil pollution. There will be continuing discussions of Regulations 13F and 13G to Annex I of MARPOL 73/78. IMO will consider guidelines for structural and operational requirements for existing ships, equivalencies for double-hulls for new ships, and guidelines for enhanced inspections.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact either Lieutenant Commander M.L. McEwen or Ensign W.H. Crozier, U.S. Coast Guard Headquarters (G–MEP–3), 2100 Second Street, SW., Washington, DC 20593–001, telephone (202) 267–0419.

Dated: August 25, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–21171 Filed 9–2–92; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statements; Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that individual environmental impact statements will be prepared for three highway projects within the Maricopa Association of Governments Freeway System in Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004, telephone (602) 379–3646.

SUPPLEMENTARY INFORMATION: The FHWA, in connection with the Arizona Department of Transportation, will prepare environmental impact statements for the proposed: Pima Freeway (Interstate 17 to Scottsdale Road); Red Mountain Freeway (Red Mountain Intechange to State Route 87); and Price Expressway (State Route 360 Interchange to Pecos Road). All three projects would provide new multiland freeway/expressway facilities on new alignment in the metropolitan Phoenix area. The proposed facilities fall within the ciites of Phoenix, Scottsdale, Tempe, Mesa, and Chandler, Arizona.

Several alternatives, including the "no action," Transportation System Management (TSM) and "build" alternatives will be considered.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to interest groups. Public scoping meetings will be held early in the process for each project.

Comments are invited from all interested parties. Comments or questions about the proposed actions and EIS preparation should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 20, 1992.

David E. Bender,

Assistant Division Administrator, Phoenix, Arizona.

[FR Doc. 92–21243 Filed 9–2–92; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, September 18, 1992 at 9:30 a.m. in room 4121, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: Agenda items for the final meeting on September 18, 1992 of the current two-year term of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will include:

I. Old Business

1. Renewal of the Advisory Committee.

2. The Customs Modernization Act/Informed Compliance Legislation.

3. Update on the North American Free Trade Agreement.

4. Harbor Maintenance Fee Issues.

II. New Business

1. Annual report of the Advisory Committee.

2. The Customs FY 1993 Budget.

3. Customs Office of Organizational Effectiveness.

4. Proposed Changes in the Regulation of Central Examination Stations.

5. Recent regulatory changes and proposals (including the President's deregulation initiative).

6. Other new business. (Other agenda items may be added by the meeting date).

The meeting is open to the public. Due to security procedures in place at the Main Treasury Building, persons wishing to attend the meeting should contact Ms. Helen Belt or Ms. Theresa Manning at (202) 622–0220 by Friday, September 11, 1992.

Dated: August 28, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–21272 Filed 9–2–92; 8:45 am]

BILLING CODE 4810–25–M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 28-92]

Treasury Notes, Series AD-1994; Interest Rates

Washington, August 26, 1992.

The Secretary announced on August 25, 1992, that the interest rate on the notes designated Series AD-1994, described in Department Circular—Public Debt Series—No. 28-92 dated August 19, 1992, will be 4¼ percent. Interest on the notes will be payable at the rate of 4¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-21208 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 29-92]

Treasury Notes, Series Q-1997; Interest Rate

Washington, August 27, 1992.

The Secretary announced on August 26, 1992, that the interest rate on the notes designated Series Q-1997, described in Department Circular—Public Debt Series—No. 29-92 dated August 19, 1992, will be 5⅝ percent. Interest on the notes will be payable at the rate of 5⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-21209 Filed 9-2-92; 8:45 am]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held September 24 and 25, 1992 by the Department of Veterans Affairs, at the Ramada Renaissance (TechWorld), 999 Ninth Street, NW., Washington, DC. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The committee will meet on September 24 from 8 a.m. until 4:30 p.m. in Conference Room 14. On September 25 the committee will reconvene in Conference Room 18 at 8:30 a.m. and adjourn at 12 noon. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202-535-7164) prior to September 22, 1992.

Future VHA (Veterans Health Administration) health care direction and follow-up of Geriatric Research, Education and Clinical Centers (GRECCs) evaluation will be the primary topics for discussion.

Dated: August 26, 1992.

Diane H. Landis,

Committee Management Office.

September 24, 1992—Conference Room 14

8:30 a.m.—Remarks from the Chair
Dr. Itamar Abrass, Chairman
8:45 a.m.—Health Promotion, Smoking Prevention
Patrick Scheer, Director, Smoking Program
9:15 a.m.—Status of Geriatric Research
Dennis B. Smith, M.D., Associate CMD for Research & Development
10 a.m.—Break
10:15 a.m.—Follow-Up on GRECC Site Visit
Thomas T. Yoshikawa, M.D., Assistant CMD for Geriatrics & Extended Care
11:45 a.m.—Lunch
1:30 p.m.—VHA's Proposed National Health Care Plan
Elwood J. Headley, M.D., Deputy ADCMD for Ambulatory Care
2:30 p.m.—Status of Eligibility Reform
Jo Ann K. Webb, Assistant Secretary for Policy and Planning
3:15 p.m.—Break
3:30 p.m.—Report of Recent GRECC Site Visits Ann Arbor, MI; San Antonio, TX; Little Rock, AR
Site Visit Teams, GGAC Members & Office of Geriatrics and Extended Care Staff
4:30 p.m.—Adjourn

September 24, 1992—Conference Room 18

8:30 a.m.—Veterans Involved in Clinical Evaluation
James E. Lubben, MPH, DSW, GGAC
9:30 a.m.—"Progress of Rural Frontier" Health Care Report
A.J. Copperthite, GGAC Committee Manager
10 a.m.—Long Term Care Outplacement Who Pays? When?
Kenneth W. Ruyle, Director, Medical Administration Service
11 a.m.—Unfinished Business
Dr. Itamar Abrass, Chairman, GGAC
Noon—Adjourn

[FR Doc. 92-21213 Filed 9-2-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 172
Thursday, September 3, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

August 31, 1992.

DATE AND TIME: Friday, September 11, 1992, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

STATUS: Telephonic Meeting/Open to the Public.

September 11, 1992

I. Approval of Agenda
II. Approval of Minutes of July 17 and August 14 Commission Meetings
III. Announcements
IV. S.1962/H.R. 3748 "Justice for Wards Cove Workers"
V. Appointments to the Indiana, Wisconsin, and Utah (interim) Advisory Committee
VI. *Voting Rights Issues in San Luis, Arizona*
VII. *The Increase of Hate Crime in Michigan*
VIII. *Campus Tensions in Massachusetts: Searching for Solutions in the 1990's*
IX. *Civil Rights Issues in Arkansas, 1991–92*
X. Staff Director's Report
XI. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105, (TDD 202–376–8116), at least five (5) working days before the scheduled date of the meeting.

CONTACT PERSON FOR FUTURE INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Emma Monroig,
Solicitor.

[FR Doc. 92–21328 Filed 9–1–92; 9:05 am]
BILLING CODE 6335–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., September 11, 1992
9:00 a.m. to 1:00 p.m., September 12, 1992

PLACE: Embassy Suites on the River, 101 East Locust Street, Des Moines, IA 50309.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: FY 1993 Guideline; FY 1993 budget, internal personnel policies; grant applications.

PORTIONS OPEN TO THE PUBLIC: Public forums on the Iowa courts, bankruptcy, and race relations and the courts; and the Institute's business meeting.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel policy discussions.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,
Executive Director.

[FR Doc. 92–21351 Filed 9–1–92; 2:40 pm]
BILLING CODE 6820–SC–M

Corrections

Federal Register
Vol. 57, No. 172
Thursday, September 3, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 124

[Docket No. 90-011]

Patent Term Restoration for Veterinary Biologics

Correction

In proposed rule document 92-16343, beginning on page 30926 in the issue of Monday, July 13, 1992, make the following corrections:

1. On page 30926, in the 3rd column, in the 2d full paragraph, in the 5th line "sues" should read "uses", and in the 12th line "approval" should read "approvable".

2. On page 30927, in the first column, in the first full paragraph, in the last line the date is corrected to read "February 13, 1991".

§ 124.2 [Corrected]

3. On page 30930, in the first column, in § 124.2 the definition for Applicant is corrected to read as follows:

Applicant. Any person who submits an application or an amendment or supplement to an application under 35 U.S.C. 156 seeking extension of the term of a patent.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

[Docket No. 920776-2176]

RIN 0648-AE36

Pelagic Fisheries of the Western Pacific Region

Correction

In proposed rule document 92-17376 beginning on page 32952 in the issue of Friday, July 24, 1992, make the following corrections:

1. On page 32954, in the first column, in the second full paragraph, in the ninth line after "NMFS" insert "Southwest", and in the fifth line from the end "**ADDRESSES**"" should read "**ADDRESSES**".

§ 611.81 [Corrected]

2. On page 32955, in the first column, under § 611.81(b), in the third full paragraph, in the first line "means "dolphin fish"" should not have been italicized, and in the third line "equisetis" should not have been capitalized.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 920805-2205]

Pelagic Fisheries of the Western Pacific Region

Correction

In notice document 92-19434 beginning on page 36637 in the issue of Friday, August 14, 1992, on page 36638, in the 1st column, under **SUPPLEMENTARY INFORMATION**, in the 2d full paragraph, beginning in the 15th line, "ika-shibi" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 920401-2194]

RIN 0651-AA54

Revision of Patent and Trademark Fees

Correction

In rule document 92-19968 beginning on page 38190 in the issue of Friday, August 21, 1992, make the following corrections:

1. On page 38191, in the first column, in the first full paragraph, in the first line, after "service" insert "fees".

2. On page 38192, in the third column, in the last full paragraph, in the fourth line "understanding" should read "understating", and in the sixth line "with" should read "which".

3. On page 38193, in the first column, in the first full paragraph, in the next to last line, after "access" insert "fees".

4. On the same page, in the third column, in the sixth full paragraph, in the third line, "investors" should read "inventors".

§ 1.21 [Corrected]

5. On page 38195, in the second column, under § 1.21(a)(6), in the first line, "regarding" should read "regrading".

§ 1.445 [Corrected]

6. On page 38195, in the third column, in amendatory instruction 9 to § 1.445, in the first line "1.455" should read "1.445", and in the second line "paragraphs" should read "paragraph".

§ 2.87 [Corrected]

7. On page 38196, in the third column, under § 2.87(c), in the ninth line, "Trail" should read "Trial".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 90-051]

RIN 2115-AD61

Double Hull Standards for Vessels Carrying Oil in Bulk

Correction

In rule document 92-18858 beginning on page 36222 in the issue of Wednesday, August 12, 1992 make the following correction:

§ 157.08 [Corrected]

On page 36239, in the third column, in § 157.08(n), "157.19d" is corrected to read "157.10d".

BILLING CODE 1505-01-D

federal register

Thursday
September 3, 1992

Part II

Department of the Interior

National Park Service

36 CFR Part 51

Concession Contracts and Permits; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024-AB98

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends regulations which describe National Park Service procedures for award of concession contracts and permits, and National Park Service procedures governing the sale and transfer of concession contracts and permits. The regulations have been promulgated under the authority of 16 U.S.C. 3 and 16 U.S.C. 20, *et seq.* and are intended, within the scope of existing law, to make more competitive the renewal of concession contracts and permits, and, to increase the extent of the government's review of the sale and assignment of concession contracts and permits.

EFFECTIVE DATE: October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Lee Davis, Chief, Concessions Division, National Park Service, Washington, DC 20013–7127. Tele. (202) 343–3784.

SUPPLEMENTARY INFORMATION:

Background

The Concessions Policy Act (the "Act") authorizes the Secretary of Interior (the "Secretary") to regulate the conditions under which businesses ("concessioners") apply for and operate concessions in National Parks. In describing competition for concession contracts and permits ("contracts"), the Act does not treat all businesses equally. It provides that the Secretary shall encourage continuity of concessioner operations by giving preference in the renewal of concession contracts to existing concessioners that have performed to the satisfaction of the Secretary. It also provides, however, that the Secretary should give public notice of concession opportunities and consider offers that compete for concession contracts. Thus, the Act balances the desire for continuity of operations with a desire for competition in the contracting process.

On November 1, 1979, the National Park Service ("NPS") promulgated regulations at 36 CFR part 51, "Concession Contracts and Permits", to implement the Act. These regulations describe how businesses may compete for concession contracts. They also place certain restrictions on the sale and assignment of concession contract rights.

In 1989 the Secretary began reviewing the NPS concessions program. He found that the part 51 regulations did not adequately balance the Act's call for competition against the existing concessioner's preference. Particularly, the Secretary learned that despite the statutory requirement that he consider all offers for a concessions opportunity, there have only been a handful of instances (involving small operations) when an existing satisfactory concessioner was not awarded a new contract. The Secretary also found that the regulations did not provide NPS with authority over sales and transfers of concession contracts sufficient to protect the government's interests. For example, some concessioners have sold their businesses shortly after they exercised their rights of preference in renewal, in clear contradiction of the preference's statutory objective of encouraging continuity of operations.

Notice of Proposed Rulemaking

In response to the Secretary's findings, NPS sought to amend its concessions regulations by publishing in the "Federal Register" a Notice of Proposed Rule Making (NPRM), Notice No. 91–20024 (56 FR 41894; August 23, 1991). In the NPRM, the Park Service proposed modifications to 36 CFR part 51 ("amended regulations") to bring the competition requirement into balance with the right of preference by:

(1) Amending the definition of right of preference in § 51.3(b) to provide that a concessioner NPS rates unsatisfactory in the last year of its contract or marginal in the last two years of its contract will receive an overall rating of unsatisfactory.

(2) Amending the definition of right of preference in § 51.3(b) to provide that NPS will not grant a right of preference to a concessioner that has operated for less than two years as a result of acquiring a concession. This would ensure that only concessioners that prove they are consistently satisfactory performers will receive a right of preference in renewal.

(3) Amending § 51.4 to require the advertising of concession opportunities in the "Commerce Business Daily", in addition to the "Federal Register". This would enable more people to learn of concession opportunities.

(4) Amending § 51.5(a) to substitute the term "prospectus" for the term "fact sheet". This would enhance competition, since "prospectus" better signifies the existence of a competitive environment than does "fact sheet".

(5) Amending § 51.5(b) to describe in a new subsection (c) the application of the right of preference. This subsection presented three alternatives, with varying degrees of competitive consequences. Under Alternative 1, NPS would award the contract to the existing satisfactory concessioner (that submits a responsive offer) if it submits the best offer. If NPS receives a better responsive offer, the existing concessioner could still win the contract by meeting the terms and conditions of the better offer.

Under Alternative 2 NPS would numerically evaluate all offers that respond to a prospectus. NPS would award the contract to the offer which receives the highest score, if this score is at least 5 percent (5%) higher than the existing concessioner's score. If the existing concessioner's score is within 5% of the highest score, it would win the contract.

Alternative 3 called for NPS to award the contract to the party submitting the best offer, provided that if the responsive offer of the existing concessioner with a right of preference is substantially equal to the best offer, the contract would be awarded to that concessioner.

Although the three alternatives have varying degrees of competitive consequences, NPS believes that each would attract competition for concession opportunities. Under each alternative, a concessioner must submit a timely offer that responds to the terms and conditions of the prospectus, to retain its right of preference in renewal. This requirement would stimulate competition by letting potential competitors know that the existing concessioner must work hard (by responding to the terms and conditions of the prospectus) if it wishes to exercise its right of preference. (NPS has selected Alternative 1 in the final regulations. See "Analysis of Comments" section).

(6) Adding a new § 51.8, to increase the amount of concessioner financial information that is available to the public. This would enhance competition by educating potential competitors about the nature of a particular concession opportunity.

Additionally, NPS proposed to restrict the use of the preferential right to additional services by:

(7) Amending § 51.3 to restrict grants of the preferential right to additional services to cases where the Director issues a written finding that the right is in the public interest. This would enhance competition by limiting the availability of the anti-competitive preferential right to additional services.

As noted, the Secretary also determined that the present regulations do not give the government adequate

control over sales and transfers of concession contract rights. NPS regulates sales and transfers of concession contracts and permits through the existing 36 CFR 51.7. As a recent Secretarial Concessions Task Force report points out, in recent years concessioners have sold their operations for prices that exceeded the value of the concessions's tangible assets. NPS believes that the value of these purchase prices consisted, at least in part, of the worth of intangible assets that rightly belonged to the general public, through the government.

NPS also used the amended regulations to address this Secretarial concern. In the amended regulations, NPS proposed to gain greater control over sales and transfers of contract and permit rights by:

(1) Amending § 51.7 ("Sale, assignment, or encumbrance of concession contracts permits and assets") to allow a sale or transfer only in those instances where the concessioner has gained a possessory interest. This amendment would reduce the number of sales and transfers that are based on the value of intangible assets. (NPS has deleted this section from the final regulations. See "Analysis of Comments" section.)

(2) Amending § 51.7(e) to make clear that NPS must approve all sales, transfers, or encumbrances of contract rights or assets connected with a concession. This amendment would make clear that NPS has the authority to condition the approval of a sale or transfer upon changes to the terms and conditions of the concession contract. The Director could seek such changes, for instance, where the contract terms do not reflect the current probable value of the privileges granted to the concessioner.

The proposed amendment also authorizes NPS to disapprove a sale or transfer in situations that include, but are not limited to: Those that may result in decreased quality of service to the public; those in which a concessioner may lack a reasonable opportunity for profit; those involving contracts under which higher than comparable rates would be charged to the public as a result of the purchase prices; and, those involving purchase prices that are inflated due to the value of intangible assets or values that belong to the government, such as contract rights, rights of preference in renewal, user days, entry or trip applications, and low fees and charges. These amendments clarify and strengthen the existing regulations in this regard. NPS interprets the existing regulations to allow disapproval of concession sales or renegotiation of contract terms in these circumstances.

In the amended regulations, NPS also proposed provisions that are generally related to competition amongst concessioners, or the issue of control over sales and transfers. One of these would limit the scope of the right of preference to make it consistent with the Act. In § 51.3 the right of preference covers "substantially the same accommodations, or facilities * * *" as provided under the existing contract or permit. The Act, however, authorizes only those concessions that are necessary and appropriate to the public use and enjoyment of a park. Pursuant to this provision, NPS may decide that only part of a concessioner's operation is "necessary and appropriate" to continue under a new concession contract or permit. To make the definition of right of preference consistent with this aspect of the Act, NPS proposed to limit the scope of the right of preference to "all or part of" the activities authorized under the existing contract. This amendment is also for the purpose of clarifying the existing regulations, as NPS interprets the existing regulations in accordance with the clarifying amendment.

The amended regulations also proposed to encourage women and minorities to compete for concessions opportunities by providing in § 51.4 that NPS shall provide maximum allowable information and assistance to minority and women-owned businesses.

Analysis of Comments

NPS received over 920 comments on the amended regulations from August 23, 1991 to November 23, 1991. The largest number of comments, about 700, came from park visitors. Over 95 percent of these were from individuals who enjoyed experiences on river running trips in western parks. Apparently, many of the river running concessioners actively encouraged their customers to comment on the amended regulations. The second largest group of comments, approximately 160, came from the concessions community. About 100 of these were from river runners or outfitters and guides. The remaining 60 were from other concessioners. NPS notes that over 65 percent of the concessioner community did not comment on the proposal. Environmental and commercial interest groups accounted for about 20 comments. In addition, 15 Federal legislators commented on the amended regulations.

The substance of these comments, as well as any changes NPS has made to the amended regulations, are discussed below in the Section by Section Analysis. Additionally, NPS has made some editorial changes to the amended regulations of a technical, rather than substantive, nature.

Section by Section Analysis

General Comments

Many commenters oppose the proposal on the general ground that it is anti-concessioner. Other commenters, however, say the proposal does not go far enough in promoting competition or protecting park resources. These divergent views are inevitable, given the balancing test that NPS must use in implementing the Act. The regulations try to reconcile these views to the greatest extent possible, by properly balancing the requirement of competition against the right of preference, and by ensuring that NPS has control over sales and transfers sufficient to protect the public interest.

Several commenters say the proposal violates either the United States Constitution, the Act, or various Executive orders. NPS has reviewed its authorities in this regard and considers the amended regulations to be lawful. Specific legal issues are addressed below where appropriate. Also, NPS will not take any discretionary action that it considers a material breach of any concession contract or permit that was executed prior to the effective date of these final regulations.

One commenter suggests that NPS add a section to the proposed regulations that would outline its commitment to encouraging minority and women-owned businesses to participate in the NPS concessions program. NPS believes this is unnecessary, as § 51.4 already expresses, to the extent necessary for regulatory purposes, its commitment to stimulating the involvement of minority and women-owned businesses in NPS concessions operations.

NPS recognizes that minority and women-owned businesses are severely under-represented in the concessioner community. To remedy this, NPS will strongly encourage minority and women-owned businesses to apply for concessions opportunities.

Section 51.4(a) of the amended regulations takes one step toward this goal by providing, in pertinent part, that "In order to encourage minority and women-owned business to compete to be potential concessioners, the National Park Service shall provide maximum allowable information and assistance to minority and women-owned

businesses". NPS will implement this provision by:

(1) Making reasonable efforts to include on all source lists of potential concessioners, minority and women-owned business concerns which have actual or potential capabilities to fulfill such requirements.

(2) Seeking the advice and assistance of the Minority Business Development Agency, Department of Commerce, in locating and counselling such firms, as well as providing information on concession contract opportunities to such firms in advance of such opportunities, and,

(3) Providing advice and counselling to such firms on how to participate in concessions contracts and potential subconcession opportunities.

Many commenters assert that the regulations have a disparate impact on smaller concessioners. Some suggest that NPS set up different standards for smaller concessioners. NPS recognizes that one section of the proposal, § 51.7(a), does unfairly impact smaller concessioners. NPS discusses its response to commenters objecting to § 51.7(a) in the analysis of that section. NPS disagrees that the other portions of the regulations disparately impact smaller concessioners, or that separate regulations with regard to contract award and assignment procedures should apply to smaller concessioners.

The amended regulations deal primarily with procedures for the award of concession contracts, and the governmental review of sales and transfers. These matters impact all concessioners in the same manner. Therefore, it would not be just, in the public interest, or consistent with the Act, to give a weak preference to one type of concessioner, and a strong preference to another kind of concessioner. The goal of the proposal is to make the competitive playing field more even. NPS's aim is not to make several playing fields, each with its own degree of competitiveness.

The sales and transfer regulations are also equally applicable to all concessioners. NPS determination of whether to approve a sale or transfer should not turn on the size or type of operation that is sold. It should, instead, turn on whether the sale or transfer is consistent with, or contrary to, the public interest. As the sale or transfer of any concessions operation could, in certain circumstances, be contrary to the public interest, it would be inappropriate to limit this rule to only certain types or sizes of concessions operations.

Some commenters say they cannot intelligently comment on the proposal, since it is only one part of the Secretary's overall plan to reform the NPS concessions program. NPS disagrees. The Secretary will deal with other concession reform initiatives in the future, such as the modification of the standard contract language, and changes to the internal organization of NPS. None of these issues, however, will be addressed through a rulemaking, as that is not the appropriate forum. Moreover, unlike the instant regulations, these initiatives will not directly involve the issues of competition in contract awards or the appropriate extent of government control over sales and transfers (except as in the implementation of these regulations).

Other substantive reforms under review deal primarily with monetary matters, e.g., compensation for possessory interest and franchise fee calculations. These issues are matters of contract administration and are distinct and severable from the procedural provisions of the amended regulations. NPS will seek public comment on other aspects of the Secretary's concessions reform program where appropriate.

NPS also points out that the several provisions of the amended regulations are in large part independent of one another. In the event that it may be determined that any particular provision or portion thereof is not within the authority of NPS to promulgate, it is the intention of NPS to seek to implement the balance of the regulations to achieve their purposes.

Two commenters are concerned about the impact of the regulations on concessioner employees. These commenters suggest that when one concessioner is replaced by another, NPS should require the new concessioner to offer the employees of the predecessor concessioner the same rights and privileges of employment they enjoyed with the predecessor concessioner. This suggestion goes beyond the general authority of the Secretary. Concessioner employment practices, to the extent they are lawful, are generally left to the discretion of the concessioner.

Section 51.1—Authority

One commenter objects to the statement in this section that concession contracts are not procurement contracts. This commenter believes that this policy will allow NPS "to create a separate class of contractors by decree, against whom they could then discriminate on the issue of obtaining and publicizing confidential concessioner financial information". This commenter's assertion is incorrect. NPS is not trying to "create" anything by stating that concessions contracts are not federal procurement contracts. This statement simply clarifies the status of concessions contracts, which NPS has never considered a type of federal procurement contract.

NPS has deleted the word "solely" from this section to make clear that statutory and regulatory requirements relating to federal procurement actions do not apply to concessions contracts or permits. Also, NPS has broadened the term "commercial use license" to include similar non-concession authorizations. Further, NPS has deleted the term "permit" except where necessary to distinguish between concession contracts and permits. The term "concession contract" encompasses both concession contracts and permits, except where otherwise indicated.

Section 51.2—Policy

One commenter suggests that NPS change the requirement that the Secretary permit only those concessions that do not "unduly impair park values and resources". This commenter urges NPS to drop the word "unduly" and disallow concessions that would in any way impair park values and resources.

The mission of NPS is to conserve the environment of National Parks, and provide for the visiting public's enjoyment of the parks, both today and in the future. Under the latter directive, NPS must allow the public to visit and enjoy National Parks. Over the years, legislative and administrative actions have brought some measure of change to park values and resources. While such actions may have some impact on park resources, they are not necessarily deemed to have impaired resources for the enjoyment of future generations (see NPS Management Polices, 1.3, 1988). In the Concessions Policy Act, Congress found that "the preservation of park values requires that such public accommodations, facilities, and services as have to be provided * * * should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not *unduly impair* these values * * *" (16 U.S.C. 20; emphasis added). Consequently, NPS will leave the word "unduly", as used in legislation, in final § 51.2.

Section 51.3—Definitions

Section 51.3(b)

Section 51.3(b) defines the right of preference. Subsections 51.3(b) (1) and (2), however, also describe the application of the right of preference. As NPS intends § 51.5 to cover the details

of the application of the right of preference, it will move the language in § 51.3(b) (1) and (2) to that section. Thus, NPS will make proposed § 51.3(b) (1) and (2), amendments to which are discussed below, into a new § 51.5(a). Succeeding subsections in § 51.5 are renumbered accordingly. Also, NPS has changed the definition of right of preference so that it encompasses contract extensions as well as new or renewed contracts.

Several commenters object to § 51.3(b)(1) because it does not specifically define the term "satisfactory performance". They contend that without a specific definition, NPS might base its evaluations on purely arbitrary and subjective grounds, which could lead to unfair determination of a concessioner's performance.

These commenters essentially want NPS to define the term "satisfactory performance" in regulatory terms. NPS believes this would be inappropriate. Rather, determinations of "satisfactory" performance are accomplished through the NPS concessioner review program which involves on-site inspections of concession operations, and specific analysis of the pluses and minuses of each particular operation. The concessioner review program was established in 1976, and has been thoroughly tested. The amended regulations do not attempt to change this program.

The program documents the NPS determination of a concessioner's performance. If the decision is considered incorrect by a concessioner in a particular case, that concessioner is permitted administrative channels of appeal. NPS considers that case-specific, written evaluations of "satisfactory" performance are superior to a regulatory definition which, by its very nature, would be so general as to be of limited practical value.

In making these case specific determinations, NPS evaluates the concessioner's operational performance as well as its conformance with the terms and conditions of the concessions contract. Only formally trained NPS personnel have the authority to conduct evaluations. NPS evaluates smaller concession operations at least twice yearly, and larger concessions at least three times every year.

The concessioner's performance determines its evaluation rating. Park staff may rate a concessioner satisfactory, marginal, or unsatisfactory, depending on its performance.

In evaluating operational performance NPS measures a concessioner's performance against a set of standards that spells out what NPS expects of the concessioner. They serve as goals for concessioners striving to provide park visitors with good, safe, sanitary service.

There are 25 sets of standards, tailored to the unique circumstances of each type of concession operation. The types of operations cover the spectrum of the concessions industry, and include horse and mule operations, as well as lodging, food and beverage, and marina operations. Each type of operation has its own set of standards.

Under the contract compliance part of the concessions program, NPS measures the extent of a concessioner's compliance with the terms and conditions of the concessions contract.

NPS has also amended the timing sequence described in the proposed section. This section, as proposed, require NPS to give an overall unsatisfactory rating to a concessioner it rates marginal during the last two years of a contract, or unsatisfactory during the last year of a contract. This is a very significant evaluation, since concessioners rated less than satisfactory overall are not entitled to a right of preference in contract renewal. As a practical matter, however, it would be impossible to implement this proposed provision, since the solicitation process for a new contract must begin prior to the annual evaluation of concessioner's performance over the last year of a contract. Accordingly, NPS must base its overall evaluation on annual evaluations it has conducted prior to the start of the solicitation process, and not on evaluations it conducts at the expiration of the contract.

To accomplish this, NPS is changing the focus of this section from the date the contract expires to the date the prospectus is issued. The amended section will thus provide that NPS will not give an overall satisfactory rating to a concessioner it rates marginal in the two years prior to the issuance of a prospectus, or unsatisfactory in the year prior to the issuance of the prospectus.

NPS recognizes that some concessioners it rates less than satisfactory overall may perform satisfactory following the issuance of a prospectus. NPS will consider such improvement in performance in evaluating offers for a new contract. This turn-around in performance, however, will not entitle an overall less than satisfactory concessioner to regain its right of preference in renewal. This is because, for the reasons expressed above, the focal point for the overall rating must be the concessioner's performance prior to the issuance of a prospectus, and not its performance subsequent to this event.

NPS has also added another sentence to this section to encourage satisfactory performance following the issuance of a prospectus. The final section provides that an overall satisfactory concessioner that performs unsatisfactorily after the issuance of a prospectus will lose its right of preference.

Several commenters say that this section places undue emphasis on the final years of a contract. NPS disagrees. It is current NPS policy to terminate a contractor or take other appropriate action when it rates a concessioner's performance during the term of a contract marginal for two consecutive years, or unsatisfactory for one year. This provision merely gives concessioners notice that NPS has the additional power to deny a right of preference in renewal to a concessioner whose performance is less than satisfactory during the final years of a contract.

A number of commenters object to the requirement in § 51.3(b)(2) that a concessioner must operate for a least two years after acquiring a concession to qualify for an overall "satisfactory" rating. These commenters generally take the position that this rule is unfair because it will deter transfers during the last two years of a contract. Some commenters note that this provision would cause hardship to those concessioners that are forced to sell their concessions during the last two years of a contract for reasons that are beyond their control. Some also comment that this rule is illogical, claiming that the amount of time on a contract has nothing to do with a concessioner's performance.

NPS recognizes that circumstances beyond a concessioner's control may force a concessioner to sell its operation during the last two years of a contract. This rule would cause a hardship to such concessioners. Therefore, NPS has amended the proposed rule to make clear that it is applicable only to transfers made after the effective date of these regulations, and to except from its application sales and transfers that NPS determines are caused by circumstances beyond the concessioner's control. Sales and transfers that are the result of serious illness, death, bankruptcy, or similar circumstances, would fall under this exception.

NPS has also made other changes to the proposed rule. Final § 51.5(a) makes clear that for its purposes, NPS considers a concessioner's "in operation" from the date the Director

approves in writing the acquisition in question.

NPS has also amended this section to make it consistent with § 51.7(b). Section 51.7(b) refers to sales and transfers as the transfer or sale of, among other things, controlling interests in concession operations. The term "change of ownership" in § 51.3(b) also deals with sales and transfers. To make these sections consistent with one another, final rule § 51.5(a) drops the term "change in ownership" and replaces it with language that follows § 51.7(b). This language refers to this transaction as an "acquisition of a concession, or a controlling interest in a concession as defined in § 51.7(b)", by a "transfer, purchase, or assignment".

Additionally, NPS has amended this section to make clear that it can rate a concessioner either satisfactory, unsatisfactory, or marginal, as a result of its overall evaluation. The proposed rule refers only to "satisfactory" evaluation in the first part of its first sentence.

NPS believes that the rest of this paragraph should remain intact to ensure that only concessioners who demonstrate satisfactory performance over a sustained period of time may qualify for the right of preference. The objective of continuity of service must be based on a demonstrated record of consistent satisfactory performance in light of the anti-competitive consequences of the preference in renewal.

One commenter opposes this section's restriction of the scope of the right of preference to "all or part of" the activities authorized under the existing concessions contract. This commenter urges that this is an unacceptable weakening of the right of preference, since the present regulations apply the right of preference to "substantially the same accommodations, or facilities * * *" as provided under the existing contract or permit.

This amendment does not weaken the right of preference. It merely makes the right consistent with the provision in the Act that authorizes only those concessions that are necessary and appropriate to the public use and enjoyment of the parks. In accordance with this provision, and, as NPS interprets the existing regulations, NPS may choose to discontinue any part of a concession operation that it considers no longer necessary and appropriate to the use and enjoyment of a park. Final § 51.3(b) clarifies this authority by restricting the right of preference to "all or part" of the concession activities under the existing concession contract. NPS has also added an additional phrase to this section to clarify when it will issue a new contract.

Section 51.3(c)

Several commenters suggest that the revised definition of the preferential right to additional services unnecessarily encumbers this right by restricting it to only those situations in which the Director determines the right is in the public interest. These commenters say this restriction is unnecessary because this right is always in the public interest. NPS disagrees. Because the preferential right to additional services is inherently anti-competitive, NPS will include it in contracts only where it is clearly in the public interest to do so. NPS also notes that this provision reflects long standing NPS policy.

Section 51.4—Solicitation and Award of Concessions Contracts and Permits Where No Right of Preference Exists

Section 51.4(b)

Many commenters urged NPS to refrain from making franchise fees the most significant factor in the evaluation of offers. NPS agrees with these comments and points out that the regulations do not change the significance of franchise fees in offer evaluations. Under the revised regulations, franchise fees will continue to be only a secondary factor in the evaluation of offers.

Several commenters suggest that the concessioner's commitment to conservation, as well as its conformance to the Park General Management Plan, should be principal factors in the evaluation of offers. NPS agrees. One of the principal factors under the proposed regulations is the experience and related background of the offeror. Another is the offeror's conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor. To satisfy these factors, a concessioner must prove to NPS that it can conform to the Park General Management Plan. It must also show it is committed to conserving park resources.

A few commenters suggest that the NPS team that drafts the solicitation document should consist of people other than those on the team that evaluates offers. This is current NPS practice. Because it is more appropriately a matter of internal policy, however, it is not a proper subject for regulation. These commenters also suggest that the NPS team that evaluates offers should include members from a variety of NPS departments, including the planning and natural resource departments. This is also a matter of internal policy, and not a proper subject for regulation.

Section 51.4(d)

NPS has added a sentence to this section to clarify that the cancellation of a solicitation at any time prior to execution by NPS does not establish compensable or other rights in an offeror or other interested party. Also, NPS has added a sentence to make clear that failure by the selected offeror to promptly execute the contract will result in resolicitation or award to another offeror. NPS has added a similar provision to § 51.5(c).

Section 51.4(f)

One commenter suggests that the NPS allow waivers of the public notice and advertising procedures only if it finds it is clearly in the public interest to do so. The proposed section allows for a waiver of public notice or advertising in exceptional circumstances or when such a waiver would be in the public interest. NPS believes that this comment is valid, and, accordingly, has amended its proposed regulations to state that the waiver may occur only in exceptional circumstances where the public interest so warrants.

Section 51.5—Solicitation and Award of Concession Contracts and Permits or Extensions or Renewal of Concession Contracts and Permits, Where a Right of Preference Exists

Section 51.5(b)

Several commenters suggest that this section's requirement that offers be fully responsive to a prospectus will enable NPS to reject an offer on merely technical grounds. In response to this concern, NPS is amending this section to remove the term "fully". NPS, as a matter of practice, does not consider an offer non-responsive for slight, nonmaterial, technical deficiencies only. However, offerors must generally meet all requirements of a prospectus for NPS to consider their offers responsive. NPS will continue this practice under final § 51.5(b).

Other commenters object to this requirement because it eliminates negotiation from the contract solicitation process. However, a negotiated contract is not the object of the solicitation process, although some negotiation of minor terms of a contract may occur after the selection of the best offer. The general lack of negotiation in the solicitation process helps balance the requirement of competition against the right of preference.

By requiring existing concessioners to satisfy the terms and conditions of a

prospectus, this rule encourages competitors to submit offers for concessions contracts. A potential competitor who knows an existing concessioner must work hard (by responding to the prospectus) to renew its contract is much more likely to compete for that contract. In this regard, NPS has added a phrase to final regulation § 51.5(d) to the effect that an existing satisfactory concessioner which agrees to meet the terms of a better offer must be capable of carrying out those terms.

NPS also points out that it has the responsibility of determining the terms and conditions of a continuing concession operation. If existing concessioners submitted unresponsive offers and retained their rights of preference, they would be in a position to frustrate this exercise of NPS authority. This clearly is not Congressional intent under the Act.

Some commenters asked what the consequences will be if no offer satisfies the terms and conditions of a prospectus. The consequences will be as follows: If NPS readvertises the prospectus on substantially the same terms and conditions as the prospectus that attracted no responsive offers, then the existing concessioner will not have a right of preference. If, however, NPS advertises the prospectus on terms and conditions that are substantially different from those in the original prospectus, then the existing concessioner will retain its right of preference. The final regulations contain language to this effect.

Section 51.5(c)

This section as proposed listed three alternative methods for applying the right of preference, each with its own degree of competitive consequences. Alternative 1 would give the existing concessioner a right to match or better the best outside offer received in response to a contract solicitation. Alternative 2 would require NPS to evaluate numerically offers, and give the existing satisfactory concessioner's offer a 5% preference. Alternative 3 would treat all offers equally, but would award the contract to the existing satisfactory concessioner if its offer were at least substantially equal to the best competitive offer.

Many commenters believe alternatives 2 and 3 weaken the right of preference to such an extent that they would discourage concessioners from investing in their operations. This, according to these commenters, would lead to a deterioration in the quality of service that concessioners offer to the visitor. These commenters generally prefer alternative 1. Some do so, however, with the understanding that they would oppose it if it is tied to the responsive offer requirement of § 51.5(b).

Other commenters prefer either alternative 2 or 3. These commenters assert that only these alternatives would sufficiently enhance competition.

NPS believes that alternative 1, given the restraints of existing legal authority, represents an appropriate balance between the objective of enhancing competition and the objective of encouraging continuity of service. Accordingly, NPS has implemented this alternative, rather than alternatives 2 and 3, in final regulation § 51.5(c).

Section 51.7—Sale, Assignment or Encumbrance of Concessions Contracts, Permits, and Assets

Section 51.7(a)

Many commenters say this provision's prohibition on sales and transfers of contracts under which there is no possessory interest is unfair. They contend that this rule will discourage concessioners without possessory interest from investing in their operations, as they will not be able to recoup the value of this investment through a sale. Other commenters note that this provision disparately impacts smaller concessioners, as these are the ones without possessory interest.

A few commenters, however, support this provision as it would give NPS tighter control over sales and transfers of concessions operations.

After reviewing these comments, NPS is persuaded that the application of this section would cause a hardship to smaller concessioners. NPS also agrees that this section would discourage concessioners that do not have possessory interest from investing in their operations. This result may adversely impact the quality of service that these concessioners offer to the visitor. For these reasons, NPS is deleting this section from the final regulations. All succeeding subsections in § 51.7 are renumbered accordingly.

Section 51.7(d)

This section provides that a concessioner that is in the process of selling, transferring, assigning, or encumbering its operation must provide the Director with various documents relating to this transaction. NPS would then examine these documents to determine whether to approve or disapprove of the transaction. Several commenters suggest that this requirement will unnecessarily delay the consummation of the sales transaction. NPS disagrees. The documents listed under this section will provide the Director with information from which to determine the transactions effect on park resources, and, its effect on the quality of service that a prospective concessioner might offer to the visitor.

In addition, the documentation requirements do not materially differ from those contained in the current regulations. NPS is not aware of any general problems in this regard under the current regulations. However, to make this rule more flexible, NPS has amended it to provide the Director with the authority to waive these documentation requirements in certain circumstances. It has also clarified the definition of a "controlling interest" in this section to make clear that it encompasses transactions which do not fall within the scope of usual business structures.

Section 51.7(e)

This section clarifies the authority of the Director under the existing regulations to disapprove a sale of a concession, or require amendment of the concession contract that is at the heart of such a sale, where the sale would be contrary to the public interest. A number of commenters submit that this regulation is contrary to the principles of free enterprise, as it allows the government to revise agreements (the concession contract and the sale agreement) that were reached as the result of arms length business transactions.

NPS disagrees with this position. NPS unquestionably has the authority, and obligation, to disapprove a sale of a concession that is against the public interest. NPS also has a responsibility under law to see that franchise fees and other contract terms reflect the probable value of the privileges granted by a concession contract. The modification of a concession contract upon sale or assignment is an appropriate implementation of this authority. However, NPS has added a new provision at the end of § 51.7(e) stating that the Director will not take any discretionary action that he considers a material breach of any contract or permit that was executed prior to the effective date of these final regulations.

NPS notes that permitting contract modification as a condition of contract transfer in effect only incorporates what is a standard business practice in commercial landlord-tenant relationships. Commercial landlords seek to enter into leases whereby the tenant is not allowed to transfer the lease to a third party without a right of

the landlord to renegotiate the terms of the lease. The NPS regulatory provision, accordingly, is not contrary to the principles of free enterprise; rather, it reflects an existing free enterprise practice in this regard. NPS also notes that there is no inherent right on the part of a government contractor to sell or assign its contract to a third party rather than perform itself under the terms of the contract.

Additionally, NPS has amended the part of this section that refers to intangible assets. In the amended regulations NPS refers to intangible assets as the "concession contract, a right of preference in contract renewal, user days, allocated entries or trips, and low fees and charges". NPS has amended this language in final § 51.7(d) to make clear that "intangible assets" refers to those assets which emanate from the privileges granted by the concessions contract, as opposed to those which emanate from the business activities of the concessioner. These include, but are not limited to, a right of preference in contract renewal, allocation of park user days, allocated park entries or trips, and low government fees and charges. NPS has also included the term "values" in this section to make clear that this concept applies even where such matters are not specifically recognized as assets in the transaction.

NPS has also amended this section to make clear that when reviewing the sale or assignment of a concession, the Director will disapprove the transaction only if a significant portion of the purchase price is attributable to intangible assets or values emanating from the concession contract. This amendment recognizes that it is not in the public interest for NPS to prevent the consummation of transactions that involve only insignificant intangible assets and values of this nature.

Section 51.8—Public Availability of Concessions Information

Some commenters claim that this section calls for the unlawful release of confidential information. NPS disagrees. In the first instance, much of the information that would be released by the government under this regulation may be available to the public, at least with respect to corporations whose stock is publicly traded. In any event, it is generally within the authority of NPS to require this information from concessioners, and to distribute it to interested members of the public.

NPS notes that the type of information this regulation asks for is released by other public entities administering concession type contracts. The purpose of this regulation is to enhance competition in the concession contracting process. Under present circumstances, businesses which seek to compete for NPS concession contract awards where there is an existing concessioner (and the information is not otherwise available) are provided with almost no substantive information about the financial circumstances of the concession operation. In short, they are compelled to compete for a "pig in a poke." This situation, of course, discourages competitors from submitting offers, to the detriment of the government and, ultimately, the public. NPS believes, accordingly, that the proposed regulation effectuates a valid governmental purpose and is within its general authority to promulgate.

NPS has added a provision, however, to the effect that it will not exercise the authority contained in this section with respect to contracts in effect prior to the effective date of these final regulations if it determines that such exercise would be a material breach of the terms of the concession contract at issue. NPS has also modified the proposed regulation to make clear that concessioners will provide this information to NPS, and NPS will then make it available to the public. Further, reference to 43 CFR part 2 has been changed to legal authority in general.

NPS also points out that the proposed regulation, in reality, requires concessioners to make only limited financial information available to the public (through NPS). Among other matters, the regulation does not cover profits, salaries, or expenses of existing concessioners; information that competitors would certainly seek if it were available. NPS believes that the proposed regulation strikes an appropriate balance between the need for release of financial information to enhance competition and the desire of NPS concessioners to limit disclosure of financial aspects of their business operations.

Drafting Information

The primary authors of these regulations are Wendelin M. Mann, Chief, and David P. Emmerson, Concession Contract analyst, Contracts Branch, Concessions Division, National Park Service.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1024–0095 (Contracting procedures), and 1024–0096 (Sales and Transfers).

Compliance With Other Laws

NPS has determined that this document will not have a significant effect on the quality of the human environment, health, and safety, because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been proposed.

NPS has determined that this rulemaking is not a "major rule" under Executive Order 12291 (46 FR 13193; February 19, 1981). The planned rulemaking would serve no more than to continue the "usual and customary use and occupancy" of federal lands.

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) which became effective January 1, 1981, NPS has determined that these regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. It is estimated that 95 percent of all concession operations are conducted by small entities. The regulations would impose no significant costs on any class or group of small entities, and will give more small entities an opportunity to compete for concession opportunities, particularly in contract renewal situations.

NPS has reviewed this rule as directed by Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property" to determine if this rule has policies that have taking implications. NPS has determined that there are no taking implications because the regulations only described the means by which NPS awards and administers concession contracts and permits and reviews sales and assignments of such contracts. The rules do not affect private property interests within the meaning of the Executive Order.

The Department of the Interior has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks.

In consideration of the foregoing, 36 CFR part 51 is reviewed to read as follows:

PART 51—CONCESSION CONTRACTS AND PERMITS

Sec.

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly the Concessions Policy Act of 1965, 16 U.S.C. 20 *et seq.*, and 16 U.S.C. 3.

§ 51.1 Authority.

Concession contracts and permits are awarded by the Director on behalf of the Secretary of the Interior pursuant to the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, the Concessions Policies Act of 1965, 16 U.S.C. 20 *et seq.*, and 16 U.S.C. 3. All concession contracts and permits are subject to the requirements of this part 51. They are not federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable to federal procurement actions. Commercial use licenses are not concession contracts or permits, and, particularly, a commercial use licensee (or a person holding a similar nonconcession authorization) has no right of preference in renewal.

§ 51.2 Policy.

It is the policy of the Secretary of the Interior, as mandated by law, to permit concessions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

§ 51.3 Definitions.

The following definitions shall apply to this part 51:

(a) *Concession contracts* and *concession permits* (or *contracts* and *permits*) are agreements between the Director and a concessioner whereby the concessioner agrees to provide certain visitor accommodations, facilities or services within a park area under the administration of the Director. The Director authorizes concession operations by both contracts and permits. Contracts are used for larger operations and permits for those of less complexity. Throughout this document, wherever the term *contract* or *concession contract* are used, they shall, unless otherwise indicated, refer to both types of authorization documents.

(b) *Right of Preference* refers to the right of an existing satisfactory concessioner to a preference in the extension or renewal of its contract or a new contract concerning all or part of substantially the same accommodations, facilities and services as provided by concessioner under the the terms of its existing contract if the Director chooses to continue to authorize all or part of such accommodations, facilities and services in an extended, renewed or new contract as necessary and appropriate concession activities.

(c) *Preferential Right* refers to a contractual right which may be included in concession contracts (not permits) in the discretion of the Director to provide new or additional visitor accommodations, facilities and services of the same character as authorized under the concessioner's contract if the Director considers such new or additional concession activities necessary and appropriate for the accommodation and convenience of the public. A preferential right to new or additional services shall be granted only upon a specific written finding by the Director that the granting of such a contractual right because of exceptional circumstances is in the public interest.

(d) The term *Director* refers to the Director of the National Park Service or an authorized representative.

§ 51.4 Solicitation and award of concession contracts where no right of preference exists.

The following procedures shall be applicable to the solicitation and award of concession contracts, including renewals and extensions of concession contracts, where no right of preference to the contract exists:

(a) The Director shall issue a prospectus soliciting proposals describing the concession operation to be authorized, the material terms and conditions of the proposed concession contract, and the principal factors considered in selection. Advertisement of the availability of the concession opportunity shall be published in the Commerce Business Daily and, for contracts or permits requiring Congressional review pursuant to 16 U.S.C. 1a–7(c), in the **Federal Register**. Notices may also be published, if appropriate, in local or national newspapers or trade magazines. The notice will be distributed to interested parties and organizations. The prospectus will be made available upon request to all interested parties and will allow a reasonable period of time for submission of offers with a minimum of 60 days unless a written determination is made that a shorter period is necessary because of exceptional circumstances. All offers received shall be evaluated by the Director, and the offeror submitting the offer considered best by the Director on an overall basis shall be awarded the contract.

(b) The principal factors to be considered in selection of the best offer shall be:

(1) The experience and related background of the offeror;

(2) The offeror's financial capability; and

(3) Conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor.

Secondary factors shall include franchise fee offered and other factors as may be specified.

(c) The Director may solicit from any offeror additional written information or clarification of an offer, and may extend the solicitation period in his or her discretion. The Director may choose to reject all offers received at any time and resolicit or cancel the solicitation altogether in his or her discretion. Any material information made available to any offeror or other party by the Director is to be made available to all offerors, and will be available to the public upon request.

(d) The execution of the final contract by the selected offeror shall occur promptly upon award within a time

period established by the Director. Failure by the selected offeror to execute the final contract in this period shall result in cancellation of the award by the Director and resolicitation or award to another offeror. Substantive amendments which improve the proposed terms and conditions of the contract for the offeror, as compared to those set forth in the prospectus, may be permitted only after solicitation of the amended concession opportunity for an appropriate period of time. Changes benefiting only the Government do not require solicitation. Concession contracts with anticipated annual gross receipts in excess of $100,000 or of five (5) years or more in duration, shall be forwarded to the Congress pursuant to 16 U.S.C. 1a–7(c) prior to execution by the Director. The Director may, in his or her discretion, terminate the award of a concession contract at any time prior to execution by the Government and resolicit or cancel the solicitation. No offeror or other interested party shall be considered to have obtained compensable or other legal rights as a result of a resolicited or canceled solicitation or award of a concession contract.

(e) The terms and conditions of the solicitation must represent the requirements of the Director and not be developed to accommodate the capabilities or limitations of any particular party.

(f) Upon a written determination that exceptional circumstances warrant waiver of the procedures described in this subsection in the public interest, to protect visitor or park resources or otherwise, the Director may negotiate a concession contract with any qualified party without public notice or advertising.

§ 51.5 Solicitation and award of concession contracts where a right of preference exists.

Except as follows, the procedures described in § 51.4 shall apply to the solicitation and award of concession contracts, including renewals and extensions of contracts, where an existing satisfactory concessioner is entitled to a right of preference to the contract:

(a) Prior to the issuance of a prospectus, the Director shall determine, based on annual evaluations conducted during the term of the contract, whether or not the existing concessioner has performed in a satisfactory, marginal, or unsatisfactory manner over the term of the contract. The annual evaluations shall be based on the concessioner's operational performance as well as its compliance with the terms and conditions of the contract. In addition, if the concessioner is rated unsatisfactory in the year prior to the issuance of the prospectus, or marginal during the two years preceding the issuance of the prospectus, the concessioner's overall performance shall not be considered satisfactory. If the concessioner's overall performance over the term of the concession contract is determined to have been satisfactory, it is entitled to the preference in the renewal of its contract as described herein. However, if, after a prospectus which recognizes a right of preference is issued, a concessioner is rated pursuant to an annual evaluation as unsatisfactory by the Director, the Director shall cancel the solicitation or contract award and reissue the solicitation without a right of preference. A concessioner whose overall performance has been less than satisfactory as determined by the Director is not entitled to a right of preference. Additionally, if a concessioner has or will have operated less than two (2) consecutive years prior to the expiration of its contract as a result of acquiring, subsequent to the effective date of these regulations, a concession, or a controlling interest in a concession, as described in § 51.7(b) hereof, by a transfer, purchase, assignment, or otherwise, the concessioner shall not be entitled to a right of preference in the renewal of its contract. For the purposes of this section, the concessioner's first day of operation will be considered the date on which the Director approved in writing the acquisition in question. The Director may, in his or her discretion, grant an exception from this two (2) year provision if the Director determines that the transaction was a result of circumstances beyond the selling or transferring concessioner's control.

(b) A prospectus will be developed by the Director and will describe the existing satisfactory concessioner's right of preference, if any, as well as the material terms and conditions under which the Director proposes to award the contract.

(c) The concessioner with a right of preference shall be required to submit a responsive offer (a timely offer which the Director determines meets the terms and conditions of the prospectus) pursuant to the prospectus. If the concessioner fails to do so, the right of preference shall be considered to have been waived and the contract shall be awarded to the party submitting the best responsive offer. If no other responsive offers were received, the concession opportunity shall be resolicited and no right of preference shall apply to the concession opportunity unless the concession opportunity is resolicited upon terms and conditions that are substantially different from the terms and conditions of the initial prospectus. Such award to another responsive offeror or resolicitation without a right of preference shall also occur where a concessioner with a right of preference is awarded a contract but fails to execute it within the time period established by the Director.

(d) All responsive offers received pursuant to a prospectus where a right of preference is applicable to the concession opportunity shall be evaluated on an equal basis. If an offer other than a responsive offer of the existing satisfactory concessioner is determined to be the best offer, the party submitting the best offer will be awarded the contract or permit, provided that the existing satisfactory concessioner shall be given an opportunity to amend its offer to meet the terms and conditions of the best offer. If the existing satisfactory concessioner does so within the period of time allowed by the Director, and its offer, as amended, is, in the judgment of the Director, at least substantially equal to the best offer and the existing concessioner is capable of carrying out its terms, the existing concessioner shall be selected for award of the contract upon the amended terms and conditions.

(e) The requirement for public notice and evaluation of offers received may not be waived.

§ 51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

Where the Director seeks to authorize new or additional accommodations, facilities and services of generally the same character as provided by an existing satisfactory concessioner in a park area, and such concessioner by concession contract has a right to provide such additional services, the Director independently shall develop a description of the new or additional services and the terms and conditions upon which they are to be provided without reference to any private party, including the existing concessioner, and give the existing concessioner a reasonable opportunity to review such descriptions to determine if it wishes to provide the services. If so, the Director shall authorize the additional services by amendment to the concessioner's contract. If the existing concessioner does not agree to provide the additional services upon the terms and conditions described, the Director shall authorize the additional services to be provided

by a new concessioner under substantially the same terms and conditions and pursuant to the procedures of § 51.4 hereof.

§ 51.7 Sale, assignment or encumbrance of concession contracts and assets.

(a) Concession contracts, or operations authorized thereby, controlling interests therein, or assets of a concessioner, may not be transferred, sold, assigned, or encumbered in any manner, including, but not limited to, stock purchases, mergers, consolidations, reorganizations, mortgages, liens or collateralization, except with the prior written approval of the Director. Such approval is not a matter of right to the concessioner. Transfers, sales, assignments, or encumbrances consummated in violation of this requirement shall be considered null and void by the Director and a material breach of the contract resulting in termination of the contract for cause.

(b) The term "controlling interest" as used herein means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities so as to permit exercise of managerial authority over the actions and operations of the concessioner or election of a majority of the Board of Directors of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, beneficial ownership of the capital assets of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner. In other circumstances, the term refers to any arrangement under which a third party gains the ability to exercise managerial authority over the actions operations of the concessioner.

(c) Prior to consummating any transaction which may constitute the type of transaction described in subsection (a) hereof, the concessioner will request the Director in writing to review the transaction and provide the Director the following information:

(1) All instruments proposed to implement the transaction;

(2) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(3) A narrative description of the proposed transaction and the operational plans for conducting the operation;

(4) A statement as to the existence of any litigation questioning the validity of the proposed transaction;

(5) A description of the management qualifications and financial background of the proposed transferee, if any;

(6) A statement as to whether the proposed transaction constitutes the sale, assignment or transfer of a controlling interest as described herein and the particulars thereof;

(7) A detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial statements (a "forecast") that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Director that the purchase price is reasonable based on the objective of having a satisfactory concession operation that will generate a reasonable profit over the remaining term of the contract, with rates to the public not exceeding existing approved rates;

(8) A schedule which allocates in detail the purchase price to the assets acquired, together with the basis for the allocation;

(9) If the transaction may result in an encumbrance on the concessioner's assets, full particulars of the terms and conditions of the encumbrance; and

(10) Such other information as the Director may require.

The Director may waive portions of these documentation requirements in circumstances where particular documents are considered unnecessary for the Director's review purposes.

(d) The Director may choose to disapprove a transaction as described herein in his or her discretion or may place appropriate conditions on any approval, including modification of the terms and conditions of the concession contract, as a condition of approval. Among other circumstances, the Director may choose not to approve a transaction if the concessioner does not accept appropriate modifications intended to assure that consideration flowing to the Government under the contract is consistent with the probable value of the privileges granted by the contract. The Director shall not approve a transaction that the Director considers may result in decreased quality of service to the public, the lack of a reasonable opportunity for profit over the remaining term of the contract, or in rates higher than comparable rates being charged to the public. Further, the Director shall not approve a transaction if a significant portion of the purchase price is attributable either directly or indirectly to intangible assets or values emanating from the privileges granted by the concession contract (including, but not limited to, a right of preference in contract renewal, user days, allocated entries or trips, and low fees and charges). 16 U.S.C. 3 and certain concession contracts contain provisions which limit the purposes for which contracts may be encumbered. Such limitations are an element of the Director's review of such transactions. In addition, the Director shall not exercise the authorities contained in this section with respect to concession contracts in effect prior to the effective date of these regulations if the Director considers that such exercise would constitute a material breach of the terms of the concession contract at issue.

§ 51.8 Public availability of concessions information.

Among other information which may be required by contract or otherwise, the following information shall be contained in the financial statements submitted to the Director by a concessioner and shall be made available to the public by the Director: Gross receipts broken out by department for the 3 most recent years; franchise fees charged broken out by building use fee and percentage fee for the 3 most recent years; merchandise inventories for the 3 most recent years; and the depreciable fixed assets and net depreciable fixed assets of the concessioner. Other information may also be made available to the public to the extent permitted by law. The authority in this section shall not be exercised by the Director with respect to contracts in effect prior to the effective date of these regulations if the Director determines that such exercise would constitute a material breach of the concession contract at issue.

§ 51.9 Information collection.

(a) The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3051 *et seq.* and assigned clearance numbers 1024–0095 (contracting procedures, §§ 51.4–51.6), and 1024–0096 (sales and transfers, § 51.7). Response is required to obtain a benefit in accordance with 16 U.S.C. 20, *et seq.*

(b) The public reporting burden for the collection of information for the purpose of preparing an offer in response to a contract solicitation is estimated to average 80 hours per offer. The public reporting burden for the collection of information for the purpose of reporting a sale or transfer of a concession operation is estimated to be 160 hours for a large operation, and 32 hours for a small operation. Please send comments regarding this burden estimate or any other aspect of this collection of

information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 1100 L Street, NW., Washington, DC 20013; and the Office of Management and Budget, Paperwork Reduction Act (1024–0095 and 1024–0096), Washington, DC 20503.

Dated: June 12, 1992.

Michael Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92–20843 Filed 9–2–92; 8:45 am]

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Thursday
September 3, 1992

Part III

Department of the Interior

National Park Service

Standard Concession Contract Language; Revision; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

Standard Concession Contract Language; Revision

ACTION: Proposed revision of National Park Service Standard Concession Contract Language.

SUMMARY: The National Park Service authorizes certain businesses to operate concessions in national parks. The agreements embodying these authorizations consist primarily of standard language that incorporates National Park Service concessions policies. The National Park Service proposes to amend this standard language in accordance with 16 U.S.C. 3 and 16 U.S.C. 20, *et seq.*, to clarify the intentions of the drafters of the original language, and to carry out certain policy changes.

DATES: The National Park Service will accept written comments until November 2, 1992.

ADDRESSES: Comments should be addressed to: Director, National Park Service, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Lee Davis, Chief, Concessions Division, National Park Service, Washington, DC 20013–7127.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior ("the Secretary") set up a Departmental Task Force to review the concessions program of the National Park Service ("NPS") in 1989. On April 9, 1990, the Task Force submitted a report to the Secretary that identified three basic problems with the program. First, the Task Force pointed out that there was virtually no competition for NPS concession opportunities. In the history of NPS, there have only been a handful of instances when NPS did not renew the contract of an existing concessioner. Second, the Task Force noted that NPS was not exercising enough oversight with respect to sales and transfers of concessions operations. Some concessioners had sold their operations for prices that included the value of intangible assets that rightly belonged to the American public, through the government. Third, the Task Force noted that NPS was not receiving adequate consideration in return for allowing concessioners the opportunity to operate in national parks.

The Task Force proposed a 12-point reform plan to address these problems. The Task Force saw a need to:

1. Set systematic franchise fees for concessions operations.
2. Raise the building use fees paid by concessioners.
3. Redefine an existing concessioners "right of preference" in contract renewal.
4. Redefine the "preferential right to additional services".
5. Reduce concessioners' possessory interest.
6. Exert better oversight over sales and transfers of concession operations.
7. Shorten the length of concession contracts.
8. Develop mechanisms for funding improvements to concessions facilities.
9. Centralize NPS Concessions Division decision-making authority.
10. Improve Concessions Division accountability and internal controls.
11. Improve Concessions Division training programs and Concessions Division personnel, and,
12. Increase the resources of the Concessions Division.

After slightly modifying some of these recommendations, the Secretary, by a memorandum of July 19, 1990, instructed the Director of NPS ("the Director") to implement the Task Force plan. NPS is using three methods to do this.

Recommendations dealing with the right of preference, the preferential right to additional services, and the appropriate extent of NPS control over sales and transfers, concern the regulation of both contracting procedures and sales and transfers. NPS could carry these out only by amending its existing regulations. NPS recently took care of this by publishing amended regulations in the **Federal Register**". The regulations were published for public comment as proposed regulations on August 23, 1991. NPS received over 920 comments on the proposed regulations.

In response to the public comment, NPS modified some aspects of the proposed regulations. (See Preamble to the Final Regulations in the **Federal Register** for a detailed analysis of the regulations and comments). The regulations that evolved from the public comment process enhance competition by restricting the availability of both the right of preference in contract renewal ("right of preference"), and the preferential right to additional services ("right to additional services"). Notwithstanding its restricted availability, the right of preference, in accordance with the Concessions Policy Act, remains strong enough to encourage continuity of concessioner operation.

The amended rules enhance the government's control over sales and transfers of concession operations by expressly allowing the Director to condition his approval of these transactions upon appropriate amendments to the seller's concession contract. The rules do not change the significance of franchise fees in offer evaluations. As an offer-evaluation factor, the amount of franchise fee remains secondary to the offeror's experience, financial capability, and ability to offer good service to park visitors.

Task Force recommendations dealing with franchise fees, building use fees, centralization, increasing accountability, length of contract, personnel, and increasing Concession Division resources, are more policy-oriented. NPS would have to change its policies and procedures to implement these recommendations.

NPS is in the process of addressing these points. It has recently increased funding and personnel for the Concession Division. The increase in resources will help NPS address Task Force recommendations concerning the need to pursue fair franchise fees from concessioners. Also, it will allow NPS to develop a reasoned and workable solution to the building use fee issue. Furthermore, it will enable NPS to enhance its training program, thus satisfying another Task Force concern. The desirability and feasibility of additional adjustments in resources will be assessed as necessary, in order to assure effective implementation.

To implement the Task Force recommendation that NPS shorten the length of concession contracts, NPS is carefully reviewing the length of every new and renewed contract. The Director will not approve those with excessively long terms.

NPS is implementing the directive concerning increasing its accountability by creating an accounting system to accurately track concessioner franchise and building use fees. It is carrying out the Task Force centralization point by requiring a Secretarial signature for all contracts dealing with operations that receive at least $3,000,000 in annual gross revenue. Similarly, the Director must sign all contracts dealing with concession operations that receive over $1,000,000 in annual revenue. To further implement this point the Director now must review, prior to a Regional Director's signature, all contracts for operations that gross between $100,000 and $1,000,000 in annual revenue.

NPS, through this public comment process, is particularly seeking comment on the methods it has chosen to deal with the Task Force points concerning possessory interest and funding mechanisms. Because these issues concern the agreement between the

concessioner and NPS they are being addressed as proposed changes to the standard concession contract. Among other things, NPS intends these proposed changes to amend compensation for concessioners' possessory interests, and establish mechanisms to fund improvements to concessions facilities. NPS notes that some of these changes have strong relationships to Task Force points discussed above, such as the proposed special fund provisions. NPS discusses these and other specific proposed changes that are of a substantive nature in the "Section by Section" analysis below. Additionally, NPS has made some editorial changes to the standard contract that are of a technical, rather than substantive, nature.

Section by Section Analysis

Whereas Clauses

The proposed language drops the present "whereas clause" that states "Whereas, the establishment and maintenance of such facilities and services involves a substantial investment of capital and the assumption of risk of operating loss, it is therefore proper, in consideration of the obligations assumed hereunder and as an inducement to capital, that the concessioner be given assurance of security of such investment and of a reasonable opportunity to make a profit". NPS has dropped this clause from the proposed language as it is unnecessary in light of the applicable provisions of the Concessions Policy Act.

Section 1—Term of Contract

NPS has amended paragraph (a) of this section to provide for a shortened term of contract if the concessioner does not complete a contractually required improvement and building program to the satisfaction of the Secretary within the time allotted. This provision gives the concessioner an incentive to fulfill its building and improvement program commitment in a timely manner. If it fails to do so, the contract will come to a premature end.

Section 1(d) allows the Secretary to grant a concessioner relief from the obligations of an improvement program where the concessioner cannot perform its construction duties because of circumstances beyond its control. Such relief, however, would not extend to accounts set up under section 1(e) of the contract.

Section 2—Accommodations, Facilities and Services

Section 2(b) of the proposed language changes the existing contract by providing for the development of an Operating Plan. The Plan would carry out the requirements of the contract in greater detail. The purpose of the plan is merely to provide a blueprint for how a concessioner will carry out its responsibilities under the contract. The final sentence of section 2(b) makes this clear by stating that the Operating Plan does not "amend or alter the rights and liabilities of the parties to the contract".

The proposed language does not include the optional paragraph from the existing standard contract that grants a concessioner a preferential right to provide new or additional services. The deletion of this section from the standard contract is consistent with the Secretary's initiative. The Secretary has concluded that the preferential right to provide new or additional services is inherently anti-competitive. Therefore, it will no longer be a part of the standard contract.

Section 3—Plant, Personnel and Rates

In the existing standard contract, the following sentence appears as the second sentence in paragraph (a)(2) of this section: "The Secretary shall exercise his decision making authority with respect to the concessioners rates and prices in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on its operations hereunder as a whole commensurate with the capital invested and the obligations assumed". NPS has deleted this sentence from the proposed language because it merely restates NPS's obligation under the Concessions Policy Act to allow concessioners a reasonable opportunity for profit.

Section 4—Government Land and Improvements

NPS has revised section 4(a) of the existing contract to require a separate land assignment and listing of Government Improvements assigned to the concessioner for use under the contract. The proposed language revises section 4(e) to clarify that the concessioner will be responsible for capital improvements to government facilities directly supporting the concession operation unless the Secretary determines that the required improvements are economically infeasible for private investment.

Section 5—Maintenance

The proposed language amends the existing contract by providing for the development of a maintenance plan. This plan would implement the maintenance requirements of the concession contract.

Section 7—Utilities

The proposed language revises this section by clarifying that the Secretary may provide utilities to the concessioner and, if the Secretary does not provide such services, NPS may require the concessioner to secure utility services at its own expense from sources outside the park.

Section 9—Fees

NPS has revised section 9(e) to provide for a 120-day period in which NPS may reconsider the franchise fees in section 9 or other considerations described in section 10. Additionally, NPS has revised the advisory arbitration language of this section. The revised section seeks to resolve reconsideration disputes by using an advisory arbitration panel consisting of one or three neutral arbitrators. The American Arbitration Association or a similar organization would set up the panel, which would recommend to the Secretary appropriate fees and/or other considerations.

Section 10—Accounts

This section sets up two types of accounts for building and improvement programs. Section 10(a) allows the concessioner to remit funds into a "Government Improvement Account" in consideration for the right to use and occupy government-owned buildings. The concessioner would access this account to fund the repairs and improvements of Government Improvements which directly support concession services. This section also provides further details on the approval of projects and the general administration of the account. Further, it provides that the concessioner shall not receive possessory interest in improvements made from the account.

Section 10(b) allows the concessioner to remit funds into a "Capital Account" as partial consideration for the privileges granted under the contract. The concessioner would access this account to fund improvements which directly support concession services. Like section 10(a), this section also provides further details on the approval of projects and the general administration of the account. It also states that the concessioner will not receive possessory interest in improvements made from the account.

The most significant aspect of this section is that it does not grant

concessioners possessory interest for improvements. This distinguishes it from sections 4 and 6, which do grant concessioners possessory interest for government and concessioner improvements made thereunder. The purpose of this section is to carry out the Secretarial initiative that instructs the Director to seek improved funding mechanisms for facility maintenance and rehabilitation. The need for these funding mechanisms is evident, as the concessions facilities in many parks are either inadequate or in need of rehabilitation. These funds also privatize the maintenance and rehabilitation of government-owned facilities.

This section also provides that any money remaining in these accounts at the end of the contract shall either be spent on approved projects or remitted to the "Miscellaneous Receipts" Account of the United States Treasury.

Section 12—Termination

The proposed language amends the existing contract to clarify that the Secretary may terminate or suspend operations under the contract in order to enhance or protect area resources or visitor enjoyment or safety.

Section 13—Compensation

The proposed language changes NPS's method of determining the value of possessory interest. The existing contract entitles concessioners to the sound value of concessioner improvements, less observed depreciation, not to exceed their fair market value. The proposed language drops the reference to sound value and provides that the concessioner will be entitled to the "fair value" of its possessory interest. In those instances where a concessioner has acquired a sound value possessory interest under the terms of a prior concessions contract, NPS would determine the concessioners pre-existing sound value, convert this figure to fair value, and state that figure in the contract. The language further provides that this amount shall be decreased over the shortest period possible, usually not more than 1/30th of the original amount each year. In the event of contract termination or expiration, the concessioner's right to compensation for these improvements will be the amount not yet decreased, except in the event of termination for unsatisfactory performance. Subsection (d) of this section entitles a terminated unsatisfactory concessioner to the fair value of its possessory interest as described in section 13(b), or the original cost of the improvements (less depreciation), whichever is less.

Additionally, the proposed language states that the fair value of any possessory interest in concessioner or Government improvements constructed under the terms of the new contract will be the original cost of the improvement less straight line depreciation over the estimated useful life of the asset, provided that the useful life may not exceed 30 years. It also provides that NPS will not permit a successor to revalue any possessory interest, method of depreciation, or, the useful life of the asset.

Section 14—Assignment or Sale of Interests

The proposed language revises section 14(a)(1) to clarify that a concessioner must have the Secretary's written approval before encumbering its assets or interests (such as mortgages, liens, or collateral) under the contract. The proposed language also provides that Secretarial approval is not a matter of right. It provides that the Secretary will use established policies and procedures in determining whether to approve, disapprove, or place conditions on, the proposed transfer. Further, NPS has deleted the term "controlling interest" from the proposed language. This definition is unnecessary since this term is defined in 36 CFR 51.

NPS has amended proposed section 14(a)(2) to describe in further detail the items that concessioners must provide to the Secretary for his consideration in reviewing a proposed transaction.

Exhibits

NPS has added a new exhibit entitled "Land Assignment" to the proposed contract, and renumbered existing exhibits accordingly.

Other

NPS has dropped the "Disputes" section from the existing contract. This former section 17 of the contract provided for the resolution of contract disputes in accordance with the rules of the Board of Contract Appeals. NPS has removed it from the contract because it believes the Contracts Disputes Act covers these matters.

Dated: June 10, 1992.

James M. Ridenour,

Director, National Park Service.

Standard Language To Be Used, Where Applicable, in Concession Contracts

United States Department of the Interior, National Park Service

(Name of Concessioner)

_____

(Name of Area)

_____

Contract No. _____ executed _____ covering the period _____ through _____

Concession Contract—Table of Contents

Corporation

This contract made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and _____, a corporation organized and existing under the laws of the State of _____ doing business as

_____ hereinafter referred to as the "Concessioner":

Partnership

This contract made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and _____ of _____, _____, and _____, of _____, partners, doing business as _____, pursuant to a partnership agreement dated _____, with the principal place of business at _____, hereinafter referred to as the "Concessioner":

Sole Proprietorship

This contract made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and _____, an individual of _____, doing business as _____, hereinafter referred to as the "Concessioner":

WITNESSETH:

That whereas, (Name of Park, Recreation Area, etc.) (hereinafter referred to as the "Area") is administered by the Secretary to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such area unimpaired for the enjoyment of future generations; and

Whereas, the accomplishment of these purposes requires that facilities and services be provided for the public visiting the area; and

Whereas, the United States has not itself provided such necessary facilities and services and desires the Concessioner to establish and operate certain of them at reasonable rates under the supervision and regulation of the Secretary; and

Whereas, pursuant to law the Secretary is required to exercise his authority hereunder in a manner consistent with a reasonable opportunity by the Concessioner to realize a profit on the operations conducted hereunder as a whole commensurate with the capital invested and the obligations assumed:

Now, therefore, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4), and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 et seq.), and other laws supplemental thereto and amendatory thereof, and said parties agree as follows:

Sec. 1. Term of Contract

(a) This contract shall [supersede and cancel Contract No. _____ effective upon the close of business _____ 19_____, and shall] [1] be for the term of _____ (_____) years from _____, 19_____,[2] [conditioned upon the Concessioner's completion of the improvement and building program set forth in subsection (b) hereof. In the event the Concessioner fails to complete said program to the satisfaction of the Secretary within the time allotted therefor, then this contract shall be for the term of _____ (_____) years from _____].

(b) [3] The Concessioner shall undertake and complete an improvement and building program costing not less than $_____ as adjusted per project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Commerce's "Construction Review". It is agreed that such investment is consistent with section 3(a) hereof. Such improvement and building program shall include:

(Provide detailed description of improvement and building program.)

(c) The Concessioner shall start the improvement and building program on or before _____ in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying said program forward reasonably under the circumstances. After approval of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation, as may be satisfactory to the Secretary, to demonstrate that such program is being carried forward, and shall complete and have it available for public use on or before _____.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the improvement program, except for the account(s) set forth in subsection (e) hereof, for such stated periods and the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond its control warranting such relief.

(e) In addition to the capital improvement program described above, the concessioner shall accomplish such additional projects as may be funded from the account(s) established in section 10 hereof.

Sec. 2. Accommodations, Facilities and Services

(a) The Secretary requires and hereby authorizes the Concessioner during the term of this contract to provide accommodations, facilities and services for the public within _____, as follows:

(Provide detailed description of required and authorized services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used. A provision stating "The Concessioner may provide services incidental to the operations authorized hereunder at the request of the Secretary," is acceptable.)

(b) The Secretary reserves the right to determine and control the nature, type and quality of the merchandise and services described herein as authorized and required to be sold or furnished by the Concessioner within the area. Operations under this contract and the administration thereof by the Secretary shall be subject to the laws of Congress governing the area and the rules, regulations and policies promulgated thereunder, whether now in force or hereafter enacted or promulgated, including but not limited to United States Public Health Service requirements. Concessioners must also comply with current applicable criteria promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions outlined in the National Park Service's Safety and Occupational Health Policy associated with visitor safety and health. In order to implement these requirements the Secretary, acting through the Superintendent, and in consultation with the concessioner, shall establish and revise as circumstances warrant, in the form of an Operating Plan, specific operating requirements. However, such Operating Plan shall not amend or alter the rights and liabilities of the parties to this contract.

Sec. 3. Plant, Personnel and Rates

(a)(1) The Concessioner shall maintain and operate the said accommodations, facilities and services to such extent and in such manner as

[1] To be used when existing contract is to be replaced, before expiration date.

[2] To be used where there is an improvement and building program. The shortened term of contract should generally not exceed 10 years.

[3] (b), (c) and (d) are to be used where improvement programs are included in the contract. *Note: Do Not Use* Sec. 1, (b), (c) or (d), if there is no building program.

the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with a reasonable opportunity to realize a profit on its operations hereunder commensurate with the capital invested and the obligations assumed.

(2) All rates and prices charged to the public by the Concessioner for accommodations, services or goods furnished or sold hereunder shall be subject to regulation and approval by the Secretary. Reasonableness of rates and prices will be judged generally by comparison with those currently charged for comparable accommodations, services or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, [average percentage of occupancy],[4] accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services in accordance with procedures established by the Secretary.

(b)(1) The Concessioner may be required to have its employees who come in direct contact with the public, so far as practicable, to wear a uniform or badge by which they may be known and distinguished as the employees of the Concessioner. The Concessioner shall require its employees to exercise courtesy and consideration in their relations with the public.

(2) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Secretary to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(3) The Concessioner shall comply with the requirements of (a) title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (b) title V, sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93–112 as amended in 1978, (c) CFR, part 60–2 which prescribes affirmative action requirements for contractors and subcontractors, (d) the Age Discrimination in Employment Act of December 15, 1967 (Pub. L. 90–202), as amended by (Pub. L. 95–256) of April 6, 1978, and (e) the Architectural Barriers Act of 1968 (Pub. L. 90–480) which requires Government Contractors and Subcontractors to take affirmative action to employ and to advance in employment qualified handicapped individuals and to make facilities accessible to or useable by handicapped persons so that they will not be denied the benefit of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by an Executive agency or by the United States Postal Service. The Concessioner shall also comply with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and providing accessible facilities and services to the public and shall do nothing in advertising for employees which will prevent those covered by these laws from qualifying for such employment and use of their facilities. Regulations heretofore promulgated are set forth in Exhibit "A" attached hereto and made a part hereof.

Sec. 4. Government Land and Improvements

(a) The Secretary hereby assigns for use by the Concessioner during the term of this contract, certain parcels of land, if any (as described in Exhibit "B" hereto), and Government Improvements, if any (as described in Exhibit "C" hereto) appropriate to conduct the operations authorized hereunder. The Secretary reserves the right to withdraw such assignments or parts thereof at any time during the term of this contract if, in his judgment, (1) such withdrawal is for the purpose of enhancing or protecting area resources or visitor enjoyment or safety, or (2) the operations utilizing such assigned lands are terminated pursuant to section 11 hereof. Any permanent withdrawal of assigned lands or improvements which are essential for conducting the operation authorized hereunder will be considered by the Secretary as a termination pursuant to section 12 hereof. The Secretary shall compensate the Concessioner for any possessory interest in such properties permanently withdrawn pursuant to section 13 hereof.

(b) "Government Improvements" as used herein, means the buildings, structures, utility systems, fixtures, equipment, and other improvements upon the lands assigned hereunder, if any, constructed or acquired by the Government and provided by the Government for the purposes of this contract. The Concessioner shall have a possessory interest in improvements it makes to Government Improvements. In the event that such possessory interest is acquired by the Government or a successor Concessioner at any time, the Concessioner will be compensated for such possessory interest pursuant to section 13 hereof.

(c) The Secretary shall have the right at any time to enter upon the lands and improvements utilized by the Concessioner hereunder for any purpose he may deem reasonably necessary for the administration of the area and the Government services therein.

(d) The Concessioner may construct or install upon the assigned lands such buildings, structures, and other improvements as are necessary for the operations required hereunder, subject to the prior written approval by the Secretary of the location, plans, and specifications thereof. The Secretary may prescribe the form and contents of the application for such approval. The desirability of any project as well as the location, plans and specifications thereof will be reviewed in accordance with the provisions of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966.

(e) If during the term hereof a Government Improvement requires major repairs and/or improvements that serve to prolong the life of the Government Improvement to an extent requiring capital investment for major repair, such capital investment shall be borne by the Concessioner. Such expenditures shall be consistent with a reasonable opportunity for the Concessioner to realize a profit on its operations. Where capital improvements to Government facilities directly supporting the concession operation are determined by the Secretary to be necessary for the accommodation of park visitors they shall be made by the Concessioner unless the Secretary determines that the required improvements are economically infeasible for private investment.

[4] This should be used only in contracts involving lodging.

Sec. 5. Maintenance

Subject to section 4(e) hereof, the Concessioner will physically maintain and repair all facilities (both Government and Concessioner's Improvements) used in the operation hereunder, including maintenance of assigned lands and all necessary housekeeping activities associated with the operation to the satisfaction of the Secretary. In order that a high standard of physical appearance, operations, repair and maintenance be maintained, appropriate inspections will be carried out by the Secretary. In order to implement these requirements the Secretary, acting through the Superintendent, and in consultation with the concessioner, shall establish and revise as circumstances warrant, in the form of a Maintenance Plan, specific maintenance requirements. However, such Maintenance Plan shall not amend or alter the rights and liabilities of the parties to this contract.

Sec. 6. Concessioner's Improvements

(a) "Concessioner's Improvements," as used herein, means buildings, structures, fixtures, equipment, and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this contract, (excluding improvements made to Government Improvements by the Concessioner), as follows: (1) such improvements upon the lands assigned at the date hereof as described in Exhibit "D" hereto; and (2) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary. Concessioner's Improvements do not include any interest in land upon which the described structures are located.

(b) The Concessioner shall have a possessory interest in all Concessioner's Improvements and Government Improvements recognized by this contract. Possessory Interest shall consist of all incidents of ownership, except legal title which shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture or improvement in which the Concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of this contract, and may not be terminated or taken for public use without just compensation as determined in accordance with section 13. Wherever used in this contract, "possessory interest" shall mean the interest described in this paragraph. Performance of the obligations assumed by the Secretary under section 13 hereof shall constitute just compensation with respect to the taking of a possessory interest.

(c) Any salvage resulting from the authorized removal, severance or demolition of a Concessioner's Improvement or any part thereof shall be the property of the Concessioner.

(d) In the event that a Concessioner's Improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly upon the request of the Secretary, restore the site as nearly as practicable to a natural condition.

Sec. 7. Utilities

(a) The Secretary may furnish utilities to the Concessioner, for use in connection with the operations authorized hereunder, when available, at reasonable rates to be fixed by the Secretary in his discretion and which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Secretary in effect at the time of billing.

(b) Should the Secretary not provide such services, the Concessioner shall, with the written approval of the Secretary and under such requirements as shall be prescribed by him, secure the same at its own expense from sources outside the area or shall install the same within the area subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Federal lands shall be acquired at its expense in accordance with any applicable state procedures and state law. Such water rights, upon expiration or termination of this contract for any reason shall be assigned to and become the property of the United States without compensation.

(2) Any service provided by the Concessioner under this section shall, if requested by the Secretary, be furnished to the Government to such an extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the Government for such service shall be approximately the average cost per unit of providing such service.

(3) All appliances and machinery to be used in connection with the privileges granted in this section, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Secretary.

Sec. 8. Accounting Records and Reports

(a) The Concessioner shall maintain an accounting system whereby the accounts can be readily identified with its system of account classification. The Concessioner shall submit annually as soon as possible but not later than _____ (_____) days after the _____ day of _____ a financial statement for the preceding year or portion of a year as prescribed by the Secretary, and such other reports and data including but not limited to operations information as may be required by the Secretary. If annual gross receipts are in excess of $1 million, the financial statements shall be audited by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are between $250,000, and $1 million, the financial statements shall be reviewed by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants.

Financial statements accompanied by remarks such as "prepared from client records without audit" are unacceptable.

The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent to those included in the Federal and state tax returns. If they are not, then a statement showing differences shall be included. The Secretary shall have the right to verify and copy for his own use all such reports from the books, correspondence, memoranda, and other records of the Concessioner, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b)[5] Within ninety (90) days of the execution of this contract or its effective date, whichever is later, the Concessioner shall submit to the Secretary a balance sheet as of the beginning date of the term of this contract. The balance sheet shall be audited by an independent certified public accountant or by an independent licensed public accountant, certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970. The balance sheet shall be accompanied by a schedule that identifies and provides details for all assets in which the Concessioner claims a possessory interest. The schedule must describe these assets in detail showing for each such asset the date acquired, useful life, cost and book value.

(c) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of five (5) calendar years after the expiration of this contract, have access to and the right to examine any of the pertinent books, documents, papers, and records of the Concessioner and any subconcessioners related to this contract including Federal, and state income tax returns.

Sec. 9. Fees

(a) For the term of this contract, the Concessioner shall pay to the Secretary for the privileges granted herein, fees as follows:

(1) [6] An annual fee for the use of any Government Improvements utilized by the Concessioner hereunder, if any. Such fee and assigned Government buildings shall be identified in Exhibit "C" hereto, and shall be adjusted annually by the Secretary to equal the fair annual value of such Government Improvements as determined by the Secretary.

(2) In addition to the foregoing, a franchise fee equal to _____ percent (_____%) of the Concessioner's gross receipts, as herein defined, for the preceding year or portion of a year.

(b) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that payment shall be received by the Secretary within 15 days after the last day of each month that the Concessioner operates. Such monthly payment shall include the annual use fee for assigned Government Improvements, as set forth in Exhibit "C" hereto, divided by the expected number of operating months, as well as the specified percentage of gross receipts for the preceding month. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the annual financial report. Overpayments shall be offset against the following year's franchise fees due. All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed beyond the 15-day period provided for in subsection (b) hereof. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(d)(1) The term "gross receipts," as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted in this contract, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the area, and excluding gross receipts from the sale of genuine United States Indian and native handcraft, intracompany earnings on account of charges to other departments of the operation (such as laundry), charges for employees' meals, lodgings, and transportation, cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the area, sale of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid Governmental agencies,[7] and amounts received as a result of an add-on to recover utility costs above comparable utility charges. All monies paid into coin operated devices, except telephones, whether provided by; the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts.

(2) The term "gross receipts of subconcessioners" as used in subsection (d)(1) of this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever and the subconcessioner shall report the full amount of all such receipts to the Concessioner within 45 days after the _____ day of _____ of each year or portion _____ of a year. The subconcessioners shall maintain an accurate and complete record of all items listed in subsection (d)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed in subsection (d)(1) in computing the franchise fee payable to the Secretary as provided for in subsection (a) hereof.

(e) Within one hundred twenty (120) days after _____, _____, _____, and _____,[8] at the instance of either party hereto, the amount and character of the franchise fees described in this section and/or the considerations provided for in section 10 hereof may be reconsidered. Such request shall be made in writing within 60 days after the end of the applicable contract year but cannot be made before the end of such year. In the event that the Secretary and the Concessioner cannot agree upon an adjustment of the franchise fees described in this section and/or section 10 considerations within 120 days from the date of the request for renegotiation as made by either party, the position of the Concessioner must be reduced to writing within 30 days therefrom and submitted to the

[5] Optional: Subsection 8(b), in its entirety, may be excluded where the Concessioner has no acquired possessory interest assets involved and no balance sheet is required.

[6] This subsection should be used if a building use fee is to be charged. If a special account is to be established under section 10(a) in lieu of a building use fee, this subsection should be deleted.

[7] Note to Preparer: This means, for example, if fishing licenses are sold, $2.00 goes to State or Federal agency, $.25 goes to Concessioner. Only $2.00 can be excluded from gross receipts, i.e. fishing license cost to user $2.00 but concessioner sells them and charges $.25 for services.

[8] The dates to be inserted in the blanks should coincide with the Concessioner's financial reporting year (for example, if the Concessioner's financial reporting year is on a calendar year basis, the dates should be December 31 of the appropriate year). *Franchise fees must be reconsidered at least every five years.*

Secretary for a determination of appropriate fees and/or section 10 considerations consistent with the probable value to the Concessioner of the privileges granted by this contract based upon a reasonable opportunity for a profit in relation to both gross receipts and capital invested. If desired by the Concessioner an advisory arbitration panel will be established, consisting of either one or three neutral arbitrators and utilizing the American Arbitration Association, or a similar organization, for the purpose of recommending to the Secretary appropriate franchise fees and/or other considerations. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written determination of the Secretary as to franchise fees and/or section 10 considerations shall be final and conclusive upon the parties hereto. Any amended fees and/or section 10 considerations established will be retroactive to the commencement of the applicable period for which notice of reconsideration is given and be effective for the remaining term of the contract unless subsequent negotiations establish different franchise fee and/or section 10 considerations. If new rates are greater than existing rates, the Concessioner will pay all back franchise fees and make required section 10 deposits due at the time of the next regular payments or deposits. If new rates are less than the existing rates the Concessioner may withhold the difference between the two rates from future payments or deposits until he has recouped the overpayment. Any new franchise fees and/or section 10 considerations will be evidenced by an amendment to the contract unless based upon the written determination of the Secretary in which event a copy of the determination will be attached hereto and become a part hereof, as fully as if originally incorporated herein.

Sec. 10. Accounts

(Two alternatives are presented for subsection (a)):

(a) [9] No special accounts are included in this contract.

(a) Government Improvement Account [10]

(1) As consideration for the use and occupancy of Government Improvements herein provided, Concessioner shall deposit in a "Government Improvement Account", held in trust by the National Park Foundation,[11] funds by which it will undertake on a Project basis a repair and improvement program for Government Improvements which directly support concession services authorized and/or required under this contract, as directed by the Superintendent and in accordance with written approval of individual Projects and Project priorities by the Regional Director. Expenditures from this account for repair and/or improvement projects in excess of $1,000,000 must also receive the written approval of the Director. Projects will include structural repair of Government Improvements and major systems repair and replacement for only those Government Improvements assigned to the Concessioner pursuant to Exhibit "C" hereof.

(2) Projects paid for from the Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by sections 4 and 5, or otherwise, of the Concession Contract from funds other than the "Government Improvement Account," and the Account will not be used for purposes for which those Sections would apply. Concessioner shall have no ownership, possessory interest, or other interest in improvements made from the Government Improvement Account.

(3) In order to carry out the Account program, the Concessioner shall deposit within fifteen days after the last day of each month a sum equal to one-twelfth of the amount of the Government Improvement Account Allocation as established in Exhibit "C" into [an] interest bearing account(s) at [a] Federally insured financial institution(s) and held in trust by the National Park Foundation. The account(s) shall be maintained separately from all other Concessioner funds, and copies of monthly account statements shall be provided to the Secretary.

(4) An interest charge will be assessed on overdue payments for each 30 day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(5) The Concessioner shall submit annually, no later than _____ of the year following the Concessioner's accounting year a statement reflecting total activity in the Government Improvement Account for the preceding financial year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

(6) The balance in the Government Improvement Account shall be available for projects in accordance with the Account's purpose. Advances or credits to the Account by the Concessioner will not be allowed. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing in advance of any expenditure being made. Account activities shall be initiated and managed as a series of Projects with objections for each Project defined as part of the Superintendent's approval document. For all expenditures made for each project from the Account, Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

(7) Upon the expiration or termination of this contract, or upon assignment or sale of interests related to this contract, the unexpended balance remaining in the Government Improvement Account shall be expended for approved Projects, or shall be remitted by the Concessioner in such a manner that payment shall be received by the Secretary within 15 days after the last day of the Concessioner's operation. Any payment consisting of $10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communications System. An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed beyond the 15-day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(b) Capital Account

(1) As partial consideration for the privileges granted herein, the Concessioner shall deposit in a capital account held in trust by the National Park Foundation [12] funds by which it

[9] This subsection should be used only when no special accounts are included in the contract.

[10] To be used in lieu of building use fee requirement in section 9(a)(1) if a special account is to be established.

[11] The authority to utilize the National Park Foundation for this purpose is under review. If the Foundation cannot undertake this function, another means to achieve the Trust Account objective will be adopted.

[12] The authority to utilize the National Park Foundation for this purpose is under review. If the Foundation cannot undertake this function, another means to achieve the Trust Account objective will be adopted.

will undertake, on a Project basis, improvements which directly support concession services authorized and/or required under this contract. Projects will be selected by the Superintendent in accordance with the written approval of individual Projects and Project priorities by the Regional Director. Projects costing over $1,000,000 must also be reviewed and approved by the Director.

(2) Projects paid for from the Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by sections 4 and 5, or otherwise, of the Concession Contract from funds other than the Account and the Account will not be used for purposes for which those Sections would apply. Concessioner shall have no ownership, possessory interest or other interest in improvements made from the Account.

(3) In order to carry out the Account projects the Concessioner shall deposit within fifteen days after the last day of each month that the concessioner operates a sum ("SUM") equal to _____ percent (_____%) of the Concessioner's Gross Receipts for the previous month, as defined herein, into (an) interest bearing account(s) at (a) Federally insured financial institution(s) and held in trust by the National Park Foundation. The account(s) shall be maintained separately from all other Concessioner funds and copies of monthly account statements shall be provided to the Secretary.

(4) An interest charge will be assessed on overdue payments for each 30 day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(5) The Concessioner shall submit annually, no later than _____, of the year following the Concessioner's accounting year a statement reflecting total activity in the Account for the preceding financial year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

(6) The balance in the Account shall be available for projects in accordance with the Account's purpose. Advances or credits to the Account by the Concessioner will not be allowed. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made. Account activities shall be initiated and managed as a series of Projects with objectives for each Project defined as part of the Superintendent's approval document. For all expenditures made for each project from the Account, Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

(7) Upon the expiration or termination of this contract, or upon assignment or sale of interests related to this contract, the unexpended balance remaining in the Account shall be expended for approved Projects or shall be remitted by the Concessioner in such a manner that payment shall be received by the Secretary within 15 days after the last day of the Concessioner's operation. Any payment consisting of $10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communications System. An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed beyond the 15-day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

Sec. 11. Bond and Lien

The Secretary may, in his discretion, require the Concessioner to furnish a surety bond acceptable to the Secretary conditioned upon faithful performance of this contract, in such form and in such amount as the Secretary may deem adequate, not in excess of _____ dollars ($_____).[13] As additional security for the faithful performance by the Concessioner of all of its obligations under this contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the area.

Sec. 12. Termination

(a) The Secretary may terminate this contract in whole or part for default at any time and may terminate this contract in whole or part when necessary for the purpose of enhancing or protecting area resources or visitor enjoyment or safety. The operations authorized hereunder may be suspended in whole or in part at the discretion of the Secretary when necessary to enhance or protect area resources or visitor enjoyment or safety. Termination or suspension shall be by written notice to the Concessioner and, in the event of proposed termination for default, the Secretary shall give the Concessioner a reasonable period of time to correct stated deficiencies. Termination for default shall be utilized in circumstances where the Concessioner has breached any requirements of this contract, including failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder.

(b) In the event of termination of this contract when necessary for the purpose of enhancing or protecting area resources or visitor enjoyment or safety, or for default, the total compensation to the Concessioner for such termination shall be as described in section 13, "Compensation".

(c) In the event it is deemed necessary to suspend operations hereunder in whole or in part to enhance or protect area resources or visitor enjoyment or safety, the Secretary shall not be liable for any compensation to the Concessioner for losses occasioned thereby, including but not limited to, lost income, profit, wages, or other monies which may be claimed.

(d) To avoid interruption of services to the public upon the expiration or termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator, designated by the Secretary, of the Concessioner's Improvements and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall be entitled to an annual fee for the use of such improvements and personal property, prorated for the period of use, in the amount of the annual depreciation on such improvements and personal property, plus a return on the book value of such improvements and personal property equal to the prime lending rate, effective on the date the temporary operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In this

[13] *Note to Preparer:* If a bond is required it should not, under normal conditions, exceed the amount of franchise fees which may be due. Leave blank where there has been no past operator because no dollar amount can be determined.

instance the method of depreciation used shall be either straight line depreciation or depreciation shown on Federal Tax Returns.

Sec. 13. Compensation

(a) *Just Compensation:* The compensation described herein shall constitute full and just compensation to the Concessioner from the Secretary for all losses and claims occasioned by the circumstances described below.

(b) *Contract expiration or termination where operations are to be continued:* If for any reason, including contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and, at the time of such event the Secretary intends for substantially the same or similar operations to be continued by a successor, whether a private person, corporation or an agency of the Government, (i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in Concessioner and Government Improvements, if any, as defined under this contract, and all other property of the Concessioner used or held for use in connection with such operations; and (ii) the Secretary will require such successor, as a condition to the granting of a contract to operate, to purchase from the Concessioner such possessory interests, if any, and such other property, and to pay the Concessioner the fair value thereof. The fair value of any possessory interest in Concessioner's Improvements heretofore acquired shall be $_____ as of the effective date of this contract. This amount shall decrease by −$_____[14] of the original amount each year. In the event of contract termination or expiration, the concessioner's right to compensation for these improvements shall be the amount not yet decreased, except that in the event of contract termination for default due to unsatisfactory performance, compensation shall be as provided in subsection 13(d) hereof. The fair value of any possessory interest in Concessioner's Improvements hereafter acquired, or in Government Improvements heretofore or hereafter acquired shall be the original cost less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 30 years. In the event that such possessory interest is acquired by a successor, the successor will not be permitted to revalue such possessory interest, method of depreciation or useful life. The fair value of merchandise and supplies shall be actual cost including transportation. The fair value of equipment shall be book value.

(c) *Contract expiration or termination where operations are to be discontinued:* If for any reason, including contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and the Secretary at the time chooses to discontinue such operations, or substantial part thereof within the area, and/or to abandon, remove, or demolish any of the Concessioner's Improvements, if any, then the Secretary will take such action as may be necessary to assure the Concessioner of compensation for (i) its possessory interest, if any, as set forth in section 13(b) hereof, or, if it is a lesser amount, in the amount of the original cost of the improvement less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 30 years; (ii) the cost to the Concessioner of restoring any assigned lands to a natural condition, including removal and demolition, (less salvage) if required by the Secretary; and (iii) the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination. Any such property that has not been removed by the Concessioner within a reasonable time following such determination shall become the property of the United States without compensation therefor.

(d) *Contract Termination for Default for Unsatisfactory Performance Where Operations are to be Continued.* Notwithstanding any other provision of this contract to the contrary, in the event of termination of this contract for default for failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder, compensation for the Concessioner's possessory interest in Concessioner's Improvements, if any, shall be as set forth in section 13(b) hereof, or, if it is a lesser amount, at the original cost of the improvement less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 30 years.

Sec. 14. Assignment or Sale of Interests

(a)(1) The Concessioner and/or any person or entity which owns a controlling interest (as herein defined) in a Concessioner's ownership, (collectively defined as the "Concessioner" for the purposes of this section) shall not assign or otherwise sell or transfer responsibilities under this contract or the concession operations authorized hereunder, or the concessioner's assets in the concession operation, not sell or otherwise assign, transfer or encumber (including, without limitation, mergers, consolidations, reorganizations, other business combinations, mortgages, liens or collateral) a controlling interest in such operations, this contract, or a controlling interest in the Concessioner's ownership or assets, as defined herein, without the prior written approval of the Secretary. Such approval is not a matter of right; the Secretary will exercise his discretion as to whether and/or under what conditions a proposed transaction will be approved in accordance with established policies and procedures. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this contract for which this contract may be terminated immediately by the Secretary without regard to the procedures for termination for default described in section 12 hereof, and, the Secretary shall not be obliged to recognize any right of any person or entity to an interest in this contract or to own or operate the operations authorized hereunder acquired in violation hereof.

(2) The Concessioner shall advise the person(s) or entity proposing to enter into a transaction which subject to subsection (a)(1) above that the Secretary shall be notified and that the proposed transaction is subject to review and approval by the Secretary. The Concessioner shall request in writing the Secretary's approval of the proposed transaction prior to consummation and shall promptly provide the Secretary all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction. Among others, the

[14] In usual circumstances, the amount by which possessory interest will be reduced annually will be 1/30th (i.e., over 30 years). However, as our policy is to extinguish possessory interests as quickly as possible, taking into consideration the useful life of the facilities, a shorter period of time should be established when the economic conditions permit.

following documents and information shall be provided to the Secretary:

(i) All instruments proposed to implement the transaction;

(ii) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(iii) A narrative description of the proposed transaction and the operational plans for conducting the operation;

(iv) A statement as to the existence of any litigation questioning the validity of the proposed transaction;

(v) A description of the management qualifications and financial background of the proposed transferee, if any;

(vi) A statement as to whether the proposed transaction constitutes the sale, assignment or transfer of a controlling interest as described herein and the particulars thereof;

(vii) A detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial statements (forecast) that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Director that the purchase price is reasonable based on the objective of having a satisfactory concession operation that will generate a reasonable profit over the remaining term of the contract or permit, with rates to the public not exceeding existing approved rates;

(viii) A schedule which allocates in detail the purchase price to the assets acquired, together with the basis for the allocation;

(ix) If the transaction may result in an encumbrance on the concessioner's assets, full particulars of the terms and conditions of the encumbrance; and

(x) Such other information as the Director may require.

(b) The Concessioner may not enter into any agreement with any entity or person except employees of the Concessioner to exercise substantial management responsibilities for the operation authorized hereunder or any part hereof without written approval of the Secretary at least 30 days in advance of such transaction.

(c) No mortgage shall be executed, and no bonds, shares of stock or other evidence of interest in, or indebtedness upon, the rights and/or properties of the Concessioner, including this contract, in the area, shall be issued without prior written approval of the Secretary. Approval of such encumbrances shall be granted only for the purposes of installing, enlarging or improving, plant equipment and facilities, provided that, such rights and/or properties, including possessory interests, or evidences of interests therein, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof, shall succeed to the interest of the Concessioner in such rights and/or properties but shall not thereby acquire operating rights or privileges which shall be subject to the disposition of the Secretary.

Sec. 15. Approval of Subconcession Contracts

All contracts and agreements (other than those subject to approval pursuant to section 14 hereof) proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this contract in whole or part shall be considered as subconcession contracts and shall be submitted to the Secretary for his approval and shall be effective only if approved. However, agreements with others to provide vending or other coin-operated machines shall not be considered as subconcession contracts. In the event any such subconcesssion contract or agreement is approved the Concessioner shall pay to the Secretary within _____ days after the _____ day of _____ each year or portion of a year a sum equal to fifty percent (50%) of any and all fees, commissions or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in section 9 of this contract.

Sec. 16. Insurance and Indemnity

(a) *General.* The Concessioner shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages or judgments and expenses on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, any by whomsoever made, arising out of the activities of the Concessioner, his employees, subcontractors or agents under the contract. The types and amounts of insurance coverage purchased by the Concessioner shall be approved by the Secretary. At the request of the Secretary, the Concessioner shall annually, or at the time insurance is purchased, provide the Secretary with a Statement of Concessioner Insurance and Certificate of Insurance as evidence of compliance with this section and shall provide the Secretary thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder. The Secretary will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(b) *Property Insurance.* The Concessioner will, in the event of damage or destruction, repair or replace those buildings, structures, equipment, furnishings, betterments and improvements and merchandise determined by the Secretary to be necessary to satisfactorily discharge the Concessioner's obligations under this contract and for this purpose shall provide fire and extended insurance coverage on both Concessioner Improvements and assigned Government Improvements in such amounts as the Secretary may require during the term of the contract. Those values currently in effect are set forth in Exhibit "E" to this contract. This exhibit will be revised at least every 3 years, or sooner, if there is a substantial increase in value.

Such insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear. In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concessioner and Government Improvements, equipment, furnishings and other personal property hereunder, as directed by the Secretary. The lien provision of section 10 shall apply to such insurance proceeds.

The Concessioner shall purchase the following additional property coverages in the amounts set forth in Exhibit "E":

1. Boiler and Machinery;
2. Sprinkler Leakage;
3. Builders' Risk;
4. Flood;
5. Earthquake;
6. Hull;
7. Extension-of-Coverage Endorsement.

(c) *Additional Property Damage Requirements—Government Improvements, Property and Equipment.* The following additional requirements shall apply to structures all or any part of which are "Government Improvements" as defined in section 4(b).

(1) The insurance policy shall contain a loss payable clause approved by the

Secretary which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States.

(2) The use of insurance proceeds for repair or replacement of Government structures will not alter their character as Government structures and the Concessioner shall gain no possessory interest therein.

(d) *Public Liability.* The Concessioner shall provide Comprehensive General (liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operation authorized hereunder. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event, the limits of liability shall not be less than ($_____) per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Concessioner shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

From time to time, as conditions in the insurance industry warrant, the Secretary reserves the right to revise the minimum required limits.

All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America or shall provide that the United States of America is named an additional insured.

The Concessioner shall also obtain the following additional coverages at the same limits as required for Comprehensive General Liability insurance unless other limits are specified below:

(1) *Product Liability*—Amount ($_____);

(2) *Liquor Legal Liability*—Amount ($_____);

(3) *Protection and Indemnity (Watercraft Liability)*—Amount ($_____);

(4) *Automobile Liability*—To cover all owned, non-owned, and hired vehicles—Amount ($_____);

(5) *Garage Liability*—Amount ($_____);

(6) *Workers' Compensation*;

(7) *Aircraft Liability*—Amount ($_____);

(8) *Fire Damage Legal Liability*—Amount ($_____);

(9) Other.

Sec. 17. Procurement of Goods, Equipment and Services

In computing net profits for any purposes of this contract, the Concessioner agrees that its accounts will be kept in such manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

Sec. 18. General Provisions

(a) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(b) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this contract.

(c) Notwithstanding any other provision hereof, the Secretary reserves the right to provide directly or through cooperative or other non-concession agreements with non-profit organizations, any accommodations, facilities or services to area visitors which are part of and appropriate to the park interpretive program.

(d) That any and all taxes which may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(e) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(f) This contract may not be extended, renewed or amended in any respect except when agreed to in writing by the Secretary and the Concessioner.

In witness whereof, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at _____, this _____ day of 19_____.

United States of America
By _____, Regional Director,
National Park Service.

CORPORATIONS

Attest:
By _____
By _____
Title _____
Date _____

(Concessioner)
By _____
By _____
Title _____
Date _____

SOLE PROPRIETORSHIP

Witnesses:
Name _____
Address _____
Name _____
Address _____
Date _____

(Concessioner)

_____
(Name)

_____
(Title)

Partnership

Witnesses as to each:
Name _____
Address _____
Name _____
Address _____

(Concessioner)

_____
(Name)

_____
(Name)
Date _____

Exhibit "A"

Concession Authorization No.:

_____

Nondiscrimination

Section I—Requirements Relating to Employment and Service to the Public

A. *Employment:* During the performance of this concession contract the concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, with out regard to their race, color, religion, sex, age, national origin or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer: recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Secretary setting forth the

provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed $50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession contract or with any of such rules, regulations, or orders, this concession contract may be canceled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contract in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interest of the United States.

B. *Construction, Repair, and Similar Contracts:* The preceding provisions A (1) through (8) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for the purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. *Facilities:* (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, subleases, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin or disabling condition; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

Section II—Accessibility

Title V, Section 504 of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any *"program"* or *"service"* being provided to the general public be provided to the highest extent *reasonably possible* to individuals who are mobility impaired, hearing impaired, and visually impaired. It *does not* require architectural access to every building or facility, but only that the service or program can be provided *somewhere* in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

Part A

Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

1. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

2. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

3. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

4. Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;

6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

7. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving aid, benefit, or service.

Part B

Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Exhibit "B"

Land Assignment

Note to Preparer: The land assignment may be described in narrative form and, if possible, should include a map showing the area(s) to be assigned.

Exhibit "C"

Government-Owned Structures Assigned to

_____

(Concessioner)

Pursuant To

Concession Contract No. _____

Building Number _____

Description _____

Annual Fee _____

$ _____

Total amount due pursuant to subsection xxxxxxx

Approved, effective _____

By: _____

Name of Concessioner

By _____

Title _____

United States of America

Regional Director

Region

Exhibit "D"

Pursuant to Subsection 6(a)(1)

Note to Preparer: If the Concessioner has no possessory interest assets, put "*NONE*" on this page. You will *ALWAYS* use this EXHIBIT, either with a schedule of possessory interest assets, or with the words "NONE", but *Never Leave This Exhibit Off the Contract.*

Exhibit "E"

Building Replacement Cost for Insurance Purposes

Concessioner:

Concession Contract No.: _____

The replacement costs set forth herein are established for the sole purpose of assuring property insurance coverage and shall not be construed as having application for any other purpose.

I. Government Buildings

Building No. _____

Description _____

Insurance Replacement Value [1] _____

II. Concessioner Buildings

Building No. _____

Description _____

Insurance Replacement Value [1] _____

[1] * * * or "Not to be replaced," where applicable. * * *

(Name of Concessioner _____

United States of America

Regional Director _____

By _____

Title _____

Date _____

[FR Doc. 92-20844 Filed 9-2-92; 8:45 am]

BILLING CODE 4310-70-M

federal register

Thursday
September 3, 1992

Part IV

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 563 et al.

Regulatory Capital: Interest Rate Risk Component, Proposed Rule; Public Information Collection Requirements Submitted to OMB for Review; Notice

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 567, and 571

[No. 92-318]

RIN 1550-AA46

Regulatory Capital: Interest Rate Risk Component

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is seeking further comment on how to incorporate an interest rate risk component into the risk-based capital rule. Adding such a component to the existing risk-based capital framework is intended to ensure that savings associations maintain levels of capital commensurate with the degree of interest rate risk to which they are exposed.

On December 31, 1990, the OTS published a proposed regulation, including a technical appendix, addressing how an interest rate risk component would be calculated and incorporated into OTS capital requirements (December 1990 Proposal). This supplemental notice of proposed rulemaking seeks public comment on modifications to the December 1990 Proposal.

Under today's notice, savings associations with a greater than "normal" level of interest rate risk exposure will be subject to an "add-on" to their risk-based capital requirement. The notice also discusses proposed modifications to some aspects of the methodology set forth in the December 1990 Proposal for calculating an association's interest rate risk exposure. OTS will also be instituting a substantially revised data collection form that will be used to calculate the interest rate risk component. Instead of this full scale reporting form, OTS is proposing to give small, highly-capitalized institutions the option of filing an abbreviated reporting form.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. [92-318]. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Radu Filimon, Senior Financial Economist, Policy (for questions on liabilities), (202) 906-5733; Doug Gordon, Senior Financial Economist, Policy (for questions on off-balance sheet items), (202) 906-5728; Gerald A. Hinkle, Program Analyst, Policy (for questions on off-balance sheet items), (202) 906-5774; Ed Irmler, Senior Project Manager, Policy (for questions on assets), (202) 906-5730; Elizabeth Mays, Project Manager, Policy, (for questions on assets), (202) 906-5729; Anthony G. Cornyn, Deputy Assistant Director for Policy, Risk Management, (202) 906-5727; Valerie Lithotomos, Counsel (Banking and Finance), (202) 906-6439; Deborah Dakin, Assistant Chief Counsel, (202) 906-6445; Karen Solomon, Deputy Chief Counsel, (202) 906-7240, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

This supplemental notice solicits further comment on the OTS proposal to incorporate an interest rate risk component into OTS' capital regulations. OTS believes that interest rate risk (IRR) is one of the most important risks that savings associations must control. OTS also believes that it is important, both for the protection of the insurance fund and to create appropriate incentives for prudent risk-management, that capital requirements for associations be explicitly sensitive to interest rate risk exposure.

Regulatory and Statutory Background. On December 15, 1988, the Federal Home Loan Bank Board ("Bank Board"), the predecessor agency to the OTS, proposed a risk-based capital regulation. At that time, the Bank Board intended to include an interest-rate risk component in a proposed risk-based capital regulation. On June 22, 1989, the Bank Board issued for public comment an advance notice of proposed rulemaking ("June 1989 ANPR") that described the methodologies for measuring interest rate exposure that were under consideration for inclusion in the Bank Board's proposed risk-based capital rule.

Shortly thereafter, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") was enacted. FIRREA amended the Home Owners' Loan Act by adding a new section 5(t) that required the OTS to promulgate regulations prescribing uniform capital standards for all savings associations. FIRREA mandated that the capital standards were to include a risk-based capital standard, a leverage ratio standard, and a tangible capital standard, and that they be no less stringent than the standards applicable to national banks. FIRREA specifically provided that the risk-based capital standard of OTS may deviate from the standards applicable to national banks "to reflect interest-rate risk or other risks," as long as such deviations "shall not, in the aggregate, result in materially lower levels of capital being required of savings associations."

The OTS adopted the required capital standards for savings associations in November, 1989. The risk-based capital standard, however, did not include an interest rate risk component because the statutory deadline for adopting a capital rule did not provide sufficient time to develop fully a methodology for measuring interest rate exposure.

After that methodology was developed, OTS issued the December 1990 Proposal, which requested comment on the methodology and on how to amend the OTS capital regulation to reflect interest rate risk. Among the alternatives on which comment was sought were (i) adding an interest rate risk component to the existing 8 percent risk-based capital requirement, (ii) lowering the 8 percent risk-based capital requirement and then adding on an interest rate risk component, or (iii) adding an interest rate risk component to the leverage ratio requirement. In addition to reviewing more than 250 comment letters, the OTS held public hearings on the December 1990 Proposal in Washington, DC, and San Francisco on January 31, and February 14, 1991.

On December 19, 1991, the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA")

was enacted. Section 305 of FDICIA requires the federal banking agencies to review their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of: (i) Interest rate risk; (ii) concentration of credit risk, and (iii) the risks of nontraditional activities. Section 305 also mandates that the federal banking agencies publish final regulations no later than 18 months after the enactment of FDICIA (June 19, 1993) as well as establish reasonable transition rules to facilitate compliance with those regulations. OTS will publish separately an advance notice of proposed rulemaking requesting comment on the most appropriate ways to deal with the concentration of credit risk and the risks of nontraditional activities.

The Proposed Interest Rate Risk Component. The December 1990 Proposal would have required all institutions, except those with no exposure to interest rate risk, to hold some amount of capital for interest rate risk. Specifically, the amount of capital that institutions would have been required to hold (*i.e.*, the IRR capital component) was an amount equal to one-half the dollar decline in the market value of portfolio equity (MVPE) resulting from a 200 basis point increase or decrease in interest rates.

Under the present supplemental proposal, only institutions with more than a "normal" level of interest rate risk will be required to maintain extra capital for interest rate risk. The consensus among the banking and thrift regulators is that the existing risk-based capital requirement, though focusing primarily on credit risk factors, is nevertheless intended to cover depository institutions with "normal" levels of interest rate risk. Accordingly, OTS is proposing that only institutions with an "above normal" level of interest rate risk exposure be required to maintain additional capital for interest rate risk under the risk-based capital framework. (The banking agencies intend to issue a similar proposal.) This capital requirement for interest rate risk would be in addition to the existing 8 percent risk-based capital requirement.

OTS proposes to measure an institution's interest rate risk using the OTS Market Value Model described in appendix A. An institution's IRR will be expressed as the change in its MVPE resulting from a hypothetical 200 basis point increase or decrease in interest rates (whichever leads to the lower MVPE) divided by the estimated market value of its assets. OTS proposes to define as "above normal" any decline in MVPE (resulting from a 200 basis point shock) that exceeds 2 percent of an institution's assets expressed in market value terms as estimated by the OTS Model.

Institutions whose measured interest rate risk is less than or equal to 2 percent will not be required to maintain additional capital for interest rate risk. Those whose measured interest rate risk exceeds 2 percent (*i.e.*, those that would suffer a loss of MVPE exceeding 2 percent of the estimated market value of their assets under a 200 basis point rate shock) will be required to hold additional capital. The IRR component that such an association will be required to maintain will be calculated as one-half of the difference between its measured IRR and 2 percent, multiplied by the market value of its assets. (For further details see Section III.)

The OTS believes that it is appropriate to measure the interest rate risk exposure of savings associations within the context of a parallel shift in the term structure of interest rates of 200 basis points. A "rate shock," or "stress test," of this magnitude is necessary to measure the ability of an institution to withstand difficult interest rate environments that might be reasonably expected to occur. Moreover, a stress test of at least this magnitude is necessary to reveal the potential impact on an institution's financial condition of mortgage prepayment options, interest rate floors and caps, and other financial contracts with option-like features that would result from a significant movement in interest rates.

Model and Data Collection Improvements. OTS has undertaken a major initiative to upgrade the interest rate risk model and reporting form that will be used by OTS to determine the interest rate risk capital component under this proposal. This initiative was taken in response to comments received on the December 1990 proposal (which contained a description of the model) and discussions held with interest rate risk experts from the industry.

Although many commenters found the prior OTS Model to be reasonably accurate and agreed with the methodologies and assumptions underlying the model, many offered suggestions for ways to improve the reporting form that collects input data for the model. A point made by these commenters was that if regulators intend to incorporate an interest rate risk component into the risk-based capital rule they should ensure that they are in position to assess accurately the interest rate exposure of individual institutions. Some argued that the prior OTS Model was based on overly crude data that could lead to counterproductive results.

For the most part, the suggestions for improving the data collection form (Schedule MR) focused on gathering data in a more precise and efficient manner. A number of commenters also suggested that individual savings associations be given the option to report additional financial data to OTS that would improve the Model's accuracy. Several commenters noted that the reporting of more precise data would reduce the number of assumptions that would need to be made by the Model on the characteristics of financial instruments.

As discussed further in Section IV below and in Appendix A, OTS has, as a consequence, made major revisions to the reporting form and the Model to accommodate these suggestions.

OTS believes that it is important to employ an accurate interest rate risk model for purposes of determining an institution's interest rate risk component under the risk-based capital rule because:

(1) failure to identify institutions with high exposure could prove costly to the insurance fund and taxpayers;

(2) significant flaws in the output of an interest rate risk model could lead to a misallocation of capital, with institutions being required to hold more (less) capital than necessary for a particular level of risk;

(3) an overly crude model could lead to inappropriate asset/liability decisions on the part of savings associations; and,

(4) the growing complexity of financial instruments makes it increasingly difficult to analyze interest rate risk without use of a relatively sophisticated model.

Implementation. OTS intends to publish a final regulation incorporating the interest rate risk component into the risk-based capital rule in late 1992 or early 1993 with an effective date of January 1, 1994. In addition, OTS intends to implement a new reporting form (Schedule CMR) in March, 1993 that will provide information needed by OTS to better measure the interest rate risk exposure of savings associations. During 1993, OTS intends to report the results of the revised model to institutions and use those results for supervisory purposes, as we have during 1991 and 1992.

Once the interest rate risk component becomes effective, OTS intends to reduce or eliminate the leverage ratio requirements to the extent permitted by the agency's statutory authority at that time.

Based on data as of March, 1992, OTS estimates that approximately 45 percent of all savings associations would be subject to an interest rate risk component, requiring them to maintain capital in an amount that would exceed their existing minimum risk-based capital requirement. Many of these institutions however, have sufficient capital to cover the incremental amount that would be required by the interest rate risk component and, therefore, would not be required to raise additional capital.

Institutions that do not have sufficient capital to satisfy the interest rate risk component would be required to submit a capital plan describing their strategy to achieve compliance. Such a plan is required under current regulations for any institution that fails its capital requirements. Institutions could achieve compliance by raising additional capital, reducing their interest rate risk exposure, reducing their risk weighted assets, or a combination of these.

OTS proposes that the interest rate risk component be computed quarterly and that the capital requirement for interest rate risk have an effective lag of one quarter (*i.e.*, the requirement would go into effect on the last day of the quarter that follows the reporting date of Schedule CMR). For example, a capital requirement that is calculated using data from the March 31, 1994 Thrift Financial Report would become effective on June 30, 1994.

II. Purpose of Interest Rate Risk Component

As a result of statutory and regulatory constraints dating back to the 1930s, savings associations have long operated as specialized financial intermediaries, gathering funds, mostly short-term deposits, and making long-term mortgage loans. Until the late 1970s, this practice worked reasonably well. Indeed, the industry prospered throughout most of the postwar period, in part, because interest rates were relatively stable and the average rate paid on short-term deposits rarely rose above the rate earned on mortgages. The practice of funding long-term mortgages with short-term deposits, however, left the thrift industry vulnerable to rising interest rates.

The earnings of most savings associations are exposed to interest rate risk because their liabilities reprice faster than their assets when interest rates change. If interest rates rise, their cost of funds increases more rapidly than their yield on assets, thereby reducing net interest income. This rise in interest rates adversely affects the economic value of most savings associations because an increase in interest rates will cause the present value of assets to decline more than the present value of liabilities.

The industry's vulnerability to rising rates became obvious in the late 1970s and early 1980s when interest rates rose dramatically. The industry experienced sharply higher funding costs and significant deposit disintermediation. Industry profitability plunged and turned negative in 1981 and 1982. Industry losses for the 1981–82 period totaled $8.9 billion. On a mark-to-market basis, however, the losses to net worth were far greater, with some estimates exceeding $150 billion.

Although the stress of the 1981–82 period prompted many industry participants to adopt interest rate risk management programs and hedging strategies, the interest rate exposure of many associations remains a significant risk today. Accordingly, OTS believes that the credit risk component of the risk-based capital requirement should be supplemented by a component that addresses the interest rate exposure of the thrift industry. OTS, therefore, proposes to incorporate an interest rate risk component into its risk-based capital rule.

The principal objectives of adopting an interest rate risk component are to:

(1) Make capital requirements sensitive to differences in interest rate exposures among savings associations;

(2) discourage savings associations from taking excessive interest rate risk by making such behavior more costly; and

(3) ensure that adequate capital is maintained in savings associations to reduce the exposure of the deposit insurance fund and to protect the taxpayers' interests.

In addition to these objectives, OTS believes that the interest rate risk component would create better incentives for savings associations to make decisions on the basis of their economic merit rather than on their accounting effect. All too often depository institutions, including savings associations, enter into transactions that generate high levels of current income at the expense of long-run profitability. By tying the capital requirements to the effect of potential interest rate movements on the present value of a savings association's net worth, the interest rate risk component should encourage associations to give more consideration to the effect of any portfolio changes on the economic value of the association.

III. Discussion of Interest Rate Risk Component

Under the proposed amendment to the risk-based capital rule, a savings association's risk-based capital requirement would be comprised of two components: a credit risk component and an interest rate risk component.

The OTS proposes to measure a savings association's interest rate exposure in terms of the sensitivity of the market value of portfolio equity ("MVPE") of an association to changes in interest rates. The market value of portfolio equity is defined as the net present value of an association's assets, liabilities, and off-balance sheet contracts.

The market price of most financial instruments changes as market interest rates change. For example, the price of a Treasury bond will fall (rise) if interest rates rise (fall). The greater the sensitivity of an instrument's market value to interest rate changes, the greater is the interest rate risk inherent in that instrument. For the typical savings association, the net market value of its portfolio of financial instruments accounts for most of the association's total market value. Thus, since MVPE includes the value of all of an association's financial instruments, measuring the sensitivity of MVPE provides a good measure of the association's exposure to interest rate changes. Furthermore, because MVPE is equal to the present value of all future cash flows from existing financial instruments, it also provides a leading indicator of an association's future income stream.

Calculation of Changes in Market Value of Portfolio Equity. The general formula for computing MVPE is as follows:

MVPE = Present value of expected cash inflows from *existing* assets
minus
the present value of expected cash outflows from *existing* liabilities
plus
the present value of net expected cash inflows from *existing* off-balance sheet contracts.

OTS will calculate changes in an association's MVPE based on financial data submitted by the association on Schedule CMR of the Thrift Financial Report. Changes in MVPE are calculated using the following steps.

Step 1: The savings association's "base case" market value of portfolio equity will be estimated at the end of the quarter. Market value estimates will be based on the level of interest rates at the quarter-end date. This is referred to

as the "base case" interest rate scenario.

Step 2: The effect of an immediate parallel upward shift in the term structure of interest rates (*i.e.*, the zero-coupon Treasury yield curve) on the association's MVPE will be estimated by adding 200 basis points to the quarter-end interest rates and recalculating the association's MVPE. Such an immediate parallel shift in interest rates, in either the upward or downward direction, will hereafter be referred to as an "interest rate shock."

Step 3: The effect of a downward interest rate shock on the association's MVPE will be estimated by subtracting 200 basis points from quarter-end interest rates and recalculating the association's MVPE.

Step 4: The decline in MVPE will be determined by taking the lesser of the MVPEs in the two ("shocked") rate scenarios computed in Steps 2 and 3 and subtracting it from the base case MVPE value computed in Step 1.

Proposed Interest Rate Risk Capital Component. The December 1990 Proposal proposed that institutions be required to maintain an interest rate risk component calculated as one-half the dollar decline in their MVPE (as calculated in Step 4). OTS now proposes to modify the calculation of the interest rate risk (IRR) component of the risk-based capital rule that was described in the December 1990 Proposal.

The IRR capital component described in the December 1990 Proposal would have required all institutions, except those exhibiting no decline in MVPE, to maintain some amount of capital for IRR. The capital required under an institution's IRR component would have been incorporated into its risk-based capital requirement by adding it to a credit risk component consisting of some percentage of risk-weighted assets. (The December 1990 Proposal requested comment on, among other things, whether the credit risk component should remain at the full 8 percent of risk-weighted assets or whether it should be reduced to some smaller percentage.)

As a result of comments received on the December 1990 Proposal and discussions with the bank regulatory agencies, OTS has decided to leave the credit risk component for savings associations unchanged at a fully phased-in level of 8 percent of risk-weighted assets. The consensus among federal banking and thrift regulators is that at this level the credit risk component is sufficient to cover a "normal" amount of IRR. OTS has, therefore, decided that only institutions with more than a normal amount of IRR should maintain extra capital for IRR. All other institutions would be responsible for maintaining only the 8 percent credit risk component. The agencies have also agreed that, once they have sufficient experience with an interest rate risk component, they will reduce or eliminate the leverage ratio.

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Computation of the Interest Rate Risk Capital Component. In order to implement this approach, OTS proposes to measure an institution's IRR as the change in its MVPE under a plus or minus 200 basis point interest rate shock (whichever leads to the lower MVPE) divided by the estimated market value of its assets. That is,

$$\text{Measured IRR} = \frac{\text{Decline in MVPE Caused by Adverse Rate Shock}}{\text{MV of Assets}}$$

OTS proposes that a "normal" level of IRR be defined as measured IRR of 2 percent or less. (That is, an institution whose MVPE declines by no more than 2 percent relative to the market value of its assets would have a "normal" level of IRR.) The amount by which an institution's measured IRR exceeds the 2 percent normal level will be defined as the institution's "excess IRR." That is,

$$\begin{aligned}\text{Excess IRR} &= \text{Measured IRR} - \text{Normal IRR} \\ &= \text{Measured IRR} - 0.02\end{aligned}$$

Only institutions whose measured IRR exceeds 2 percent will be required to maintain an IRR component. The amount of additional capital (or IRR component) that such an association will be required to maintain will be calculated as one-half its excess IRR times the market value of its assets. That is,

$$\text{IRR Component} = \frac{\text{Excess IRR}}{2} \times \text{MV of Assets}$$

For example, suppose that an institution has a base case MVPE of $10 million. MVPE rises to $12 million in the -200 b.p. scenario and falls to $7 million in the +200 b.p. scenario. The estimated market value of the institution's assets in the base case is $100 million and it has $95 million in GAAP assets and $50 million in risk-weighted assets.

This institution's risk-based capital requirement (including the IRR component) would be $4.5 million and is calculated as follows.

1. The relevant interest rate scenario for computing the IRR component is the +200 b.p. one, because it results in a lower MVPE than the -200 b.p. scenario (in which MVPE is projected to increase).

2. The institution's measured IRR is 3 percent. That is:

$$\text{Measured IRR} = \frac{\text{Decline in MVPE Caused By Adverse Rate Shock}}{\text{MV of Assets}}$$

$$= \frac{(\$10 - \$7)}{\$100} = \frac{\$3}{\$100}$$

$$= 0.03 \text{ or } 3\%$$

3. Because its measured IRR exceeds the 2 percent normal level, this association would be required to maintain an interest rate risk component. The amount of this additional capital

requirement would be $.5 million, and is calculated as follows:

$$\text{IRR Component} = \frac{\text{Excess IRR}}{2} \times \text{MV of Assets}$$

$$= \frac{(.03 - .02)}{2} \times \$100$$

$$= \$.5 \text{ million}$$

4. The institution's credit risk component is $4 million (i.e., 8% x $50 million in risk-weighted assets).

5. The institution must, therefore, maintain a minimum of $4.5 million in capital. That is,

$$\text{Minimum Capital Required} = \text{Credit Risk Component} + \text{IRR Component}$$

$$= \$4.0 + \$.5$$

$$= \$4.5 \text{ million}$$

OTS proposes that the capital requirement that is calculated using this process will go into effect on the last day of the quarter that follows the reporting date of Schedule CMR. That is, a capital requirement that is calculated using data from the March 31 Thrift Financial Report becomes effective on June 30 of that year.

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IV. Revisions to the OTS Model and Data Collection

As a result of comments received on our December 1990 Proposal, OTS has made a number of substantial changes to the OTS model and data collection. We believe these changes will both improve the accuracy of the model and result in data collection that is easier for thrifts to provide. The new reporting form, Schedule CMR, collects data in a less aggregate manner than the current form, Schedule MR. With the new form, institutions will need to perform fewer calculations to group together financial instruments for reporting purposes, and the OTS model will have more detailed input data that will result in more accurate interest rate risk estimates.

Two important changes to the reporting form concern the reporting of mortgages and of off-balance sheet instruments. On Schedule MR (the current reporting form), all fixed-rate single family mortgage loans and securities are grouped together and reported as a single balance. On the new Schedule CMR, institutions will report mortgage loans and securities separately, and will report 30-year, 15-year, and balloon mortgages as separate categories.

In the off-balance sheet section of the current Schedule MR, institutions aggregate positions that have similar, but not identical characteristics. The present OTS model must make assumptions about the type of position being reported, leading to possible errors in evaluating those positions. Schedule CMR will collect off-balance sheet data in a way that permits institutions to list their off-balance sheet positions individually. Not only does this approach simplify the reporting of these positions, it eliminates the need for the Model to make assumptions about the nature of the positions being reported, and results in greater accuracy.

Appendix A provides a detailed description of these changes. A draft copy of the revised Schedule CMR is in Appendix B. The revised Schedule CMR and instructions are being provided separately to each thrift institution and are available to others upon request.

V. Optional Reporting for Small, Highly-Capitalized Institutions

OTS is proposing that small, highly-capitalized institutions be given the option to file an abbreviated Schedule CMR should they choose not to file Schedule CMR. The abbreviated form would be filed quarterly and would be used to identify institutions having potentially high interest rate risk that should be required to complete Schedule CMR.

OTS solicits comment on whether the abbreviated form should be the same reporting form that will be used by the federal banking agencies to implement their IRR component, or, alternatively, whether OTS should develop a one-page reporting form that would be more consistent with Schedule CMR and the Thrift Financial Report.

To qualify for an exemption, an institution must have less than $300 million in assets and a risk-based capital ratio in excess of 12 percent. Regional Directors would retain the discretion to require any otherwise qualifying institution to file Schedule CMR if there is a reason to be concerned about the interest rate exposure of the institution.

OTS is proposing this alternative approach for small, highly capitalized institutions in recognition of the reporting burden of Schedule CMR. Although using a short reporting form for certain institutions involves certain risks, OTS believes that such risks are minimal in light of the stringent qualification criteria and the option for OTS to require more detailed data. OTS also believes the regulatory risks of collecting less detailed information from these institutions are outweighed by the benefits of reduced reporting burden for small institutions.

Nevertheless, OTS strongly believes that all institutions regardless of size or financial condition need to be in a position to measure and monitor their interest rate risk exposure.

VI. Related Capital Requirements

OTS also proposes to replace Thrift Bulletin 13 with a new Section 571.3 of the OTS regulation, 12 C.F.R. 571.3, that sets forth the responsibilities of the board of directors and management with regard to interest rate risk.

In addition, OTS is proposing to change the risk-weight assigned to certain securities in the OTS risk-based capital rule. In its current risk-based capital rule, OTS places securities with residual characteristics, as well as all stripped mortgage-backed securities, in higher risk-weight categories than other mortgage-related securities. The OTS made this choice because the value of these securities generally exhibits an extraordinarily high degree of volatility due to interest rate risk. OTS subsequently issued further guidance in Thrift Bulletin 38 defining "residual characteristics" with respect to certain collateralized mortgage obligations ("CMOs") and real estate mortgage investment conduits ("REMICs"). In the preamble to the current risk-based capital rule, OTS noted that it would reconsider this higher risk-weight classification for such instruments upon adoption of an explicit interest rate risk component.

Because the interest rate risk component currently being proposed measures the interest rate exposure of the total portfolio, it will reflect the effect of the instruments discussed in the previous paragraph. OTS, thus, believes that special risk weightings for those instruments will be unwarranted. OTS proposes, therefore, that upon implementation of the interest rate risk component, interest-only and principal-only stripped mortgage-backed securities and tranches of CMOs and REMICs with residual characteristics would be assigned risk weights that reflect only the credit risk of such instruments.

VII. Issues for Further Consideration

The OTS requests comments on all aspects of the proposal. In addition, specific comments are requested on the following issues:

1. The proposal would measure an institution's IRR exposure within the context of hypothetical parallel shifts in the Treasury term structure of plus and minus 200 basis points. Is the 200 basis point shift appropriate or should the rate shift be narrower or broader (*e.g.*, 100 basis points or 300 basis points)? Would a 100 basis point shift be too narrow to provide a meaningful IRR stress test? Would a 100 basis point stress test be too narrow to properly assess the IRR exposure of institutions—particularly institutions with significant holdings of mortgage assets and other financial instruments that contain options or option-like features? Would a 300 basis point shift be too severe and unlikely to persist for an extended period of time to be a reasonable test?

2. Should OTS have the flexibility to change the parameters for the stress test that is used to measure IRR exposure for capital purposes in light of interest rate levels? For example, would it be appropriate to adopt a stress test of plus 200 basis points and minus 100 basis points when interest rates are at low levels because the likelihood of a 200 basis point decline in interest rates is less than a 200 basis point rise in rates?

3. For purposes of determining an IRR component, should an institution's IRR exposure be measured within the context of a non-parallel shift in the yield curve? If so, how should such a non-parallel shift be defined? How would an institution's capital requirement be determined using a non-parallel shift?

4. Under the proposed rule, the amount of capital that an institution would be required to hold for IRR, that is, the IRR component, would become effective one quarter after the quarter-end date of the financial statements on which the IRR component is based. This one quarter lag is designed to provide institutions time to plan for capital needs.

(a) Instead of a one quarter lag, would it be better to make the IRR component effective immediately (*i.e.*, a contemporaneous requirement)?

(b) Should the IRR component be based on a moving average of the last two or three quarters (with or without a lag) in order to moderate the potential quarter-to-quarter variability of the IRR component?

(c) Instead of an explicit formula for computing an IRR component, should an institution's capital requirement be determined on a case-by-case basis after, for example, it has been undercapitalized for two or three successive quarters?

5. Should any institutions be given the option of filing an abbreviated Schedule CMR? If so, should the option be based on an institution's asset size, its capital position, both size and capital position, or some other criteria?

6. Should OTS place a percentage limit, or cap, on the amount of capital that an institution would be required to hold for IRR exposure? If so, what is the appropriate level of such a cap?

7. Should OTS translate an institution's measured IRR into a component of the regulatory capital requirement using (a) the formula shown in Section III above or (b) a "step function" schedule that would set different capital requirements for different, broadly defined risk categories? For example, once an association's measured IRR has been calculated, its IRR component might be determined according to the following schedule, which approximates the formula in Section III.

INTEREST RISK COMPONENT

If an institution's IRR sensitivity percentage is between	Its IRR component as a percent of the MV of its assets is
0.0 and 2.00	0.0
2.01 and 3.00	0.5
3.01 and 4.00	1.0
4.01 and 5.00	1.5
5.01 and 6.00	2.0
6.01 and 7.00	2.5
7.01 and Above	3.0

Note that the schedule provides a cap on the IRR component of 3 percent of the market value of assets.

8. Should institutions that fail to submit a correct Schedule CMR on a timely basis be subject to a specific, "default" capital charge?

9. Should OTS establish an "appeals process" for institutions that disagree with its assessment of their interest rate risk exposure? If so, how should it be structured to be administratively feasible?

10. Should mortgage-backed securities with residual characteristics and stripped mortgage-backed securities be assigned a 20 percent risk-weight under the risk-based capital rule once an IRR component is added to the risk-based capital rule? (Such securities are currently assigned a risk-weight of 100 percent because of their interest rate risk.) If so, should the 20 percent risk-weight be limited to those institutions that (a) have the capability to estimate the market value of such securities under alternative interest rate scenarios and (b) report such estimates to OTS on Schedule CMR?

11. OTS recently issued a notice of proposed rulemaking on Prompt Corrective Action to implement section 38 of the Federal Deposit Insurance Act. Section 38 requires OTS and the other federal banking agencies to take certain supervisory actions when institutions falls within one of five capital categories. The categories are defined in terms of specific capital ratios. The thresholds, or boundaries, for four of the five categories are defined in terms of risk-based capital ratios and leverage ratios. For example, an institution must have a risk-based capital ratio of a least 8 percent to be considered "adequately capitalized." Given the fact that institutions with different levels of interest rate risk exposure would have different IRR components, how should the risk-based capital thresholds for prompt corrective action be changed or defined once an IRR component is added to the risk-based capital framework? (Commenters should also address this issue in commenting on the proposed rule on Prompt Corrective Action.)

12. Are the complexity of the OTS Model and the more detailed data reporting it requires vis a vis the banking agencies' proposal justified by the presumably higher interest rate exposure of savings institutions compared to that of commercial banks? Should OTS consider adopting a less complex system for measuring institutions' interest rate exposure? While this might pose less of a burden for the thrift industry it could produce less accurate results.

Appendices

To submit comments on the proposed information collection requirements appearing in the following appendices, please refer to the notice document entitled "Thrift Financial Report (TFR)" published elsewhere in this issue of the **Federal Register.**

Appendix A—Reporting Form—Schedule CMR

Contents of Appendix A

c. Optional Commitments to Purchase or Sell Mortgages
d. Commitments to Purchase or Sell Non-Mortgage Financial Assets and Liabilities
e. Interest Rate Swaps
i. Fixed-for-Floating Swaps
ii. Basis Swaps
iii. Swaptions
iv. Mortgage Swaps
v. Amortizing Swaps
f. Interest Rate Caps and Floors
g. Futures
h. Options on Futures
i. Construction LIP

A. The Reporting Form (Schedule CMR)

Schedule MR is part of the Thrift Financial Report filed by all OTS-regulated savings institutions. It provides information about the interest rate, repricing, and maturity characteristics of financial instruments held by savings associations. The proposal published in December 1990 to incorporate an interest rate risk component into risk based capital was based on the data reported on Schedule MR.

Many of the comment letters received in response to the December 1990 Proposal argued that the Schedule MR data are too highly aggregated to be used to calculate a precise measure of interest rate risk. For example, some commenters criticized the data on adjustable-rate mortgages for lacking detail on certain ARM characteristics such as margins and periodic and lifetime caps and floors. Others stated that the use of a benchmark approach to value CMOs and residuals was inadequate to gauge the sensitivity of these complex instruments. Still others pointed out that the data collected on off-balance sheet instruments are not sufficiently detailed to allow OTS to produce accurate estimates of their sensitivity. In general, commenters indicated that if capital requirements are to be based on institutions' estimated interest rate exposures, OTS should collect the necessary data to produce as accurate an estimate as practicable.

In response to these and other comments, OTS has revised the reporting schedule to collect data in a more precise, less aggregated manner. The new schedule is called Schedule CMR, and collects information on a consolidated basis for the thrift, including the parent thrift, its finance subsidiaries, its first-tier subsidiaries and lower-tier entities of first-tier subsidiaries (but excluding the holding company and its affiliates). The "maturity bucket" approach followed in Schedule MR, where by balances are grouped according to their time to maturity or next repricing, has been eliminated. This permits OTS to collect information about other characteristics of financial instruments that are needed to estimate market value sensitivities without a large increase in the number of items collected. Schedule CMR will collect 605 items (excluding the Optional Supplemental Reporting section described below), while Schedule MR collects 612 items. Schedule CMR is attached as Appendix B.

In addition to sections for assets, liabilities, and off-balance sheet instruments, Schedule CMR includes two new sections not included in Schedule MR. In the section called "Reporting of Market Value Estimates" institutions can report their own market value estimates of certain complex financial instruments (such as collateralized mortgage obligations) in each of the alternative interest scenarios considered by the OTS Model. These estimates will be used in calculating institutions' interest rate exposure estimates. In the "Optional Supplemental Reporting" section, institutions have the option of reporting data in an even more disaggregated manner than in the assets and liabilities sections of Schedule CMR for certain types of instruments.

Some of the more significant improvements in data collection for individual financial instruments made by Schedule CMR relative to Schedule MR are described below. For information on how the OTS model will use the CMR data to value financial instruments, see the descriptions of methodologies for individual instruments in Section V.

1. Assets

Fixed-Rate Single Family First Mortgages

Schedule CMR will collect separate information on 30-year, 15-year, and balloon mortgages by coupon range. Information on mortgage loans and securities will be collected separately within each of these categories. Schedule CMR will also distinguish FNMA and FHLMC from GNMA securities (and conventional from FHA/VA loans), and establish a separate category for construction and land loans (currently aggregated on Schedule MR with permanent mortgages).

Adjustable-Rate Single Family First Mortgages

Schedule CMR will collect information by type of index and distinguish loans from securities, and "teaser rate" from non-teaser rate ARMs. CMR will collect information on margins specific to each type of ARM as well as more detailed information on lifetime rate caps and floors and on periodic rate caps and floors.

Other Mortgages and Nonmortgage Loans

Schedule CMR will distinguish adjustable-rate from fixed-rate loans for all types of multifamily and nonresidential mortgages and nonmortgage loans. CMR will collect indexes to which adjustable-rate loans are tied, as well as their reset frequency and average margin. CMR will also collect separate information on fully-amortizing and balloon multifamily and nonresidential mortgages. In addition, institutions may report balances further disaggregated by index type and by type of consumer loan (*e.g.*, auto, credit card) in the Optional Supplemental Reporting Section of Schedule CMR.

Mortgage Derivative Securities

Schedule CMR will require institutions to report their own estimates of the market value of their mortgage derivative products in each of the nine interest rate scenarios evaluated by the OTS Model if they exhibit any of the following conditions.

(1) Assets exceed $500 million;

(2) They hold "high-risk" mortgage derivative securities acquired after December 31, 1988; or

(3) The book value of their mortgage derivatives exceeds five percent of assets.

Other institutions may optionally do so.

Cash, Deposits, and Securities

Schedule CMR will group these assets into seven categories based on their cash flow characteristics and credit risk so that appropriate assumptions may be applied in estimating their market values sensitivities.

2. Liabilities

Certificates of Deposits (Fixed-Rate)

Schedule CMR will collect information on original maturity, early withdrawal penalties, balances in brokered deposits, and, at the reporting institution's option, on early withdrawals and balances in new accounts.

Fixed-Maturity, Variable Rate Liabilities

Schedule CMR will distinguish variable-rate CDs, FHLB advances, and other borrowings, and will collect information on their index rates, margins, reset frequencies, and months to next reset.

Demand Deposits

Schedule CMR will distinguish interest bearing from noninterest bearing deposits and, at the reporting institution's option, will collect information on new accounts that will be used in the future to estimate institution-specific attrition rates.

Escrow Accounts

Schedule CMR will separately collect information on escrow accounts for mortgages held in portfolio, for mortgages serviced for others, and other escrow accounts.

3. Off-balance Sheet Contracts

The off-balance sheet section of the reporting form has been redesigned to collect information in a "contract specific" manner. That is, institutions will report each OBS position separately on Schedule CMR, along with information required to value the position.

To determine the market value of an OBS contract, information is needed on the type of contract, its maturity, and the interest rate and price specified in the contract. Schedule CMR will use four-digit codes to distinguish 277 different OBS contracts (compared to only 28 on Schedule MR). Institutions will report a contract code for each type of contract, and report the notional principal amount, maturity, price, and rate of the position held. Any OBS contract held by an institution for which there is no contract code will be valued by the institution and be reported in the section titled "Reporting of Market Value Estimates." This information will enable OTS to provide substantially more accurate estimates of the market values of OBS contracts and their sensitivity to changes in interest rates than is currently possible using data from Schedule MR.

B. Methodologies for Estimating MVPE

With a few exceptions, the general methodologies proposed for estimating the market values and market value sensitivities of assets, liabilities, and off-balance sheet instruments are the same as described in the December 1990 Proposal. Most of the modeling changes from the 1990 Proposal are the result of the adoption of the new reporting form, Schedule CMR, which permits collection of additional information on the characteristics of financial instruments held by savings associations. The following sections summarize those methodologies in nontechnical language, and describe how the new data will be used. For a more technical description of the methodologies, see the December 1990 Proposal.

1. Overview

A fundamental characteristic of all financial instruments is that they give rise to cash flows. The value of any financial instrument can be estimated by projecting the amount and timing of future net cash flows associated with the instrument, and discounting those cash flows with appropriate discount rates. This procedure for estimating the value of a financial instrument is commonly referred to as discounted cash flow analysis, or present value analysis. The basic formula for the present value of a financial instrument is as follows:

$$(1) \quad PV = \frac{CF_1}{(1+i)} + \frac{CF_2}{(1+i)^2} + \ldots + \frac{CF_n}{(1+i)^n}$$

where PV is the present value of the instrument; CF_1 is the first cash flow receipt or payment; CF_2 is the second receipt or payment, and so forth; and it is the yield at which the cash flows are discounted. The discounted cash flow approach will be used by the OTS Model to estimate the market value of most assets, liabilities, and off-balance sheet contracts.

The discount rate is the rate of return necessary to induce investors to hold a financial instrument. For any given instrument, the required rate of return is equal to the risk-free rate plus the risk premium necessary to compensate the investor for any additional risk (*e.g.*, credit risk, liquidity risk) associated with the particular instrument.

The discount rate will rise or fall with the general level of interest rates. As interest rates rise, investors require higher rates of return, and therefore, use higher discount rates to value cash flows expected from financial instruments. This causes the value of those cash flows, and thus the market price of the instruments, to decline. The reverse is true for a decline in interest rates. Of course, the size and timing of the cash flows themselves may change as market interest rates change. Such changes could result from changes in prepayment rates, for example, or from the repricing of adjustable-rate instruments.

OTS still proposes to employ two cash flow-based valuation methodologies: (1) A static discounted cash flow analysis, and (2) an option-based pricing analysis, which is a form of discounted cash flow analysis modified to value assets that contain embedded options. In addition, there is a third type of valuation methodology, the Black-Scholes model, that is used to value exchange traded options and some other off-balance sheet instruments. The approach selected for each type of financial instrument will depend on the nature of the instrument and the availability of data.

2. Static Discounted Cash Flow Analysis

Under the static discounted cash flow approach, the market value of a financial instrument is calculated as the present value of the instrument's expected cash flows. The present value is determined by discounting the cash flows the instrument is expected to generate by the yields currently available to investors from other instruments of comparable risk and duration. To calculate the present value, therefore, information is needed about the size and timing of cash flows and about the appropriate discount rate.

For the purposes of determining the interest rate risk component, cash flows will be modeled under the three interest rate scenarios described in Section III (*i.e.*, the base case, and plus and minus 200 basis point).[1] Number each scenario, a single path of future interest rates will be assumed based the Treasury yield curve, plus or minus the rate shock for that scenario. Cash flows will be calculated under each scenario based upon the assumed interest rate path depicted in that scenario.

Cash flows may differ across scenarios for two reasons. First, loan prepayment and deposit attrition rates will differ, since borrowers and depositors will make different decisions about these actions under different interest rate environments. Such differences in customer behavior will be modeled by specifying a relationship between the interest rate scenario and the rates of prepayment and attrition, and will thereby change the magnitude and timing of principal and interest flows. Second, interest payments will differ across scenarios as adjustable-rate instruments reprice in future periods.

Coupons of adjustable-rate instruments will be equal to the projected value of the index to which the instrument is tied, plus the margin

[1] OTS intends to continue to model MVPE in nine interest rate scenarios (base case and plus and minus 100, 200, 300 and 400 basis point rate shocks) for information purposes, and provide the results to thrifts as we have since early 1991.

reported by institutions. In general, indices will be projected by relating them to the Treasury implied forward rates.[2]

The basic principle behind choosing discount rates is that they should represent the yields obtainable from instruments with the same risk and duration as those of the cash flows being discounted. Thus, if one were calculating the present value of a U.S. Treasury security, an appropriate sequence of discount rates for each of its cash flows would be the sequence of zero-coupon Treasury rates with maturities corresponding to the dates on which each cash flow is anticipated. The present value calculation in this sample differs slightly from that in equation (1), above, and is illustrated as follows:

$$(2)\quad PV = \frac{cf_1}{(1+i_1)} + \frac{cf_2}{(1+i_2)^2} + \ldots + \frac{cf_n}{(1+i_n)^n}$$

The difference between this calculation and equation (1) is that subscripts have been added to the discount rates, i through i_n, to denote that each cash flow is being discounted by a different rate. In this example, the i variables represent the zero-coupon Treasury rate with maturities corresponding to the dates on which cash flows will be generated by the security being valued.

OTS proposes that the discount rates of all assets will consist of the zero-coupon Treasury rates observed as of the reporting date, plus a spread to account for the risk difference between the instrument being valued and Treasury securities.

For each type of asset, the spread to the zero-coupon Treasury curve will be unique. This spread will be calculated in one of two ways depending on the availability of market data. Where market price quotes are readily available for instruments with the same characteristics as those being valued (*e.g.*, single family mortgage loans and securities, and multifamily mortgage loans), the spread will be calculated so that the sum of the discounted cash flows (calculated given maturity, amortization, prepayment, and repricing characteristics) will equal the observed market price.

For instruments for which reliable price quotes are not available (*e.g.*, consumer and commercial loans), current lending rates on similar assets will be used to calculate the spread. For each type of asset, the spread will be calculated so that, using the current market rate to calculate cash flows, the sum of the discounted cash flows will equal par, or 100, since that is the value of a newly issued loan or security. Current market rates are available from the Thrift Financial Report or through surveys, such as that conducted by the Federal Reserve on current market rates of commercial and consumer loans.

On the liability side of the balance sheet, cash flows will be discounted using zero-coupon LIBOR (London Interbank Offered Rates) because it represents the marginal cost of funds to credit-worthy depository institutions.

It will be assumed that the risk premium required by investors will not change under the three alternative interest rate scenarios. Thus, for the alternative rate scenarios, each discount rate will be calculated by simply summing the appropriate base case zero-coupon rate, the spread, and the amount of the interest rate shock (i.e., +200 or −200 basis points). As discussed above, under the alternative interest rate scenarios, cash flows must also be revised to reflect different loan prepayment or deposit attrition rates and, if applicable, to reflect repricing of the instrument. To calculate the present value in the alternative rate scenario, the revised cash flows are then discounted by the new discount rates.

OTS proposes to use the static discounted cash flow approach to value non-mortgage loans and certain mortgage loans that have insufficient data to apply the option-based approach, all liabilities, and several off-balance sheet instruments.

3. Option-Based Pricing Analysis

The option-based pricing approach—also known as option-adjusted spread (OAS) methodology—is a technique for valuing assets that contain embedded options. Perhaps the most significant embedded options from the perspective of savings associations are the prepayment options contained in mortgages and mortgage-related securities and the interest rate caps on adjustable-rate mortgages. Prepayment options introduce significant uncertainty into the timing of mortgage cash flows. When mortgage rates fall significantly, mortgage prepayments typically accelerate, forcing associations to reinvest the proceeds of the prepayments at lower rates. An important aspect of valuing a mortgage (or mortgage-related security), therefore, is determining the appropriate value of the option component of the mortgage.

In large part, the value of a prepayment option depends on the volatility of interest rates. When interest rate volatility increases, homeowners are more likely to prepay their mortgages. This is because there is a greater chance that mortgage rates will fall sufficiently below the rates on existing mortgages to induce prepayments. Thus, higher interest rate volatility benefits homeowners to the detriment of thrifts, banks and other mortgage investors.

Option-based pricing models are designed to provide improved mortgage valuation estimates by taking interest rate volatility into account. These models use an interest rate simulation program to generate numerous interest rate paths that, in conjunction with a prepayment model, are used to estimate mortgage cash flows along each path.[3] These each flows are then discounted and averaged to arrive at a single mortgage price.

By estimating the value of a mortgage over numerous possible interest rate paths, an option-based model provides a more comprehensive and accurate estimate of the market value of a mortgage than could be derived from a static cash flow model, which assumes a single interest rate and prepayment path. (In fact, the option-based approach actually repeats the static cash flow approach many times with different interest rate paths and averages the results.)

The option-based valuation approach that OTS proposes to use is briefly described as follows.

(1) Projection of short-term interest rates. The interest rate simulation model will use an empirically estimated equation to generate 200 randomly determined interest rate paths for short-term interest rates based on an assumed level of interest rate volatility. The model will incorporate the current term structure of interest rates as a starting point and project the path of monthly interest rates over a 360 month period. The paths will be generated in a manner that makes the simulation consistent with the observed Treasury yield curve. Thus, if Treasury securities are priced using the simulation, the model will return exactly the currently observed Treasury prices. In this way, all

[2] For a description of the calculation of the implied forward rates, see Fabozzi and Fabozzi, *Bond Markets, Analysis, and Strategies*, Prentice Hall, 1989 (pp. 106–109).

[3] An interest rate path is a sequence of 360 monthly interest rates. Three hundred and sixty months are used because that is the maturity of the longest-lived mortgages (*i.e.*, thirty years).

securities can be accurately compared to the yardstick of Treasury securities.

(2) Projection of mortgage rates. The interest rate model also generates a path of future fixed-rate mortgage coupons and of future coupons of each type of adjustable-rate mortgage valued by the model. The model will use a separate volatility assumption for the fixed-rate mortgage rates, but will assume that a degree of correlation exists between short-term rates and the fixed-rate mortgage rates. The result is that each of the 200 paths will contain a short-term rate, an associated fixed-rate mortgage rate, and a projected coupon for each type of ARM for the next 360 months.

(3) Prepayment projections. The prepayment model will use the spread between the coupon of the mortgage loan or security being valued and the projected fixed-rate mortgage rate at each point along an interest rate path to generate prepayment rates along that path.

(4) Valuation of projected cash flows. Cash flows will be generated for each point along an interest rate path using scheduled amortization, coupon payments, and prepayments. A price for each path will be calculated for the loan or security by discounting that path's projected cash flow by the sequence of short-term rates associated with it, plus a spread. The spread, known as the "option-adjusted spread," will be chosen so that the average of the prices resulting from the 200 simulated rate paths is equal to the currently observed market price of a similar loan or security.

(5) Valuation of cash flows projected in other scenarios. Once the option-adjusted spread has been calculated, mortgage prices can be calculated under the alternate interest rate scenarios. To model such a scenario, steps 1 through 3 will be repeated, but starting with a term structure that has been subjected to a parallel shock of the desired magnitude (i.e., plus or minus 200 basis points). Step 4 will then be repeated with cash flows being discounted by the new sequence of associated short-term rates plus the same option-adjusted spread as the base case. The average of the 200 discounted cash flows will represent the shocked rate scenario's mortgage price.

OTS proposes to use the option-based approach to value single family fixed-rate and adjustable-rate mortgages and mortgage servicing assets.

4. The Black-Scholes Model

The OTS model will use a derivative of the Black-Scholes option valuation model to value the following types of off-balance sheet contracts:

- Optional commitments to purchase or sell mortgages.
- Swaptions (options on swaps).
- Interest-rate caps.
- Interest-rate floors.
- Options on futures.

This model, sometimes referred to as the "Black 76" model, values options on futures and other forward contracts.[4] To calculate the option's value, the model requires the input of five variables that characterize the option. These variables are (1) the future or forward price of the instrument underlying the option, (2) the strike price, (3) the volatility of the underlying instrument, (4) the time to expiration of the option, and (5) the risk-free rate of interest.

To calculate the market value of an option in the shocked-rate environment, two adjustments will be made to the inputs of the model. Shocking the yield curve (LIBOR or Treasury) generates a new forward price for the instrument underlying the option. In addition, the risk-free rate of return is adjusted by the amount of the shock.

5. Summary of Methodologies for Assets

This section summarizes the methodologies used by the OTS Model to estimate the market value of each of the asset categories listed on Schedule CMR.

a. Single Family Fixed-Rate Mortgage Loans and Securities

The methodology used to value single family fixed-rate mortgage (FRM) loans and securities will be the options-based pricing approach described in detail in the December 1990 Proposal. This approach (summarized in Section V.C) is designed to take into account the effect of embedded options (prepayments and, in the case of adjustable-rate mortgages, interest rate and payment caps) on mortgage prices. The model will use an interest rate simulation program to generate numerous interest rate paths that, in conjunction with a prepayment model, are used to estimate mortgage cash flows along each path. Those cash flows will then be discounted and averaged to arrive at a single mortgage price.

Schedule CMR will collect information on FRMs in a more disaggregated manner than the current Schedule MR. Outstanding balances, coupons, and maturities of four types of fixed-rate mortgage loans (30-year conventional, 30-year FHA/VA, 15-year original maturity, and balloon payment mortgages) will be separately reported on the Schedule. Analogous information will also be reported separately for mortgage securities backed by each of the same four types fixed-rate mortgages. All information will be reported in five separate coupon ranges (less than 8 percent, 8 to 8.99, 9 to 9.99, 10 to 10.99, and 11 percent and above).

The availability of disaggregated data will allow the model to estimate the value of the FRM portfolio as consisting of eight fairly specific types of instruments (*i.e.*, the four types of mortgage loans and four types of mortgage securities), rather than treating all single family FRMs as 30-year fixed-rate loans, which was the methodology described in the December 1990 Proposal. That will substantially reduce the need to make various simplifying assumptions made in the existing model about the nature of the mortgage instruments (and their cash flow characteristics) comprising any given data cell. (Another improvement of this type will be the separate reporting of single family construction loans and single family permanent mortgages. Both the cash flow and risk characteristics of construction loans dictate that they be valued differently from mortgages.)

The eight categories of FRMs that will be reported differ in both their projected cash flows and in the discount rates used to discount them. Modeling of cash flows will take account of each instrument's particular amortization schedule and, to the extent possible, will take account of differing prepayment characteristics. For example, separate prepayment functions will be used to estimate prepayments on conventional loans and FHA/VA loans (as well as the securities backed by those types of loans). Cash flows will be discounted using the zero-coupon Treasury yield curve plus the option adjusted spread for the particular instrument being modeled. Separate option adjusted spreads (OASs) will be derived each quarter for representative coupons and maturities of each type of instrument, based on their observed market prices at that time.

For the current and shocked interest rate scenarios, OTS will use the OAS methodology to estimate prices for several different coupon and maturity combinations of each type of mortgage instrument. Those price estimates will be printed in the form of a separate pricing "look-up" table for each type of instrument.[5] Market values for each of

[4] For more information, see Stephen Figlewski, Chapter 3 in Stephen Figlewski, William L. Silber, and Marti G. Subrahmanyan, editors, *Financial Options: From Theory to Practice*, Business One Irwin: Homewood, IL, 1990.

[5] These pricing tables are available to all OTS-regulated thrifts at no charge and at an annual charge of $40 to other interested parties.

the balances reported by the institution will then be calculated by reference to the pricing table that corresponds to that particular type of mortgage instrument. Because the tables will contain price estimates for only a limited number of coupon and maturity combinations for each type of instrument, interpolation will be used to pick prices from the table for the actual coupon/maturity combination reported.

b. Single Family Adjustable-Rate Mortgage Loans and Securities

OTS will also use the OAS approach to estimate the value of single family adjustable-rate mortgage (ARM) loans and securities. The major changes from the methodology described in the December 1990 Proposal stem from the availability of improved data about institutions' ARM portfolios as a result of the planned adoption of Schedule CMR.

Schedule CMR will collect information on ARMs in five columns that correspond to the frequency with which the mortgage rate resets and the type of index on which it is based (*e.g.*, 1-year current market index, 1-month lagging market index). Each column actually accommodates a number of possible indexes and a range of reset frequencies, but balances in the five columns will be assumed for modeling purposes to consist of the most prevalent types of ARMs in that index and reset range. These are, respectively, 6-month Treasury, 1-year Treasury, 3-year Treasury, 1-month 11th District Cost of Funds Index (COFI), and 12-month COFI. All other information about ARMs, described below, is collected separately for each of the five columns, so that the balances in each column may be modeled separately using the information submitted by the reporting institution.

The outstanding balance and weighted average coupon of ARMs subject to introductory "teaser" rates are collected separately from other ARMs, allowing teaser ARMs to be modeled separately. Teaser ARMs not only have low coupons relative to otherwise equivalent ARMs (resulting in possible aggregation error if not handled separately), but the value of their periodic caps is higher than that of otherwise identical non-teaser ARMs, which would also result in aggregation error. Modeling them separately will result in more accurate estimates.

For non-teaser ARMs, in addition to information about balance, coupon, time to next coupon reset, and maturity, the reporting form will collect the average margin of ARMs tied to each of the five index types. This last item will be a significant improvement because it will eliminate the need to assume that each institution's ARMs have the same margins (as was proposed in the December 1990 Proposal).

The second major reporting change will be to collect more detailed information about periodic and lifetime interest rate caps, because aggregation error can be especially severe for option-like instruments such as caps. (The problem is analogous to attempting to value two options—one at its strike price and the other far out of the money—on the basis of their weighted average strike price, and can lead to a very misleading answer.) In reporting on Schedule CMR, institutions will provide information that will allow their ARMs to be segregated into four groups on the basis of the distance between their current coupons and lifetime rate caps. Each group will be valued separately, based on its reported weighted average lifetime cap. That approach will reduce the amount of aggregation error by aggregating across several relatively narrow bands rather than one large one.

In addition to caps, information will also be reported about periodic and lifetime interest rate floors, allowing those features to be incorporated into the price estimates, where relevant. Finally, institutions will report information permitting ARM whole loans and ARM securities to be valued separately.

In response to comments on the December 1990 Proposal, OTS plans to develop a model to simulate the 11th District COF index that is more in keeping with the forecasting models used by various savings associations and other practitioners than the simple equation described in the 1990 Proposal. The model will project COFI in each future month based on several lagged values of short-term and long-term Treasury yields with a more complicated lag structure than the equation proposed in the 1990 Proposal. Contrary to some other comments, however, the Treasury yields projected for future months—on which both simulated Treasury ARM and COFI ARM coupons will depend—will themselves be based on the current quarter-end implied forward rates. This treatment will be similar to that proposed in the 1990 Proposal and is consistent with most industry valuation practices.

For each type of ARM (*e.g.*, 1-year current market index, 1-month lagging market index), OTS will use the OAS methodology to estimate market values, for various combinations of margin, current coupon, time to next reset, maturity, lifetime cap level, and presence or absence of periodic caps and floors. Those estimates will be printed in a series of ten "look-up" tables (both ARM loans and securities for: 6-month Treasury-indexed, 1-year Treasury-indexed, 3-year Treasury-indexed, 1-month 11th District COFI, and 1-year COFI). Market values for each of the balances reported by the institution will then be calculated using the pricing table that corresponds to that particular type of ARM instrument, using interpolation where necessary.

c. Multifamily and Nonresidential Mortgages

The OTS Model will use the static discounted cash flow approach to value multifamily and nonresidential mortgage loans and securities. Because a significant percentage of these mortgages are balloon loans, balances will be divided into balloon and fully amortizing categories on Schedule CMR. Balances will be further divided into fixed-rate and adjustable-rate categories.

For fixed-rate balances, Schedule CMR will collect the weighted average maturity and the coupon. For adjustable-rate balances, CMR will collect the following: the index to which the largest percentage of the institution's balances are tied; the reset frequency of the loans tied to that index; the weighted average margin; the weighted average maturity; the balances with coupons currently within 300 basis points of their lifetime interest rate caps; and, for those balances, the weighted average difference (in basis points) between the coupon and lifetime cap. In addition, for balloon mortgages, CMR will collect the remaining term to full amortization.

The OTS Model will value the four types of mortgages (fixed-rate balloons, fixed-rate fully amortizing, adjustable-rate balloons, adjustable-rate fully amortizing) separately, using maturity, amortization, and rate and cap information specific to each type. All balances will be assumed to pay monthly principal and interest cash flows. The coupons of adjustable-rate mortgages (equal to the projected value of the index plus the reported margin) will reset with the reported frequency, but subject to any interest rate caps. Due to the prevalence of prepayment penalties on these types of mortgages, prepayments for all multifamily and nonresidential mortgages will be assumed to be zero. Although this category may include multifamily securities as well as loans, Schedule CMR does not distinguish between them. Consequently, all balances will be valued as mortgage loans, not securities.

Each monthly cash flow will be discounted by the Treasury zero-coupon yield appropriate for that month plus a spread. That spread will be calculated so that, on average, the spread plus the zero-coupon yields will equal the required net yield for 30 day commitments on multifamily mortgages posted by FHLMC or FNMA.

Institutions holding adjustable-rate multifamily and nonresidential mortgages tied to a variety of different indices may, at their option, report those balances disaggregated by index type in the Optional Supplemental Reporting section of Schedule CMR. The valuation methodology for those balances will be the same as that described above, with the coupon on each reset date being set equal to the projected value of the reported index plus the reported margin.

The date that will be collected for multifamily and nonresidential mortgages on Schedule CMR will be more detailed than that collected on Schedule MR. By using these data, the OTS Model will produce more precise estimates of the mortgages' values and interest rate sensitivities.

d. Construction and Land Loans

The OTS model will use the static discounted cash flow approach to value construction and land loans (hereafter referred to collectively as construction loans). Schedule CMR will collect the outstanding balances of fixed- and adjustable-rate construction loans, their weighted average remaining maturities, the coupon of fixed-rate loans, and the margin of adjustable-rate loans. In addition, for adjustable-rate loans, CMR will collect an index code representing the index to which the largest percentage of the reporting institution's adjustable-rate balances are tied. All reported adjustable-rate balances for the institution will be assumed to be tied to the index it reports. This index will be projected (based on projected Treasury yields) over the remaining life of the loans and the coupon rate in each month will be calculated as the sum of the index plus the reported margin. That is, the OTS model will treat all adjustable-rate construction loans as having a monthly reset frequency with no interest rate caps or floors.

All construction loans will be assumed to pay monthly interest cash flows, and the entire principal at maturity. No prepayments are assumed. Each monthly cash flow will be discounted by the Treasury zero-coupon yield for that month plus a spread. The spread will be calculated so that on average, the discount rate is equal to the then prevailing average rate on construction lending. The average rate on construction lending will be taken from a monthly survey performed by the U.S. Department of Housing and Urban Development and published in the HUD release "Secondary Market Prices and Yields and Interest Rates for Home Loans."

Institutions holding adjustable-rate construction loans tied to indices other than the one reported in the construction loans section of Schedule CMR, may at their option report these loans disaggregated by index type in the Optional Supplemental Reporting Section. The valuation methodology for those balances will be the same as that described above with the coupon in each future month being set equal to the projected value of the index plus the reported margin.

There will be a significant improvement in the OTS Model's valuation of construction loans using the data reported on Schedule CMR. On the existing reporting form, construction loans are aggregated with permanent mortgages, the maturity, terms, and cash flow characteristics of which are very different from construction loans. Separating construction loan balances from permanent mortgages and valuing them using their reported characteristics should result in a marked improvement in the OTS Model results.

e. Second Mortgage Loans

The OTS Model will value second mortgage loans using the static discounted cash flow approach. Schedule CMR will collect the outstanding balances of fixed and adjustable-rate second mortgage loans, the weighted average maturity of those balances, the coupon of fixed-rate second mortgages, and the margin, reset frequency, and index type for adjustable-rate second mortgages.

Second mortgages will be assumed to be level-payment amortizing loans that generate monthly cash flows of interest and principal. Prepayment rates for both fixed- and adjustable-rate second mortgages will be based on observed prepayment rates of home equity loans underlying asset backed securities.

The coupon on adjustable-rate second mortgages will be calculated as the sum of the reported index and the reported margin and will be assumed to reset with the reported reset frequency. The model will treat all second mortgages as having no interest rate caps or floors.

All monthly cash flows will be discounted by the Treasury zero-coupon yield for that month plus a spread. That spread will be calculated so that, on average, the spread plus the zero-coupon yields will equal the observed current lending rate on adjustable-rate second mortgages. The current lending rate will be estimated by using the information on margins and indices on adjustable-rate second mortgages reported in Schedule CMR. It will be assumed to be equal to the index most commonly reported by institutions (*e.g.*, the prime rate) plus the average margin reported by institutions with loans tied to that index.

Institutions holding adjustable-rate second mortgages tied to indices other than the one reported in the second mortgages section of Schedule CMR, may at their option report these loans disaggregated by index type in the Optional Supplemental Reporting Section. The valuation methodology for those balances will be the same as that described above with the coupon on each reset date being set equal to the forecasted value of the reported index plus the reported margin.

The most significant improvement in the methodology for valuing second mortgage loans relative to that described in the 1990 Proposal is in the area of adjustable-rate second mortgages. By making use of the margin, reset frequency, and index to which the loans are tied, the OTS model will be able to produce better estimates of the value and interest rate sensitivity of adjustable-rate second mortgages.

f. Commercial Loans

The OTS Model will use the static discounted cash flow approach to value commercial loans. Schedule CMR will collect the outstanding balances of fixed- and adjustable-rate commercial loans, their weighted average remaining maturity, the coupon of fixed-rate loans, and the weighted average margin of adjustable-rate loans. All loans will be assumed to pay monthly interest cash flows and all principal at maturity. No prepayments are assumed.

Adjustable-rate loans will be assumed to be indexed to the prime rate and to reset monthly. The interest rate on adjustable-rate loans in each future month will be equal to the forecasted prime rate in each month plus the reported margin. The prime rate will be projected based on projected Treasury yields.

An estimate of the current lending rates on fixed- and adjustable-rate commercial loans will be used to calculate the discount rate for commercial loan cash flows. The current lending rates will be taken from the Federal Reserve statistical release E.2, "Survey of Terms of Bank Lending." The discount rate in each future month will be calculated as the zero-coupon Treasury yield in that month plus a

spread. The spread will be calculated such that, on average, the spread plus the zero-coupon yields will equal the current lending rates reported in E.2.

Institutions holding adjustable-rate commercial loans tied to indices other than prime may, at their option, report those balances disaggregated by index type in the Optional Supplemental Reporting Section of Schedule CMR. The valuation methodology for those balances will be the same as that described above, except the loan coupon in each future month will be equal to the projected value of the index (whether it be 1-month LIBOR, the 3-month T-bill rate, etc.), plus the reported margin.

g. Consumer Loans

The OTS Model will use the static discounted cash flow approach to value consumer loans. Schedule CMR will collect the outstanding balances of fixed- and adjustable-rate consumer loans, their weighted average remaining maturity, the coupon on fixed-rate loans, and the margin on adjustable-rate loans. In addition, for adjustable-rate loans, CMR will collect the index to which the largest percentage of loans are tied and the loans' reset frequency. All adjustable-rate consumer loans will be assumed to reset based on that index, with the reported reset frequency.

All consumer loans will be assumed to be level-payment amortizing loans that generate monthly cash flows of interest and principal. On schedule SC, consumer loan balances are broken down into eight types. The OTS Model will determine a unique weighted average prepayment rate for each institution's total consumer loan balances, using as weights the proportion of balances represented by each loan type on Schedule SC. OTS will base prepayment estimates for each type of loan on observed prepayment rates of collateral underlying various types of asset backed securities.

Once again using the balances reported by type on Schedule SC, the OTS model will determine a unique weighted average discount rate for each institution's consumer loan balances. For each loan type, the discount rate in each future month will be calculated as the zero-coupon Treasury yield in that month plus a spread. Each spread will be calculated such that, on average, the spread plus the zero coupon yield will equal the observed yield on an asset backed security with collateral of that loan type. For consumer loan types for which secondary market yields are not readily available, current market lending rates on various consumer loan types from Federal Reserve statistical release G.19 will be used.

Institutions may, at their option, report their consumer loans in a more disaggregated manner in the Optional Supplemental Section of Schedule CMR. Balances may be disaggregated by loan type and index. The OTS model will then apply coupon reset assumptions, discount rates, and prepayment rates specific to each type of consumer loan.

The most significant improvement in the methodology for valuing consumer loans relative to that described in the December 1990 Proposal is in the area of adjustable-rate loans. By making use of the margin, reset frequency, and index to which the loans are tied, the OTS Model will produce better estimates of the value and interest rate sensitivity of adjustable-rate consumer loans.

h. Mortgage Derivative Securities

Mortgage derivative securities include collateralized mortgage obligations (CMOs), interest-only strips (IOs), principal only strips (POs), residuals, CMO swaps, and other instruments with similar characteristics.

In the OTS Model mortgage derivatives will be valued using one of two methodologies, a "self-reporting" approach or a benchmark approach, depending on whether the savings association meets certain criteria. Under the self-reporting approach, institutions will report their own estimates of the market value of their mortgage derivatives in each of the interest rate scenarios evaluated by the OTS model. These estimates will then be used in the OTS Model to estimate institutions' interest rate exposure. Savings associations meeting of the following criteria are required to report their own market value estimates for mortgage derivatives.

a. Assets exceeding $500 million, or

b. Holdings of mortgage derivatives totaling more than 5 percent of book assets, or

c. Any "high-risk" mortgage derivatives (see Thrift Bulletin 52 for a definition of high-risk derivatives).

Other savings associations not required to provide their own estimates may provide the estimate if they wish. The self-reporting approach should result in greater accuracy in estimating market value sensitivity than the benchmark approach described below.

Mortgage derivatives of savings associations not using the self-reporting approach will be valued using a benchmark approach. Savings associations will report the book value of their holdings of each type of mortgage derivative security in the appropriate cell of Schedule CMR. Schedule CMR lists 19 types of mortgage derivatives reflecting broad classes of CMOs and the classification by Thrift Bulletin 52 of mortgage derivatives into high-risk and low-risk categories. A benchmark security will be chosen to represent the securities that savings associations report in each of these cells. The market value of the derivatives for each cell will be estimated by valuing the benchmark for that cell for each interest rate scenario. Prepayment rates assumed for the underlying collateral will be the same as those used to value mortgage securities. The estimation process will generate prices as a percent of par for the benchmark securities under the alternative interest rate scenarios. The benchmark for each class of derivative will be updated when necessary. A listing of the benchmarks and their pricing profiles will be included in the quarterly Asset and Liability Pricing Tables published by OTS.

The methodology for CMOs described in the December 1990 Proposal uses the benchmark approach for all mortgage derivatives (except for IOs and POs) and does not update the estimated market values of the benchmarks from quarter to quarter. Currently, IOs and POs are valued separately, using the option-based methodology that is used to value mortgages. In the new approach most savings associations will self-report the estimates for these securities. For the remainder, the OTS model will use the benchmark approach.

i. Mortgage Loan Servicing Rights

The OTS Model will use the same OAS methodology to value servicing that it uses to value mortgage loans and securities. See Section V.C on valuation methodologies for a further discussion of the OAS methodology.

The outstanding balances of fixed-rate mortgage loans serviced for others will be reported on Schedule CMR in five coupon ranges (less then 8 percent, 8 to 8.99, 9.00 to 9.99, 10 to 10.99, and 11 percent and above). Balances of adjustable-rate mortgages tied to current market indexes (*e.g.*, the 1-year Constant Maturity Treasury yield) will be reported separately from those tied to lagging market indexes (*e.g.*, the 11th District Cost of Funds). The OTS Model will treat all current market index loans as 1-year CMT ARMs and all lagging market index ARMs as 1-month COFI ARMs. CMR will also collect the weighted average remaining maturity and the weighted average servicing fee for each of the reported balances, the number loans serviced, and the number of loans subserviced by others.

The estimated value of mortgage servicing is equal to the discounted

present value of servicing fee income and ancillary income, minus the discounted present value of servicing cost outflows. Monthly servicing fee cash flows will be estimated by adjusting the balances reported on CMR for expected prepayments and amortization, and multiplying the outstanding balances in each month by the reported weighted average servicing fee. Ancillary income cash flows will be estimated by adjusting the reported number of loans outstanding for expected prepayments and multiplying the number of loans serviced by an estimate of monthly ancillary income.

Servicing cost outflows are estimated in the same manner as ancillary income cash flows. That is, by adjusting the reported number of loans serviced for expected prepayments and multiplying the number of loans serviced by an estimate of monthly servicing cost.

Ancillary income and servicing cost estimates will be taken from the Mortgage Bankers' Association's (MBA) annual survey of mortgage bankers. These estimates will be updated annually as new estimates become available.

All monthly cash flows will be discounted by the Treasury zero-coupon yield for that month plus a spread. The spread is calculated so that on average, the discount rate is equal to the current required yield in the servicing market. The required yield will be obtained quarterly from information provided by dealers in the servicing market.

Because the data that will be collected for mortgage servicing on Schedule CMR is somewhat more detailed than that collected on Schedule MR, the OTS Model will produce better estimates of the value and interest rate sensitivity using data from the new reporting form. Improvements in data collection include the following: (1) The reporting of the weighted average remaining maturity and weighted average servicing spread for balances in each of the coupon ranges; (2) the reporting of the number of FRM loans serviced that are conventional versus FHA/VA; (3) the reporting of the number of loans subserviced for others; and (4) the separate reporting of lagging market index and current market index adjustable-rate mortgages serviced for others.

j. Cash, Non-Interest-Earning Deposits, Overnight Fed Funds, and Overnight Repos

These assets will be valued at their face value in all of the interest rate scenarios evaluated by the OTS Model.

k. Equity Securities

Institutuions will report the market value of their equity securities as of quarter-end on Schedule CMR. To value equity securities in the alternative interest rate scenarios, the OTS Model will assume their interest rate elasticity to be −4.5 percent. That is, for every 100 basis point increase in interest rates the value of equity securities will be assumed to decrease by 4.5 percent. For example, if an institution reported $100 of equity securities on Schedule CMR, their estimated market value in the plus 200 basis points scenario would be $100×(1−.09)=$91.00.

This interest rate elasticity was estimated using regression analysis. It was obtained by regressing the monthly average of the Wilshire 5,000 Stock Index on the monthly average ten-year Treasury yield for the past five years. A time variable was included to allow for an upward trend in the index.

l. Mutual Funds With Investments in Mortgage Related Securities

Institutuions will report the current market value of investments in mutual funds that invest in non-high-risk mortgage-related securities on Schedule CMR. Thus, the base case value of these mutual funds will be set equal to the reported value. To value these mutual fund investments in the alternative interest rate scenarios, the OTS Model will apply an interest rate sensitivity measure equal to that of the total industry's single family mortgage securities estimated by the Model in the previous quarter.

m. Zero-Coupon Securities

These assets will be valued using the static discounted cash flow approach. On Schedule CMR, institutions will report the carrying value of their zero-coupon securities, the weighted average yield to maturity, and the weighted average maturity. A single cash flow will be assumed to occur at the weighted average maturity and will be discounted by the Treasury zero-coupon yield for that month.

n. Government and Agency Securities and Deposits at FHLBs

These assets will be valued using the static discounted cash flow approach. Schedule CMR will collect the outstanding principal balance of these securities and deposits and their weighted average coupon and maturity. They will be assumed to generate semiannual cash flows and all cash flows will be discounted by the Treasury zero-coupon yield for each of those months.

o. Term Federal Funds and Repurchase Agreements, Deposits at Non-FHLBs, and Commercial Paper

These assets will be valued using the static discounted cash flow approach. On Schedule CMR, institutions will report the outstanding principal balance of these assets and their weighted average coupon and maturity. They will be assumed to generate monthly interest cash flows and pay all principal at maturity. The discount rate in each month will be calculated as the zero-coupon Treasury yield in that month plus a spread. The spread will be calculated such that, on average, the spread plus the zero-coupon yields will equal the 3-month commercial paper rate published in Federal Reserve Release G.13.

p. Other Investment Securities (Municipal Securities, Mortgage-Backed Bonds, Corporate Securities, Etc.)

These assets will be valued using the static discounted cash flow approach. On Schedule CMR, institutions will report the outstanding principal balance of these assets and their weighted average coupon and maturity. They will be assumed to generate semiannual interest cash flows and pay all principal at maturity. The discount rate will be calculated as the zero-coupon Treasury yield corresponding to the timing of the cash flow, plus a spread. The spread will be calculated such that, on average, the spread plus the zero-coupon yields will equal the AA-rated corporate bond rate published in Federal Reserve Release G.13.

q. Nonperforming Loans

On Schedule CMR, institutions will report the outstanding principal balance of nonperforming mortgage loans and, separately, of nonperforming nonmortgage loans. The base case market value of each will be set equal to their reported outstanding balances minus valuation allowances for mortgage loans and nonmortgage loans respectively. They will be assumed to have the same interest rate sensitivities as each institution's total mortgage loan portfolio and total nonmortgage loan portfolio respectively.

r. Real Estate Held for Investment

Institutions will report the carrying value of real estate held for investment on Schedule CMR. Because the market value and interest rate sensitivity of real estate investments is very difficult to estimate using financial modeling techniques, OTS proposes to assume their market value equals their book value in all interest rate scenarios. That

is, that they have an interest rate sensitivity of zero. OTS request comment on this approach.

s. Repossessed Assets

Institutions will report the carrying value of repossessed assets on Schedule CMR. The market value of these assets will be assumed to be equal to their book value in all interest rate scenarios. That is, they are assumed to have an interest rate sensitivity of zero.

t. Investment in Unconsolidated Subsidiaries

Institutions will report the carrying value of their investment in unconsolidated subsidiaries on Schedule CMR. The base case market value will be assumed to equal the book value. These assets will be assumed to have the same interest rate sensitivity as the weighted average market value of portfolio equity of the entire savings and loan industry estimated by the OTS Model in the previous quarter.

u. Office Premises and Equipment

Institutions will report the carrying value of office premises and equipment on Schedule CMR. The estimated market value will be equal to the book value in all interest rate scenarios. That is, these assets are assumed to have an interest rate sensitivity of zero.

6. Summary of Methodologies for Liabilities

This section summarizes the methodologies used by the OTS Model to estimate the market value of each of the liability categories listed on Schedule CMR.

a. Liability Discount Rate

The discount rates for most liabilities will be based on the current London Interbank Offered Rates (LIBOR). The only exceptions are Escrow Accounts and Miscellaneous Liabilities. LIBOR is the rate that major international banks charge each other for large-volume loans and thus provides a benchmark for the marginal cost of funds for depository institutions, in general.

The zero-coupon LIBOR curve will be derived from market quotes for several maturities of LIBOR.[6]

In the December 1990 Proposal, OTS proposed to use the secondary market CD rates to discount liabilities. The use of LIBOR discount rates has one major advantage over secondary market CD rates: reliable quotes of CD rates cannot be obtained for maturities beyond 6-months so the remainder of the curve, from 7- to 360-month, would have to be obtained through extrapolation. Overall, accuracy in valuing liabilities will be increased through the use of LIBOR, which is based on a deep and wide market.

b. Demand Deposits

Demand deposits include transaction accounts (NOW, Super NOW, etc.), money market deposit accounts, passbook accounts, and non-interest bearing demand deposits. These liabilities have no stated maturity and their offered rates react relatively slowly to changes in market rates (exception for non-interest bearing deposits which, by definition, do not have an offered rate). Consequently, estimation of the case outflows of demand deposits require assumptions about the relationship between offered rates, balances, and market rates. These assumptions will then be applied to the reported rates and balances to derive market values for demand deposits.

These relationships will be estimated statistically for each type of demand deposit. The change in the offered rate on interest-bearing deposits will be assumed to depend on changes in the Treasury bill rate, and will be estimated to allow for the possibility of differing speeds of adjustment under rising and falling market rates. Interest payments will be assumed to be credited to the account balance rather than being paid out monthly. Outflows of accumulated interest and principal depend on the attrition of deposit balances (due to depositor relocation and other factors) and, for interest-bearing deposits, on the relationship between offered and market rates. In addition to principal and interest, the cash outflows of demand deposits also include an estimate of the non-interest cost of maintaining the deposits.

A major change in the valuation methodology for demand deposits, relative to that described in the December 1990 Proposal, is the separate valuation of non-interest bearing demand deposits. The former methodology tended to overstate their sensitivity to changes in interest rates because these accounts were reported with (and, hence, valued as) mortgage escrow accounts which usually have longer maturities. In the future, OTS plans to develop the ability to estimate institution-specific attrition rates for core deposits for institutions that elect to report data that will permit such estimation on Schedule CMR.

c. Escrow Accounts

This category includes escrow accounts associated with mortgages owned by the institution, escrow accounts associated with mortgages serviced for others, and other escrows. Since this type of account has no explicit maturity, balances remaining with the association at each point in the future must be estimated. Future balances of escrow accounts associated with mortgages held in portfolio and mortgages serviced for others will be assumed to depend on the prepayment of each of those two types of mortgages. Throughout the life of the underlying mortgages, interest payments made on these accounts will be assumed to be based on the rates reported in Schedule CMR.

The discount rates used to value these two types of escrow accounts are the same as the discount rates used to value the underlying assets, mortgages held in portfolio and mortgage servicing rights, respectively. This approach recognizes that a mortgage, either held in portfolio or serviced for others, and its associated escrow account are an inseparable bundle.

Other Escrows will be assumed to have a constant annual run-off rate. The rate paid on these accounts will be assumed to remain equal to the rate reported in Schedule CMR. To calculate the market value for Other Escrows, cash flows will be discounted by LIBOR.

d. Fixed-Rate, Fixed-Maturity Deposits

The valuation methodology for these deposits differs depending on whether they are retail or brokered accounts. The valuation of retail deposits will take into account the fact that depositors often roll their deposits over at below "market" interest rates. Because of this feature, the actual maturity and future offered rates of these deposits have to be projected. The roll-over and offered rate behavior will be based on their statistically estimated relationship to market rates. The offered rate on retail deposits of this type reacts somewhat sluggishly to changes in interest rates in either direction and a significant proportion of the account balances normally roll-over, and do so at below market interest rates.

Brokered deposits will be assumed to be replaced at maturity by deposits paying market rates and to be withdrawn whenever the early-withdrawal penalty is less than the

[6] The method used to derive the LIBOR curve is similar to that shown in Chapter 10 of Bierwag, G., *Duration Analysis: Managing Interest Rate Risk*, Ballinger Publishing, 1987.

spread between current market rate and the rate on the account.[7]

Both types of deposits, brokered and retail, will be assumed to behave like zero-coupon instruments in that monthly payments of interest will be credited to the account balance rather than being paid out. Outflows of principal and accumulated interest will be assumed to occur upon early-withdrawal or when the account balance is no longer rolled over. In addition to principal and accumulated interest, the cash outflows of deposits will include an estimate of the non-interest costs attributable to maintaining such deposits.

The only early-withdrawal penalties considered explicitly will be those stated in terms of months of forgone interest. Different penalties, as well as other options (*e.g.*, the option to roll over at a predetermined rate, etc.), can be valued by the reporting institution and reported separately in the Schedule CMR section titled Reporting of Market Value Estimates.

The proposed methodology, especially that for retail deposits, varies considerably from that described in the December 1990 Proposal. First, the value of retail deposits will incorporate the value of future patronage (by current account holders), thus producing lower, less rate-sensitive estimates of the value of these type of deposits.

Second, classifying deposits as retail and brokered, rather than deposits with balance under and over $80,000 as was proposed in the December 1990 Proposal, provides a more meaningful way to distinguish between deposits whose value incorporates the value of future patronage and deposits whose value does not.

e. Fixed-Rate, Fixed-Maturity Borrowings

FHLB advances, other borrowings, redeemable preferred stock, and subordinated debt, are all termed "fixed-rate, fixed maturity borrowings," and are assumed to have cash flows that depend only on the instruments' remaining maturity and coupon. Thus, cash flows are assumed to consist of periodic interest payments, with principal repaid at maturity. At the institution's option, the market value of any option embedded in these instruments (*e.g.*, early-withdrawal penalties, call features, etc.) can be valued by the reporting institution and reported separately on Schedule CMR in the section titled Reporting of Market Value Estimates.

The accuracy in valuing these instruments will be improved relative to that resulting from the methodology described in the December 1990 Proposal due to changes in their reporting. Schedule CMR will collect relatively detailed information on their coupons, thereby minimizing aggregation errors due to convexity.

f. Variable-Rate, Fixed-Maturity Liabilities

This category includes liabilities that have contractually stated maturities and index rates (*e.g.*, certificate of deposit, FHLB advances, and other liabilities). Schedule CMR will collect information on the main characteristics of each type of variable-rate, fixed-maturity liability (*e.g.*, type of index rate; balance, margin, rate reset frequency, time to next reset, and remaining maturity). The cash outflows of variable-rate liabilities will be calculated based on reported balances and assumptions about the relationship between the index and market rates.

These relationships will be estimated statistically for each index rate. Thus, for example, the OTS Model will estimate separately expected future levels of Treasury rates and LIBOR of various maturities, Fed Funds, Prime and other rates based on the current Treasury yield curve. Cash flows will be assumed to consist of periodic interest payments with principal repaid at maturity. At the institution's option, the market value of any embedded option (*e.g.*, early-withdrawal penalties, call features, etc.) can be valued by the institution and reported separately in Schedule CMR, in the section titled, Reporting of Market Value Estimates.

Relative to the methodology described in the December 1990 Proposal, the proposed methodology estimates the market value of variable-rate liabilities more accurately because the amount of information reported in Schedule CMR on these liabilities is much greater than that available in the current Schedule MR.

g. Other Liabilities

This category includes Collateralized Mortgage Securities Issued, and Miscellaneous Liabilities I and II.

Collateralized Mortgage Securities Issued consists of collateralized mortgage securities that are not recorded as sales. Institutions have the option and are encouraged to report the market value of these securities in Schedule CMR in the section, Reporting of Market Value Estimates. For those institutions that elect not to use this option, it will be assumed that the market value of this category is equal to its book value in all interest rate scenarios.

Miscellaneous Liabilities I consists of Accrued Interest Payable, Accumulated and Accrued Taxes, Dividends Payable, Accounts Payable, and Other Liabilities and Deferred Income. The market value of this category will be assumed to be equal to its book value in all interest rate scenarios.

Miscellaneous Liabilities II consists of Financial Options Fees Received, Deferred Gains or Losses on Liability Hedges, and Deferred Income Taxes. The market value of this category will be assumed to be zero.

7. Summary of Methodologies for Off-Balances Sheet Positions

This section summarizes the methodologies used by the OTS Model to estimate the market values of off-balance sheet positions.

a. Optional Commitments to Originate Mortgages

Optional commitments to originate mortgages are obligations to originate mortgage loans at a specified interest rate (fixed or adjustable), where the potential borrower is not obligated to take the loan. Only those optional commitments to originate for which a specified interest rate (a "rate lock") has been offered to the potential borrower will be reported on Schedule CMR.

The OTS Model will distinguish, and value separately, optional commitments to originate the following eight categories of mortgages: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages.

Institutions will report the following information on Schedule CMR for each position: (1) The dollar amount, (2) the weighted-average coupon, (3) the expected rate of fallout, and (4) the dollar amount of loan origination and discount fees that will be collected.

To value commitments to originate mortgages, the OTS Model must first estimate the amount of the commitments that will actually close and become mortgage loans. This is accomplished by estimating the percentage of commitments that will not close, (that will "fallout"), and subtracting this from the commitments reported.

In the base case interest rate scenario, the Model will use the expected fallout rates reported by the institution on

[7] The term "brokered deposit" is defined in the FDIC Improvement Act (1991). It refers to funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts.

Schedule CMR. The rate of fallout will be decreased in the increasing rate scenarios, and increased in the decreasing rate scenarios. The change in the rate of fallout in each alternate interest rate scenario will be estimated based on a statistical analysis of observed fallout rates for changes in interest rates, and estimates of changes in fallout provided by various mortgage banking professionals.

The next step is to determine the market value of the loans expected to close. The methodology used to value mortgages is discussed in the Section B.5.

Because commitments to originate mortgages represent a commitment to provide a mortgage, as opposed to the mortgage itself, the market value of the commitment will be determined by subtracting par from the market value of the underlying mortgage. For example, if the underlying mortgage loan is determined to have a value of 102 percent of par, the commitment to make the loan would have a market value equal to 2 percent of par.

The value of these commitments will be adjusted to compensate for rate buy-ups and buy-downs. If an institution is collecting fees in excess of a normal level of operating costs, possibly due to an extensive "buy-down" program, the excess income will be added to estimated market value. The reverse also holds, should fees amount to less than operating costs.

This methodology represents an improvement over that proposed in the December 1990 Proposal because of the more detailed data that will be provided by institutions. The commitments will be grouped into categories according to their interest-rate sensitivity. As a result, 6-month and 1-year COFI ARMs will be reported separately from 1-year Treasury ARMs. In addition, commitments to originate balloon mortgages will be valued. Adjusting expected fallout in the shocked-rate scenarios will improve sensitivity estimates, as will compensating for buy-ups and buy-downs.

b. Firm Commitments to Purchase, Sell, or Originate Mortgages

A firm commitment to purchase or sell mortgages is an agreement to buy or sell a specified security on a particular date in the future at a specified price. A firm commitment to originate a mortgage is an obligation, binding upon both the lender and the borrower, to transact a specified mortgage loan at a specified interest rate.

The OTS Model will value firm commitments on the following eight categories of mortgages: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages. The Model will distinguish, and value separately, commitments to transact whole loans versus MBS, and loans transacted on a "servicing retained" basis versus those transacted on a "servicing released" basis.

Schedule CMR will contain the following information on the mortgages underlying each position of firm commitments reported: (1) The category of loan or security, (2) the notional amount, (3) the coupon or pass through rate, and (4) the price to be paid or received.

The OTS model will evaluate firm commitments to purchase, sell, or originate mortgages using the option-adjusted approach that is used for valuing single family mortgages. See Section B.3 for details. Commitments will be valued as the difference between the value of the underlying security of the contract and par value. An adjustment for the forward nature of the contract will be made by adding an estimate of the cost of carry to the coupon of the forward contract.

In the methodology described in the December 1990 Proposal, firm commitments were reported with futures contracts. As a result, some firm commitments could have been identified and valued as futures contracts. Also, information was not provided on the exact type of mortgage underlying the commitment, whether the instrument was a loan or a security, or whether servicing would be retained or released.

c. Optional Commitments to Purchase or Sell Mortgages

An optional commitment to purchase mortgages is a contract that grants the buyer of the option the right, but not the obligation, to buy a specified type and amount of mortgages or mortgage-backed securities, with a specified weighted average coupon (for mortgages) or pass-through rate (for MBSs), at a specified price (called the "strike price"), on a specified date (called the "expiration date"). An optional commitment to sell mortgages is a contract that grants the buyer of the option the right, but not the obligation, to sell a specified type and amount of mortgages or MBSs, with a specified WAC or pass-through rate, at a specified price on a specified date.

The OTS model will value the four types of option positions on each of eight categories of mortgages that underlie the option. The four option positions are (1) long positions to purchase mortgages, (2) long positions to sell mortgages, (3) short positions to purchase mortgages, and (4) short positions to sell mortgages. (A long position means the thrift owns the option. A short position means the thrift has sold the option.) The following categories of mortgages underlie the options: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages.

Schedule CMR will contain the following information on each option position reported: (1) The coupon or pass-through rate, (2) the strike price, (3) the notional principal amount, and (4) the expiration date.

Optional commitments on mortgages will be valued with the Black 76 option valuation model described in Section B.4. Five inputs will be used to calculate the options value. The price of the underlying mortgage, as calculated by the OTS model (see a description of the methodology for pricing mortgages in Section B.5), plus an adjustment for the cost of carrying the asset, will represent the forward price. The strike price and expiration date are reported on Schedule CMR. The 3-month Treasury rate will be used as a proxy for the risk-free rate. Volatility will be estimated as the implied volatility of the 10-year Treasury note futures option contract.

To calculate the market values in the shocked rate environments, two adjustments are made to the inputs of the model. The price of the underlying mortgage corresponding to the shocked environment is used (with the adjustment for the cost of carry), and the risk-free rate of return is adjusted by the amount of the shock.

Optional commitments to purchase or sell mortgages were not valued under the December 1990 Proposal because they were reported in the same cells as commitments to originate mortgages. Schedule MR could not distinguish the instrument being reported, so the model valued the more common instrument, commitments to originate.

d. Commitments to Purchase or Sell Non-Mortgage Financial Assets and Liabilities

Commitments to purchase or sell non-mortgage financial assets and liabilities are agreements to purchase or sell financial assets other than mortgages or mortgage-backed securities, and

commitments to purchase or sell liabilities, for a specified fixed price, on a specified date. (Commitments to purchase or sell mortgages or mortgage-backed securities are discussed in the Section 7.B., titled Firm Commitments to Purchase, Sell or Originate Mortgages.)

Institutions will report the following information on Schedule CMR for the instruments underlying the commitments: (1) Whether they are assets, core deposits (transaction accounts, money market deposit accounts, and passbook accounts), or other liabilities, (2) the dollar (par) amount, (3) the maturity (if the position consists of core deposits, no information is provided on maturity), (4) the coupon or interest rate paid or received, and (5) the price (as a percentage of par) to be paid or received.

Because these commitments represent agreements to purchase or sell the underlying asset or liability, as opposed to the asset or liability itself, the commitment is valued by estimating the value of the underlying asset or liability and subtracting the price at which the institution has agreed to buy or sell it. For example, if an institution has agreed to sell certain bonds for 98 percent of par, and the bonds are determined to have a value of 101 percent of par in some interest rate scenario, the commitment will have a market value of negative 3 percent of par in that scenario.

Positions in other liabilities will be assumed to consist of commitments to buy or sell certificates of deposit (CDs). The valuation of CDs and core deposits is discussed in Section 6.

Positions in non-mortgage financial assets will be valued using a static discounted cash flow approach. These positions will be assumed to consist of bonds paying semiannual interest payments. The OTS model will discount the cash flows by the rate that will return the price at which the institution is transacting the instrument (i.e., the internal rate-of-return of the instrument). For example, if an institution has agreed to sell certain bonds for 98 percent of par, the model will use that discount rate in the base case that causes the sum of the discounted cash flows of the bond to equal 98 percent of par. This assumption will result in these commitments having a base case value of zero. (A contract to transact an asset at its current market price should have little value.)

In the alternate rate scenarios, this single discount rate will be altered by the amount of the shock, the market value of the bond will be recalculated, and this will be subtracted from the price at which the institution has agreed to transact the asset.

This methodology improves on the December 1990 Proposal because under that proposal, these commitments were reported in cells with other instruments such as futures, commitments on mortgages, and loans-in-process. The Model could not distinguish the instrument reported, so the instrument most commonly reported in each cell would be valued. As a result, these commitments could be recognized and valued as some other instrument.

e. Interest-Rate Swaps

i. *Fixed-for-Floating Swaps.* Fixed-for-floating interest-rate swaps are agreements to exchange a stream of fixed-rate interest payments for a stream of interest payments that float with a market index of interest rates. The coupon payments are based on a specified notional principal amount.

Schedule CMR will distinguish, and the OTS model will value separately, fixed-for-floating swaps with each of the following floating rate indices: one-month, three-month, and six-month LIBOR, three-month, one-year, three-year, five-year, seven-year, and ten-year Treasury, the 11th District Cost of Funds (COFI), and the prime rate.

Schedule CMR will contain the following information about each swap position reported: (1) The floating-rate index, (2) the fixed rate, (3) the notional principal amount, (4) the maturity date, and (5) the margin to be added to the floating-rate index, if any. In addition, to value each position, the model will utilize the following information, effective as of the report date: the zero-coupon Treasury yield curve, the LIBOR curve, the COFI rate, and the prime rate.

The market value of a swap will be estimated as the present (discounted) value of its expected cash flows. A swap's cash flows are determined on the swap's reset dates, and the payments are actually exchanged one period later. For example, if a swap resets quarterly, the payment determined on the June 15 reset date is exchanged on September 15.

The cash flows will be estimated by comparing the fixed-rate coupon to the projected floating-rate coupon on each reset date. For swaps based on LIBOR and Treasury indices, the projected floating rate will equal the corresponding implied forward LIBOR or Treasury rate. In the above example, the projected floating rate for the June 15 reset date equals the 91-day implied forward rate as of that date.

COFI rates will be projected using a model based on lagged short-term and long-term Treasury rates. The prime rate will also be projected as a function of implied forward Treasury rates.

The expected cash flow will be computed as the difference between the fixed coupon minus the projected floating coupon (plus any applicable margin), multiplied by the notional amount of the swap. This figure will then be divided by the number of resets in a year (*e.g.*, four, for swaps which reset quarterly).

Swaps contain one additional cash flow that must be valued: the first cash flow to be exchanged after the report date. As of the report date, the swap's next cash flow will be exchanged on the next reset date. However, this payment was determined on the prior reset date, which was before the report date. To estimate this cash flow, the OTS Model will compare the swap's fixed rate to what the floating rate was on the prior reset date.

Each cash flow will be discounted by the zero-coupon rate corresponding to the month the payment is exchanged to determine present value. The market value of the swap is equal to the sum of the discounted cash flows.

To determine the swap's market value in the shocked interest rate environment, the corresponding Treasury or LIBOR curve will be adjusted by the amount of the shock, and market value recalculated. The shock will effect both the projected floating rates and the spot curves used for discounting. (The first cash flow is not effected by the shock, though its value changes because it will be discounted by shocked interest rates.)

ii. *Basis Swaps.* Basis swaps are agreements to exchange one stream of interest payments that float with an index of market rates for a stream that floats with a different index of market rates. The coupon payments are based on a specified notional principal amount.

Schedule CMR will distinguish, and value separately, four types of basis swaps: one-month LIBOR-for-COFI, three-month LIBOR-for-COFI, six-month LIBOR-for-COFI, and three-month Treasury-for COFI swaps. (Treasury-for-LIBOR swaps are not reported on Schedule CMR because they are not considered to exhibit significant sensitivity to the interest rate simulations performed by the OTS model.) Schedule CMR will collect essentially the same information for these contracts as for fixed-for-floating swaps.

The methodology used to value basis swaps will be similar to that of fixed-for-floating swaps. However, instead of projecting the floating rate forward and

comparing it to the fixed rate on each reset date, two floating rates will be projected. The same methods will be used to project rates: implied forward rates will be calculated to project LIBOR and Treasury rates, and COFI will be projected as a lagged function of short and long term Treasury rates. (Because COFI rates react more slowly to rate shocks than Treasury or LIBOR rates, basis swaps in which COFI is received will tend to increase in value when rates fall, and vice versa.)

iii. *Swaptions.* A swaption is an option to enter into a specified swap agreement on a specified future date. The OTS Model will evaluate swaptions on fixed-for-floating swaps.

Schedule CMR will contain the following information on each swaption reported: (1) The floating-rate index, (2) the fixed rate, or strike rate, (3) the notional principal amount, (4) the expiration date of the swaption (the date the swap would begin if the swaption were exercised), (5) the date the swap underlying the swaption matures, and (6) the margin to be added to the floating-rate index, if any. In addition, to value each position, the model will utilize the spot Treasury yield curve and the LIBOR curve.

Swaptions will be valued with the Black 76 option valuation model described in Section B.4. Five inputs will be used to calculate the option's value. The forward swap rate will be estimated as the corresponding implied forward rate. (For example, if an option on a two-year swap expired in six months, the forward swap rate would equal the two-year-forward rate beginning six months out.) The strike price and expiration date will be taken from Schedule CMR. The 3-month Treasury rate will be used as a proxy for the risk-free rate. Volatility will be estimated as the implied volatility of the 5-year Treasury note futures contract.

To calculate the market value in the shocked rate environment, two adjustments will be made to the Model. The corresponding Treasury or LIBOR curves will be adjusted by the amount of the shock, which alters the forward swap rate. In addition, the risk-free rate of return will be adjusted by the amount of the shock.

Mortgage Swaps

Mortgage swaps are agreements to exchange a stream of fixed-rate mortgage interest payments for a stream of interest payments that float with a market index of interest rates. The payments are based on a specified notional principal amount which is reduced monthly as a function of the actual amortization and prepayment experience of a specified pool of MBSs.

Schedule CMR will distinguish mortgage swaps with one-month, three-month, and six-month LIBOR floating rate indices. Schedule CMR will contain the following information about each mortgage swap position reported: (1) The floating-rate index, (2) the mortgage coupon, (3) the notional principal amount, (4) the maturity date of the pool of mortgages underlying the swap, and (5) the margin to be added to the floating-rate index, if any.

Mortgage swap agreements are generally constructed to mimic an investment in the underlying mortgage funded by floating-rate borrowings. In the OTS model, the valuation of mortgage swaps will be simplified by the assumption that the value of the borrowings are equal to par. Therefore, the value of the swap will equal the value of the mortgage minus par. For example, if the mortgage underlying a swap is valued at 98% of par, the swap will have a value of −2% of par (for the party receiving the fixed mortgage coupon).

Amortizing Swaps

An amortizing swap is a swap on which the notional principal amount amortizes over time. Any of the swaps reported on Schedule CMR can be valued as amortizing swaps. (Of course, mortgage swaps are always valued as amortizing.)

Schedule CMR will collect the same data on the swap regardless of whether or not it is amortizing. Data on the swap's amortization schedule is not collected. Therefore, the OTS model will assume the swap amortizes in a "straight line" manner over the life of the swap.

This methodology for valuing swaps represents a substantial improvement over that described in the 1990 Proposal. Under that proposal, the floating index was not specified, margins could not be reported, and the expiration date was known only within a range. Forward swaps, swaptions, mortgage swaps and other amortizing swaps could not be distinguished. Therefore, all swaps reported on Schedule MR were assumed to be fixed-for-floating and were evaluated as such.

Interest Rate Caps and Floors

An interest rate cap is a contract that compensates the holder of the contract when a specified interest rate index increases above a specified rate (called the cap rate or strike rate). An interest rate floor is a contract that compensates the holder of the contract when a specified interest rate index decreases below a specified rate (called the cap rate or strike rate). The party that has purchased the cap or floor is said to be "long" the cap or floor, while the party that has sold the cap or floor is said to be "short" the cap or floor. Caps and floors are generally entered into for an extended period of time. They are typically evaluated every quarter or six months. Payments during the subsequent period depend on the relationship of the designated interest rate to the strike rate on the evaluation date.

Schedule CMR will contain the following information about each cap or floor position reported: (1) The interest rate index underlying cap or floor, (2) the notional amount, (3) the date the cap or floor begins (if the contract contains a forward provision), (4) the maturity date, and (5) the strike rate.

Caps and floors will be valued with the derivative of the Black-Scholes option valuation model that was described in Section B.4. Each cap or floor will be valued as the sequence of options represented by the contract. Five inputs will be used to calculate each options value. The forward rate will be estimated as the corresponding implied forward rate. The strike rate and expiration date will be taken from Schedule CMR. The 3-month Treasury rate will be used as a proxy for the risk-free rate. Volatility for the near term options of the cap or floor will be estimated as the implied volatility of the nearby Eurodollar futures contract. This volatility will be adjusted for each subsequent option so that it approaches an estimate of the long term historical volatility of short term interest rates.

To calculate the market value in the shocked rate environment, two adjustments will be made to the Model. The corresponding Treasury of LIBOR curves will be adjusted by the amount of the shock, which alters the implied forward rates used to value each option. In addition, the risk-free rate of return will be adjusted by the amount of the shock.

In the methodology described in the 1990 Proposal all caps were assumed to be based on the 3-month LIBOR rate, while floors were not valued. Cap values were determined by a model similar to the one described in this notice.

Futures

The OTS model will value long and short positions in the following futures contracts: Treasury bond, 2-year, 5-year, and 10-year Treasury notes, 1-month LIBOR, 3-month Eurodollar, 3-month Treasury bill, 30-day interest rate, 3-yea

and 5-year swaps, and 30-year mortgage-backed futures. Institutions will report on Schedule CMR a contract code that represents the type of futures contract, and the notional principal amount of their futures position(s).

Futures contracts are "marked-to-market" daily and cash is paid or received so that the market value of the position is zero at the end of each day. As a result, the market value of futures in the base case as of the reporting date is zero.

The estimated market value of a futures position in the alternate rate scenarios is determined by the difference between the estimated futures price in the alternate rate environment and the futures price in the base case. For Treasury note or bond futures, the OTS Model will estimate the futures price of the cheapest-to-deliver (CTD) security in each alternate rate environment. The futures price in the base case is then subtracted from the futures price in the alternate scenario and multiplied by the notional amount of the position to determine the market value of the position in that scenario.

To value the 1-month LIBOR, 3-month Eurodollar, 3-month Treasury bill, and 30-day interest rate futures, the base case yield is adjusted by the amount of the interest rate shock. (Treasury bill futures are adjusted by the amount that a discount yield would shift, given the shock to the zero-coupon Treasury curve.) Futures contracts have a specific dollar value per yield point, so the market value of these contracts in each scenario equals the product of this specific value and the change in the yield caused by the rate shock.

The OTS Model values 3-year and 5-year swaps futures in the same manner as fixed-for-floating swaps (refer to the Swaps section for discussion).

This methodology represents two improvements over that described in the December 1990 Proposal. The OTS model will accommodate several more futures contracts. Furthermore, the use of CTD securities will improve the valuation of Treasury note and bond futures.

Options on Futures

A call option on a futures contract is a contract that grants the buyer of the option the right, but not the obligation, to acquire a long position in a futures contract at a specified price (called the "strike price") and on a specified date (called the "expiration date"). A put option on a futures contract is a contract that grants the buyer of the option the right, but not the obligation, to acquire a short position in a futures contract at a specified price and on a specified date.

The OTS Model will value the four types of options positions on each of eight different futures contracts. The four option positions are (1) long call, (2) long put, (3) short call and (4) short put. (A long position indicates the thrift has bought the option. A short position indicates the thrift has sold the option.) The eight futures contracts underlying the options are (1) 30-day interest rate futures, (2) 3-month Treasury bill futures, (3) 2-year Treasury note futures, (4) 5-year Treasury note futures, (5) 10-year Treasury note futures, (6) Treasury bond futures, (7) 1-month LIBOR futures, and (8) Eurodollar futures.

Schedule CMR will contain the following information on each option position reported: (1) The notional principal amount, (2) the strike price, and (3) the expiration date of the option.

Options on futures will be valued with the derivative of the Black-Scholes option valuation model that was described in the section titled "Basic Valuation Methodologies." Five inputs will be used to calculate the options value. The price of the underlying futures contract will represent the futures price. The strike price and expiration date will be used from Schedule CMR. The 3-month Treasury rate will be used as proxy for the risk-free rate. Volatility will be estimated as the implied volatility of the corresponding option contract (if liquid) or of a similar contract.

To calculate the market value in the shocked rate environments, two adjustments will be made to the inputs of the model. The futures price in the corresponding shocked environment is used (for a description of how futures prices are calculated, see the Futures section, below) and the risk-free rate of return is adjusted by the amount of the shock.

Though this methodology for valuing options on futures is essentially the same as the one described in the 1990 Proposal, market value estimates will be more accurate for two reasons. The institution will report the specific type, expiration, and strike price or rate of the option held on Schedule CMR. In addition, the methodology for estimating the prices of the futures underlying the option in the alternate rate scenarios will be more accurate.

Construction LIP

Construction loans in process (construction LIP) are construction loans on which the institution has closed but has not yet disbursed the entire proceeds. Only that construction LIP for which a fixed interest rate has been specified will be reported on Schedule CMR. Floating-rate agreements or agreements wherein the rate is determined at the time the funds are disbursed will not be reported on Schedule CMR.

Schedule CMR contains the following information on construction LIP: (1) The amount of undisbursed funds, (2) the term until the expected receipt of principal on the loans, and (3) the interest rate.

Because construction LIP represents a commitment to provide a loan, as opposed to the loan itself, the market value of the commitment will be determined by estimating the value of the underlying loan, and subtracting par. For example, if the underlying loan is determined to have a value of 102 percent of the par, the commitment to make the loan would have market value equal to 2 percent of par. The underlying loan is valued as a fixed-rate construction loan (see the valuation of construction loans in Section V.E).

In the alternate interest rate scenarios, the discount rate will be adjusted by the amount of the shock, the value of the underlying loan will be recalculated, and par subtracted.

Under the December 1990 Proposal, construction LIP was not valued because it cannot be distinguished on Schedule MR. Construction LIP is reported in the same cells as futures and commitments on mortgages, and the model values these other commitments. As a result, positions in construction LIP are treated as either futures or commitments on mortgages.

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Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items
Prepared by:	Telephone Number

ASSETS

FIXED-RATE SINGLE-FAMILY FIRST MORTGAGE LOANS & MORTGAGE-BACKED SECURITIES:

		Less Than 8%
30-Year Mortgages and MBS:		
Mortgage Loans	001	$
WARM	006	months
WAC	011	. %
$ of Which Are FHA or VA Guaranteed	016	$
Securities Backed By Conventional Mortgages	026	$
WARM	031	months
Wtd Avg Pass-Thru Rate	036	. %
Securities Backed by FHA or VA Mortgages	046	$
WARM	051	months
Wtd Avg Pass-Thru Rate	056	. %
15-Year Mortgages and MBS:		
Mortgage Loans	066	$
WAC	071	. %
Mortgage Securities	076	$
Wtd Avg Pass-Thru Rate	081	. %
WARM (of Loans & Securities)	086	months
Balloon Mortgages and MBS:		
Mortgage Loans	096	$
WAC	101	. %
Mortgage Securities	106	$
Wtg Avg Pass-Thru Rate	111	. %
WARM (of Loans & Securities)	116	months

Total Fixed-Rate Single-Family First Mortgage Loans and Mortgag

opy of Schedule CMR

	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)
)		**DRAFT**

	Coupon						
%	8.00 to 8.99%		9.00 to 9.99%		10.00 to 10.99%		11.00% & Above	
	002	$	003	$	004	$	005	$
ths	007	months	008	months	009	months	010	months
%	012	. %	013	. %	014	. %	015	. %
	017	$	018	$	019	$	020	$
	027	$	028	$	029	$	030	$
ths	032	months	033	months	034	months	035	months
%	037	. %	038	. %	039	. %	040	. %
	047	$	048	$	049	$	050	$
ths	052	months	053	months	054	months	055	months
%	057	. %	058	. %	059	. %	060	. %
	067	$	068	$	069	$	070	$
%	072	. %	073	. %	074	. %	075	. %
	077	$	078	$	079	$	080	$
%	082	. %	083	. %	084	. %	085	. %
ths	087	months	088	months	089	months	090	months
	097	$	098	$	099	$	100	$
%	102	. %	103	. %	104	. %	105	. %
	107	$	108	$	109	$	110	$
%	112	. %	113	. %	114	. %	115	. %
ths	117	months	118	months	119	months	120	months

tgage-Backed Securities ..... 125 $

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ASSETS--Continued

ADJUSTABLE-RATE SINGLE-FAMILY FIRST MORTGAGE LOANS & MORTGAGE-BACKED SECURITIES		Curre by Co
		6 Mo or Less
Teaser ARMs		
Balances Currently Subject to Introductory Rates	141	$
WAC	146	. %
Non-Teaser ARMs		
Balances of All Non-Teaser ARMS	156	$
Wtd Avg Margin	161	bp
WAC	166	. %
WARM	171	months
Wtd Avg Time Until Next Payment Reset	176	months

Total Adjustable-Rate Single-Family First Mortgage Loans & Mortg

MEMO ITEMS FOR ALL ARMS (Rptd at CMR185):		Curre by Co
ARM Balances by Distance to Lifetime Cap		6 Mo or Less
Balances W/Coupon Within 200 bp of Lifetime Cap	186	$
Wtd Avg Distance from Lifetime Cap	191	bp
Balances w/Coupon 201 - 400 bp from Lifetime Cap ...	196	$
Wtd Avg Distance from Lifetime Cap	201	bp
Balances W/Coupon Over 400 bp from Lifetime Cap ...	206	$
Balances Without Lifetime Cap	211	$
ARM Cap & Floor Detail		
Balances Subject to Periodic Rate Caps	221	$
Wtd Avg Periodic Rate Cap (in basis points)	226	bp
Balances Subject to Periodic Rate Floors	231	$
Balances Subject to Lifetime Rate Floors	236	$
MBS Included in ARM Balances	241	$

	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)

urrent Market Index ARMs y Coupon Reset Frequency					Lagging Market Index ARMs by Coupon Reset Frequency			
	7 Mo to 2 Yrs		2+ Yrs to 5 Yrs		1 Month		2 Mo to 5 Yrs	
	142	$	143	$	144	$	145	$
%	147	. %	148	. %	149	. %	150	. %
	157	$	158	$	159	$	160	$
bp	162	bp	163	bp	164	bp	165	bp
%	167	. %	168	. %	169	. %	170	. %
ths	172	months	173	months	174	months	175	months
ths	177	months	178	months	179	months	180	months

Mortgage-Backed Securities ..... 185 $

urrent Market Index ARMs y Coupon Reset Frequency					Lagging Market Index ARMs by Coupon Reset Frequency			
s	7 Mo to 2 Yrs		2+ Yrs to 5 Yrs		1 Month		2 Mo to 5 Yrs	
	187	$	188	$	189	$	190	$
bp	192	bp	193	bp	194	bp	195	bp
	197	$	198	$	199	$	200	$
bp	202	bp	203	bp	204	bp	205	bp
	207	$	208	$	209	$	210	$
	212	$	213	$	214	$	215	$
	222	$	223	$	224	$	225	$
bp	227	bp	228	bp	229	bp	230	bp
	232	$	233	$	234	$	235	$
	237	$	238	$	239	$	240	$
	242	$	243	$	244	$	245	$

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Prepared by:	Telephone Number	

ASSETS-Continued

MULTIFAMILY & NONRESIDENTIAL MORTGAGE LOANS & SECURITIES

	Balloons		Fully Amortizing	
Adjustable-Rate:				
Balances	261 $		262 $	
WARM	263	months	264	months
Remaining Term to Full Amortization	265	months		
Rate Index Code	267		268	
Margin	269	bp	270	bp
Reset Frequency	271	months	272	months
MEMO: ARMs within 300 bp of Life Cap				
Balances	273 $		274 $	
WA Distance to Lifetime Cap (bp)	275	bp	276	bp
Fixed-Rate:				
Balances	281 $		282 $	
WARM	283	months	284	months
Remaining Term to Full Amortization	285	months		
WAC	287 .	%	288 .	%

CONSTRUCTION & LAND LOANS

	Adjustable Rate		Fixed Rate	
Balances	291 $		292 $	
WARM	293	months	294	months
Rate Index Code	295			
Margin in Col 1; WAC in Col 2	297	bp	298 .	%

SECOND MORTGAGE LOANS & SECURITIES

	Adjustable Rate		Fixed Rate	
Balances	311 $		312 $	
WARM	313	months	314	months
Rate Index Code	315			
Margin in Col 1; WAC in Col 2	317	bp	318 .	%
Reset Frequency	319	months		

DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)

ASSETS-Continued

COMMERCIAL LOANS		Adjustable Rate			Fixed Rate		
Balances	325	$		326	$		
WARM	327		months	328			months
Margin in Col 1; WAC in Col 2	329		bp	330		.	%

CONSUMER LOANS		Adjustable Rate			Fixed Rate		
Balances	335	$		336	$		
WARM	337		months	338			months
Rate Index Code	339						
Margin in Col 1; WAC in Col 2	341		bp	342		.	%
Reset Frequency	343		months				

MORTGAGE-DERIVATIVE SECURITIES--BOOK VALUE		High Risk			Low Risk		
Collateralized Mortgage Obligations:							
Floating Rate	351	$		352	$		
Fixed Rate:							
Remaining WAL <= 5 Years	353	$		354	$		
Remaining WAL 5-10 Years	355	$		356	$		
Remaining WAL Over 10 Years	357	$					
Superfloaters	359	$					
Inverse Floaters & Super POs	361	$					
Other	363	$		364	$		
CMO Residuals:							
Fixed Rate	365	$		366	$		
Floating Rate	367	$		368	$		
Stripped Mortgage-Backed Securities:							
Interest-Only MBS	369	$		370	$		
WAC	371		. %	372		.	%
Principal-Only MBS	373	$		374	$		
WAC	375		. %	376		.	%
Total Mortgage-Derivative Securities--Book Value	377	$		378	$		

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Prepared by:	Telephone Number

ASSETS-Continued

MORTGAGE LOANS SERVICED FOR OTHERS

Fixed-Rate Mortgage Loan Servicing

			Coupon of	
			Less Than 8%	8.00 to 8
Balances Serviced	401	$	402	$
WARM	406	months	407	
Wtd Avg Servicing Fee	411	bp	412	

Total # of Fixed-Rate Loans Serviced That Are:

Conventional Loans	421	loans
FHA/VA Loans	422	loans
Subserviced by Others	423	loans

Adjustable-Rate Mortgage Loan Servicing

			Index on Serviced Loa	
			Current Market	Lagging M
Balances Serviced	431	$	432	$
WARM	433	months	434	
Wtd Avg Servicing Fee	435	bp	436	

Total Balances of Mortgage Loans Serviced for Others .....

CASH, DEPOSITS, & SECURITIES

Cash, Non-Interest-Earning Deposits, Overnight Fed Funds, Overnight Repos .....

Equity Securities and All Mutual Funds .....

Zero-Coupon Securities .....

Government and Agency Securities and Deposits at FHLBs .....

Term Fed Funds, Term Repos, and Non-FHLB Deposits .....

Other (Munis, Mortgage-Backed Bonds, Corporate Securities, Commercial Paper,

Total Cash, Deposits, & Securities .....

	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)

on of Fixed-Rate Mortgages Serviced for Others

to 8.99%		9.00 to 9.99%		10.00 to 10.99%		11.00% & Above	
	403	$	404	$	405	$	
months	408	months	409	months	410	months	
bp	413	bp	414	bp	415	bp	

Loan
ng Market
months
bp

Total # of Adjustable-Rate Loans Serviced	441	loans
Of Which, Number Subserviced By Others ..	442	loans

.....	450	$

	Balances		WAC		WARM	
.....	461	$				
.....	464	$				
.....	470	$	471	. %	472	months
.....	473	$	474	. %	475	months
.....	476	$	477	. %	478	months
aper, Etc.)	479	$	480	. %	481	months
.....	490	$				

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ASSETS--Continued

OTHER ASSETS RELATED TO MORTGAGE LOANS & SECURITIES		
Nonperforming Loans	501	$
Accrued Interest Receivable	502	$
Advances for Taxes and Insurance	503	$
Unamortized Yield Adjustments	504	$
Valuation Allowances: Category I	505	$
Valuation Allowances: Category II	506	$

OTHER ASSETS RELATED TO NONMORTGAGE LOANS & SECURITIES		
Nonperforming Loans	511	$
Accrued Interest Receivable	512	$
Unamortized Yield Adjustments	513	$
Valuation Allowances: Category I	514	$
Valuation Allowances: Category II	515	$

REAL ESTATE HELD FOR INVESTMENT	520	$
REPOSSESSED ASSETS	525	$
INVESTMENT IN UNCONSOLIDATED SUBSIDIARIES	530	$
OFFICE PREMISES AND EQUIPMENT	535	$

OTHER ASSETS		
Valuation Allowances for Investment Securities	540	$
Purchased & Excess Servicing Rights	541	$
Margin Account	542	$
Miscellaneous I	543	$
Miscellaneous II	544	$

TOTAL ASSETS	550	$

	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)

ASSETS--Continued

MEMORANDUM ITEMS

Book Value of FSLIC Assets	575	$
Mortgage "Warehouse" Loans Reported as Mortgage Loans at CSC24	578	$
Home Equity & Secured Home Improvement Loans Reported as Nonmortgage Loans at CSC31	580	$
Market Value of Equity Securities & Mutual Funds Rpt'd at CMR464:		
Equity Securities & Non-Mortgage-Related Mutual Funds	582	$
Mortgage-Related Mutual Funds	584	$
Mortgage Loans Serviced by Others:		
Fixed-Rate Mortgage Loans Serviced	586	$
Wtd Avg Servicing Fee	587	bp
Adjustable-Rate Mortgage Loans Serviced	588	$
Wtd Avg Servicing Fee	589	bp
Credit Card Balances Expected to Pay Off in Grace Period	590	$

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items
Prepared by:	Telephone Number

LIABILITIES

FIXED-RATE, FIXED-MATURITY DEPOSITS	Original M	
	12 or Less	1
Balances by Remaining Maturity:		
Balances Maturing in 3 Months or Less	601 $	602
WAC	605 . %	606
WARM	608 months	609
Balances Maturing in 4 to 12 Months	615 $	616
WAC	619 . %	620
WARM	622 months	623
Balances Maturing in 13 to 36 Months		631
WAC		634
WARM		636
Balances Maturing in 37 or More Months		
WAC		
WARM		
Total Fixed-Rate, Fixed-Maturity Deposits		

Memo: Fixed-Rate, Fixed-Maturity Deposit Detail:	Original M	
	12 or Less	1
Balances in Brokered Deposits	650 $	651
Deposits with Early-Withdrawal Penalties Stated In Terms of Months of Foregone Interest:		
Balances Subject to Penalty	653 $	654
Penalty in Months of Foregone Interest (expressed to two decimal places; e.g., x.xx)	656 . months	657
Balances in New Accounts (Optional)	659 $	660

	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)

al Maturity In Months				Early Withdrawal During Quarter (Optional)	
13 to 36		37 or More			
602	$	603	$	604	$
606	. %	607	. %		
609	months	610	months		
616	$	617	$	618	$
620	. %	621	. %		
623	months	624	months		
631	$	632	$	633	$
634	. %	635	. %		
636	months	637	months		
		641	$	642	$
		643	. %		
		644	months		
		645	$		

al Maturity In Months			
13 to 36		37 or More	
651	$	652	$
654	$	655	$
657	. months	658	. months
660	$	661	$

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items
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LIABILITIES-Continued

FIXED-RATE, FIXED-MATURITY BORROWINGS: FHLB ADVANCES, OTHER BORROWINGS, REDEEMABLE PREFERRED STOCK, & SUBORDINATED DEBT

		Remaining M			
		0 to 3 Months		4 to 36 Mo	
Balances by Coupon Class:					
Under 5.00 %	675	$	676	$	
5.00 to 5.99 %	679	$	680	$	
6.00 to 6.99 %	683	$	684	$	
7.00 to 7.99 %	687	$	688	$	
8.00 to 8.99%	691	$	692	$	
9.00 to 9.99 %	695	$	696	$	
10.00 to 10.99 %	699	$	700	$	
11.00% and Above	703	$	704	$	
WARM	711	months	712		

Total Fixed-Rate, Fixed-Maturity Borrowings

VARIABLE-RATE, FIXED-MATURITY LIABILITIES		Liability Code		Rate Index Co
Position 1	721		722	
Position 2	728		729	
Position 3	735		736	
All Other Positions				

[1]**Memo: Book Value of Redeemable Preferred Stock** 755 $

	DOCKET	Name, Address, & Docket Number of Institution (Use Preprinted Label)
%)		

ng Maturity	
6 Months	Over 36 Months

	677	$	.....	678	.	%		
	681	$	.....	682	.	%		
	685	$	.....	686	.	%		
	689	$	.....	690	.	%		
	693	$	.....	694	.	%		
	697	$	.....	698	.	%		
	701	$	.....	702	.	%		
	705	$	.....	706	.	%		
months	713	months						

WAC

..... 715 $

ate x Code	Balance		Margin		Rate Reset Frequency		Months to Next Reset		WARM	
	723	$	724	bp	725	mo	726	mo	727	mo
	730	$	731	bp	732	mo	733	mo	734	mo
	737	$	738	bp	739	mo	740	mo	741	mo
	744	$	745	bp	746	mo	747	mo	748	mo

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items
Prepared by:	Telephone Number

LIABILITIES (Con't.), MINORITY INTEREST, & CAPITAL

	Tot
DEMAND DEPOSITS	
Transaction Accounts	762
Money Market Deposit Accounts (MMDAs)	765
Passbook Accounts	768
Non-Interest-Bearing Demand Deposits	771
ESCROW ACCOUNTS	Tot
Escrows for Mortgages Held in Portfolio	775
Escrows for Mortgages Serviced for Others	777
Other Escrows	779
TOTAL DEMAND DEPOSITS & ESCROW ACCOUNTS	781
UNAMORTIZED YIELD ADJUSTMENTS ON DEPOSITS	782
UNAMORTIZED YIELD ADJUSTMENTS ON BORROWINGS	784
OTHER LIABILITIES	
Collateralized Mortgage Securities Issued	785
Miscellaneous I	786
Miscellaneous II	787
TOTAL LIABILITIES (Incl. Redeemable Preferred Stock)	790
MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES	793
UNREALIZED LOSSES ON MARKETABLE EQUITY SECURITIES	794
EQUITY CAPITAL	796
TOTAL LIABILITIES, MINORITY INTEREST, AND CAPITAL	800

	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)
x%)		

Total Balances		WAC			Balances in New Accounts (Optional)	
762	$	763	. %	.....	764	$
765	$	766	. %	.....	767	$
768	$	769	. %	.....	770	$
771	$	.....			773	$

Total Balances		WAC	
775	$	776	. %
777	$	778	. %
779	$	780	. %

781	$
782	$
784	$
785	$
786	$
787	$
790	$
793	$
794	$
796	$
800	$

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items
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Off-Balance-Sheet Contract Positions	[1] Contract Code		Not
Position 1	801		802
Position 2	806		807
Position 3	811		812
Position 4	816		817
Position 5	821		822
Position 6	826		827
Position 7	831		832
Position 8	836		837
Position 9	841		842
Position 10	846		847
Position 11	851		852
Position 12	856		857
Position 13	861		862
Position 14	866		867
Position 15	871		872
Position 16	876		877

MEMO: Reconciliation of Off-Balance-Sheet Contract Positions Reported

Reported Above at CMR801-CMR880 .....
Reported Using Optional Supplemental Reporting .....
Self-Valued & Reported as "Additional" Positions at CMR911-CMR919 .....

	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)
oc%)		

Off-Balance-Sheet Positions

	[2] Notional Amount	[3] Maturity or Fees	[4] Price/Rate #1	[5] Price/Rate #2
802	$	803	804 .	805 .
807	$	808	809 .	810 .
812	$	813	814 .	815 .
817	$	818	819 .	820 .
822	$	823	824 .	825 .
827	$	828	829 .	830 .
832	$	833	834 .	835 .
837	$	838	839 .	840 .
842	$	843	844 .	845 .
847	$	848	849 .	850 .
852	$	853	854 .	855 .
857	$	858	859 .	860 .
862	$	863	864 .	865 .
867	$	868	869 .	870 .
872	$	873	874 .	875 .
877	$	878	879 .	880 .

NOTE: Enter "price" or "rate" in columns 4 & 5 to two decimal places (e.g., "price" = 102.25 or "rate" = 6.12%)

ed

	# of Positions
.....	901
.....	902
.....	903

Office of Thrift Supervision Thrift Financial Report Consolidated Maturity/Rate Schedule CMR March 1993	INSTRUCTIONS 1. Report Dollar Balances in Thousands ($000) 2. Report % to Two (2) Decimal Places (e.g., x.xx%) 3. Report Maturities in Whole Months 4. See Instructions for Details on Specific Items
Prepared by:	Telephone Number

REPORTING OF MARK

Estimated Mar

Required Reporting Items

Rate Shock in Basis Points	Off-Balance-Sheet Contracts Reported Under "Additional"		Mortgage-Derivative Securities	
+400	911	$	921	$
+300	912	$	922	$
+200	913	$	923	$
+100	914	$	924	$
No Change	915	$	925	$
-100	916	$	926	$
-200	917	$	927	$
-300	918	$	928	$
-400	919	$	929	$

Memo: Face Value of Liabilities w/Options (reported CMR941 th

	DOCKET	Name, Address, and Docket Number of Institution (Use Preprinted Label)

ARKET VALUE ESTIMATES

Market Value After Specified Rate Shock

Optional Reporting Items

	FSLIC Guarantee	Options on Liabilities	Collateralized Mortgage Securities Issued
	931 $	941 $	951 $
	932 $	942 $	952 $
	933 $	943 $	953 $
	934 $	944 $	954 $
	935 $	945 $	955 $
	936 $	946 $	956 $
	937 $	947 $	957 $
	938 $	948 $	958 $
	939 $	949 $	959 $

41 thru CMR949) ..... 950 $

OPTIONAL SUPPLEMENTAL R

Entry #	[1] Asset/ Liability Code	[2] Rate Index Code	[3] Balance $000	[Ma WAC
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	
			$	

L REPORTING FOR ASSETS/LIABILITIES

[4]	[5]	[6]	[7]	[8]
Margin/ WAC in bp	Rate Reset Frequency	Months to Full Amort/ Next Reset	Remaining Maturity	Distance to Lifetime Cap
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp
bp	mo	mo	mo	bp

OPTIONAL SUPPLEMENTAL REPORT

Entry #	[1] Contract Code	[2] Notional Amount	M
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	

BILLING CODE 6720-01-C

ORTING FOR OFF-BALANCE-SHEET POSITIONS

[3] Maturity or Fees	[4] Price/Rate #1	[5] Price/Rate #2

Executive Order 12291

The proposed regulation is considered to be a "major rule" within the meaning of Executive Order 12291. Accordingly, the OTS has prepared the following preliminary regulatory impact analysis.

Preliminary Regulatory Impact Analysis

OTS desires to issue a final regulation that meets its objectives at the least possible net social cost. To assist in the evaluation of this proposal, OTS is providing this analysis of the costs and benefits that are likely to accrue from this regulation. OTS also invites commenters to provide data and other information relating to the effect of the proposed regulation on the national economy, on specific activities that may be directly affected, and on savings associations.

The Need for Proposed Rule

The federal government provides a "safety net" to savings associations in the form of deposit insurance. (The safety net is generally defined to include the deposit insurance system and access to the discount window of the Federal Reserve.) In the absence of such a safety net, depositors, equity investors, and other creditors would require certain savings associations to maintain higher levels of capital to protect against potential losses from risks such as interest rate risk exposure than they currently maintain. The existence of the safety net, therefore, creates a moral hazard under which some associations may take greater risks than would be prudent or than they would be permitted to take in its absence. The proposed regulation addresses the need for additional capital to protect against one such risk—excessive interest rate risk.

Objectives of Proposed Rule

The principal objectives of incorporating an interest rate risk component into the risk-based capital framework are to: 1) Make capital requirements more sensitive to differences in risk exposure among savings associations; 2) discourage savings associations from taking excessive risks by making such behavior more costly; and 3) ensure that adequate capital is maintained in savings associations to reduce the exposure of the deposit insurance fund and to protect the taxpayers' interests. The proposal is designed to impose greater market-like discipline on savings associations to foster a more competitive and efficient thrift industry while increasing its overall safety and soundness. As described below, OTS believes that the overall benefits to society of fostering such an environment far outweigh the costs imposed on a relatively small number of savings associations that would have to raise additional capital or adjust their portfolios as a result of this rule.

Benefits

Incorporating an interest rate risk component into the risk-based capital rule will help to ensure that the capital requirements of savings associations are more closely related to the risks incurred by such institutions. Making institutions' capital requirements dependent on the risks they take should result in capital requirements that correspond more closely to those that would be imposed by equity investors, depositors, and other creditors in the absence of the federal safety net that provides support to depository institutions. Adoption of the proposed rule would result in capital requirements that correspond more closely to those that the marketplace would demand in the absence of a federal safety net, leading to gains in overall economic efficiency. It is not possible to quantify these gains with precision with the data currently available to the agency.

There are several ways in which gains should result from adoption of the proposed rule. First, the interest rate risk component requires less capital of those savings associations with low levels of interest rate risk than it does of those that are taking above normal interest rate risk. Consequently, less risky institutions should find it easier to compete and grow. Risky institutions would be encouraged to manage their interest-rate risk more effectively, also leading to gains in economic efficiency.

Second, the imposition of an interest rate risk component should reduce the likelihood of depository institution failures resulting from excessive interest rate risk exposure. While not a direct measure of economic benefit, this would reduce deposit insurance losses that otherwise would be paid by the industry or taxpayers. As is well known, thrift institutions came under severe pressure in the late 1970s and early 1980s, when interest rates rose dramatically. In fact, because of its heavy interest rate risk exposure, the industry reported losses of $9 billion during 1981 and 1982 and, in terms of market value, some estimate that losses exceeded $150 billion. While many institutions have since taken steps to reduce their exposure, others remain heavily exposed to interest rate risk.

OTS believes that the incidence of thrift institution failures resulting from excessive interest rate exposure can be reduced significantly by incorporating an interest rate risk component into the risk-based capital framework. The proposed interest rate risk component would encourage excessively exposed institutions to reduce their exposure or augment their capital base. As a consequence, risk to the deposit insurance fund and taxpayers would be reduced.

Third, OTS believes that the interest rate risk component would create incentives for savings associations to make decisions on the basis of their economic merit rather than on their accounting effect. For example, savings associations may be tempted to acquire fixed-rate mortgages instead of adjustable rate mortgages if fixed-rate mortgages are expected to generate higher levels of reported earnings over the near term, even though adjustable rate mortgages might offer higher risk adjusted returns over the long-term. By tying the capital requirements for interest rate risk to the effect of interest rate movements on the institution's economic value (equal to the present value of its future net income), the interest rate risk component should encourage institutions to consider the effect of portfolio changes on the long-run profitability of the organization.

Finally, once the proposed rule is adopted, OTS intends to reduce or eliminate the leverage ratio requirement to the extent permitted by the agency's statutory authority at that time. The reduction or elimination of this requirement would make it possible for institutions that are presently constrained by the leverage requirement—but not by the risk-based capital requirement—to expand their lending and investment activities. Based on data as of March 31, 1992, 52 savings associations are able to meet the proposed risk-based capital requirement (including the interest rate risk component) but not the current leverage ratio requirement. If the leverage requirement were eliminated, approximately $99 million of capital would be "freed-up" to support potential new lending and investment activities.

In addition, the elimination or reduction of the leverage ratio would enable many institutions that are currently constrained by the narrow definition of core capital (*i.e.*, common equity and non-cumulative perpetual preferred stock) to take advantage of the greater flexibility of the risk-based capital rules to make use of cumulative preferred stock and subordinated debt to reduce the cost of their capital structures. It is not possible to estimate the value of this flexibility with available data.

OTS believes that the proposed rule will result in gains in overall economic efficiency and, in conjunction with a reduced leverage requirement, increase the availability of credit.

Costs

Because the optimal amount of capital an institution should maintain to protect against interest rate risk cannot be measured precisely, the proposal, if adopted, could require at least some institutions to hold more capital than would be demanded by the marketplace in the absence of the safety net. Such institutions would be unfairly harmed *vis a vis* competitors that are not treated unfairly. Institutions that are required to hold more capital than necessary would become less efficient, less competitive, and earn lower returns on capital than otherwise. The cost of reduced efficiency would be borne by investors in the form of lower returns on capital or by the customers in the form of higher rates on loans, lower rates on deposits, or reduced services. It is not possible to quantify the potential costs associated with imperfections in the methodology that would be used by OTS to measure interest rate risk of individual savings associations, but OTS believes the likelihood and magnitude of such mismeasurement would be small in any case, and smaller than under other methods that have been proposed.

The collection of data to measure interest rate risk exposure necessarily imposes reporting costs on savings associations. Savings associations already are required to provide OTS with selected quarterly financial data that OTS uses to measure interest rate risk exposure and calculate capital requirements. The proposal would involve some additional reporting requirements. (See section IV for a description of these requirements.) OTS believes these reporting requirements would be imposed in any case for prudential supervisory purposes, regardless of whether it adopts the proposed approach to interest rate risk. However, OTS acknowledges that there are some costs involved in these new reporting requirements.

OTS also has required savings associations to report selected maturity and interest rate data in similar detail on Schedule MR of the Thrift Financial Report since 1988. These data are used by OTS to measure the risk exposure of individual savings associations to carry out its supervisory responsibilities. OTS intends to replace Schedule MR with Schedule CMR to improve the quality of data that is used by the OTS to measure interest rate risk of individual savings associations, regardless of the form of any final rule.

While the proposed change-over to Schedule CMR will impose certain one-time conversion costs on the industry, OTS believes that the benefits will outweigh the costs. In reaching this conclusion, OTS was persuaded by comments received from savings associations that the costs of incorporating an interest rate risk component into the risk-based capital rule would be minimized by improving the quality of data that OTS would use to assess capital requirements. The ongoing quarterly costs associated with Schedule CMR are not expected to differ significantly from those associated with the existing Schedule MR.

Based on data as of March 31, 1992, OTS estimates that approximately 80 savings associations, or 4 percent of all private sector savings associations, would have a combined capital shortfall of $170 million as a result of the proposed rule. (The 80 associations do not include those savings associations that OTS believes will be transferred to the Resolution Trust Corporation before the rule takes effect.) The $170 million of capital represents 0.3 percent of the industry's total capital base.

Although the rule would result in a $170 million capital shortfall, that amount is not an appropriate measure of the economic impact of the proposed rule for three reasons. First, the affected savings associations would have alternative ways to satisfy their capital shortfall other than raising capital. These include asset shrinkage and balance sheet restructuring to reduce interest rate risk or credit risk. OTS anticipates that most affected institutions will address any capital shortfall through these means rather than by raising capital.

Second, the cost of higher capital to these institutions is not the amount of capital (*i.e.*, the $170 million), but the difference between the yield the institutions must pay on the capital and the interest they pay on their next highest cost of funds. Assuming an "average" cost of equity of 20 percent and an alternative cost of funds of 5 percent, the cost of the extra capital to the affected portion of the industry is closer to $25 million a year [(20%–5%)×$170 million]. If institutions choose to reduce risk rather than raise capital, the cost should be significantly less than even this amount.

Because of the wide variety of different case-specific circumstances, it is not possible to estimate the costs of alternative means of compliance (asset shrinkage, balance sheet restructuring, etc.) under the capital plan that will be required of institutions that fail a new capital requirement as a result of their interest rate risk. While institutions should choose the lowest cost mix of strategies to attain compliance, the cost/risk/return tradeoffs that face each institution will be unique.

Third, while adoption of the proposed rule could be viewed as imposing a cost on individual savings associations that will be required to meet higher capital requirements, it may be more appropriate to view the effect as a reduction in the subsidy provided to such institutions by the existence of a federal safety net. The net effect of the proposal should be to reduce the overall cost to society of ensuring the safety and soundness of the thrift industry by requiring institutions that are taking disproportionate risks in relation to their capital to strengthen their capital positions.

Adoption of the proposed rule may prompt some savings associations to alter their asset/liability mix in order to reduce their interest rate risk exposure. For example, savings associations would have more of an incentive to encourage potential borrowers to take out adjustable-rate loans in lieu of fixed-rate loans, and short-term loans in lieu of long-term loans. In addition, savings associations will have a greater incentive to securitize and sell assets that exacerbate their interest rate exposure. Similarly, on the liability side, there will be a greater incentive to reduce exposure by issuing liabilities with long maturities over those with shorter maturities.

Adoption of the proposal may also prompt some institutions to rely more heavily on futures, options, and other derivative products to manage their interest rate exposure.

Examination of Alternative Approaches

OTS examined two principal alternative approaches to addressing the interest rate risk exposure of savings associations before deciding to move forward with this proposal. These included: (1) assessing capital requirements for interest rate risk on a case-by-case basis, and (2) adopting the approach for incorporating an interest rate risk component into the risk-based capital framework recently proposed by the banking agencies.

Case-by-Case Approach

Under existing authority, OTS may establish increased minimum capital requirements upon a determination that an individual savings association's capital is or may be inadequate. This

case-by-case approach is currently followed by OTS. One advantage of this approach is that it provides OTS with the flexibility to conduct a more in-depth analysis of an institution's risk exposure before an institution's minimum capital requirement is determined. Another advantage is that it provides the institution's management with an opportunity to discuss its interest rate risk exposure with OTS before a determination of its capital requirement is made.

There are, however, two significant disadvantages to the case-by-case approach. First, the case-by-case approach is time-consuming and resource intensive for both OTS and savings associations. In addition to the administrative costs associated with this approach, there is the danger that capital deficiencies of institutions that are taking excessive risks will not be addressed in time to prevent their failure. Second, the amount of capital required under a case-by-case approach is likely to vary with the expertise and negotiating skills of the parties involved, resulting in an uneven application of capital requirements across the industry.

Banking Agencies' Approach

OTS carefully reviewed the approach proposed jointly by the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, which would be applicable to commercial banks for incorporating interest rate risk into their risk-based capital rules.

A major difference in the two approaches is that the approach proposed by the banking agencies would impose a smaller reporting burden on institutions than the OTS approach. (To minimize the reporting burden of the proposed rule on savings associations, the proposal would exempt certain small, well-capitalized institutions from filing Schedule CMR. Instead, such institutions would be required to file a one page form that would provide selected maturity and rate information.)

While the OTS approach is conceptually very similar to that proposed by the banking agencies, it differs in that the OTS would determine an institution's interest rate risk capital component using a more sophisticated interest rate risk model than the one proposed by the banking agencies. The OTS model also requires more data input from institutions than the model proposed by the bank regulatory agencies. The OTS decided in favor of a more sophisticated model and a more comprehensive data collection requirement in order to be able to measure an institution's interest rate exposure with a higher degree of accuracy, not only for purposes of determining a capital requirement, but also to use the measure as a supervisory tool.

Another difference is that, under the OTS proposal, an institution's interest rate exposure would be measured in the context of a 200 basis point change in interest rates, compared to the 100 basis point change that would be used by the banking agencies.

OTS is proposing a different approach from the banking agencies because savings associations tend to be considerably more vulnerable to interest rate risk than most commercial banks. The vulnerability of savings associations to interest rate risk is in large part attributable to their role as intermediaries for housing finance. Savings associations are required by statute to hold a significant portion of their assets in mortgages, which tend to be long-term assets. The funding of long-term mortgage assets with deposits, which tend to be short-term, gives rise to interest rate risk. Interest rate risk is one of the most prominent risks, if not the prominent risk, that savings associations must manage. (Banks, in general, face a number of portfolio risks that are different from those faced by savings associations.) Because of this vulnerability, and in light of the potentially high cost to society of allowing institutions with excessive interest rate risk exposure to operate without sufficient capital, the OTS believes that its approach is warranted.

OTS recognizes that a potential criticism of the proposal is that it does not go far enough in its attempt to relate capital requirements to differences in interest rate risk exposure among savings associations. More specifically, the proposal follows an "outlier approach" that differentiates among savings associations that have more than a "normal level" of interest rate exposure, but does not differentiate among those with a less than normal level of exposure. Arguably, an approach that differentiates across all levels of exposure would impose greater "market-like" discipline on savings associations and result in greater gains in economic efficiency than the outlier approach which is being proposed. OTS decided to propose an outlier approach in order to make its proposal consistent with that of the banking agencies.

Need for a Federal Solution and Statutory Authority

Section 305 of the Federal Deposit Insurance Improvement Act of 1991 ("FDICIA"), which was enacted on December 19, 1991 requires the federal banking agencies to review their risk based-capital standards for insured depository institutions to ensure that those standards take adequate account of: (1) Interest rate risk, (2) concentration of credit risk, and (3) the risk of non-traditional activities. Section 305 also mandates that the federal banking agencies publish final regulations no later than 18 months after the enactment of FDICIA (or June 19, 1993) as well as establish reasonable transition rules to facilitate compliance with those regulations. This proposed rule is issued in accordance with this statutory mandate.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule proposes to give small, highly-capitalized institutions that have less than $300 million in assets and a risk-based capital ratio in excess of 12 percent the option to file an abbreviated Schedule CMR. The OTS estimates that based on information as of March 31, 1992, approximately 1,052 savings institutions would qualify for this option. In effect, approximately one-half of all savings institutions would qualify for the option. Therefore, the proposed rule will not significantly impact a substantial number of small institutions.

List of Subjects

12 CFR Part 563

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and Recordkeeping requirements, Savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 567, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

§ 563.176 [Amended]

2. Section 563.176 is amended by removing paragraph (b), and by redesignating paragraphs (c) through (f) as (b) through (e), respectively.

PART 567—CAPITAL

3. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

4. Section 567.2 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 567.2 Minimum regulatory capital requirement.

(a) * * *

(1) *Risk-based capital requirements.* (i) A savings association's minimum risk-based capital requirement shall be an amount equal to 8% of its risk-weighted assets as measured pursuant to § 567.6(a) of this part plus 50% of its excess interest-rate risk exposure as measured pursuant to § 567.7 and Appendix A to § 567.7 of this part.

* * * * *

5. Section 567.7 is added to read as follows:

§ 567.7 Interest-rate risk component.

(a) For purposes of this part, a savings association's interest rate risk exposure is measured by the decline in the MVPE that would result from a 200 basis point increase or decrease in market interest rates (whichever results in the lower MVPE) divided by the market value of assets, as calculated in accordance with the model. A savings association whose measured interest rate risk exceeds .02 (*i.e.*, 2%) is required to maintain additional capital equal to one-half of the difference between its measured interest rate risk and .02 (*i.e.*, 2.0 percent), multiplied by the market value of its assets.

(b) A savings institution with less than $300 million in assets and a risk-based capital ratio in excess of 12 percent may be exempt from filing the Schedule CMR. The qualifying savings institution would have the option to file an abbreviated Scheduled CMR quarterly. The Regional Directors may, within their discretion, require a qualifying savings institution to file the Schedule CMR on a quarterly basis.

PART 571—STATEMENT OF POLICY

6. The authority of citation for part 571 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

7. Section 571.3 is revised to read as follows:

§ 571.3 Interest rate risk management.

(a) The Office of Thrift Supervision expects savings associations to adopt formal interest rate risk policy statements, management policies, and procedures containing the elements described below. The objective of interest rate risk management is to maintain an institution's earnings and net worth within self-imposed parameters over a range of possible interest rate environments. Institutions will differ in their willingness to assume interest rate risk, their management capability, and their ability to absorb potential losses. As with other aspects of financial management, a trade-off exists between risk and return; thus, the objective of interest rate risk management need not be the elimination of an institution's exposure to changes in interest rates. The board of directors, however, has a fiduciary responsibility for ensuring that the level of interest rate risk exposure incurred by the institution does not exceed prudent levels.

(b) The board of directors must ensure that the institution's policies and procedures for managing interest rate risk are of a level of sophistication that is commensurate with the institution's activities and portfolio and that the institution's exposure is limited to a prudent level. More specifically the the board is accountable for interest rate risk exposure of the institution and must establish a formal policy for the management of interest rate risk and review the results of management's implementation of that policy on at least a quarterly basis.

(1) *Board of Directors' policy statement.* The board's policy statement should delegate responsibility for the management of interest rate risk and should establish limits on the level of the institution's exposure. The board should provide specific authorizations and restrictions regarding the institution's trading activities, its use of derivatives and synthetic instruments, and its hedging strategies. To facilitate the board's oversight of management in this area, the policy should specify the contents of management's reports to the board on this subject and state the frequency with which the directors will review interest rate risk management (at least quarterly).

(2) *Exposure limits.* The most important element of the board of directors' policy statement is a set of explicit limits on the institution's exposure to interest rate risk. In general, the board must be aware of the sensitivity of the institutions' earnings and net economic value to interest rate changes. The board's policy should establish reasonable limits, preferably in terms of the sensitivity of the institution's net interest income and market value of portfolio equity to changes in interest rates. In general, the policy should specify the maximum percentage change the board of directors is prepared to accept in these measures as a result of a parallel shift in the term structure of interest rates prevailing at the date of the analysis. These maximum changes should be specified for instantaneous and sustained changes in interest rates of ±100, ±200, ±300, and ±400 basis points and should be measured relative to the levels of net interest income and market value of portfolio equity under an assumption of no change in interest rates. Those institutions that are exempt from filing Schedule CMR of the Thrift Financial Report with the Office must be able to demonstrate that they have set and monitored reasonable exposure limits, but will not be required to calculate their market value of portfolio equity.

(3) *Periodic review of interest rate risk management.* Periodic reports by management to the board of directors should demonstrate compliance with the exposure limits. Reports by management should, therefore, include an analysis of how net interest income and the market value of portfolio equity would be affected by the hypothetical interest rate changes specified in the board's policy. Because any system of interest rate risk management will rely on certain assumptions, management should demonstrate to the board and document that the assumptions underlying its interest rate sensitivity analysis are reasonable.

Dated: July 15, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-21049 Filed 9-2-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

Office of Thrift Supervision

OMB Number: 1550–0023.
Form Number: OTS Form 1313, Monthly Cost of Funds Survey Systems Worksheet, Officer Certification.
Type of Review: Revision.
Title: Thrift Financial Report (TFR).
Description: OTS collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of the personal savings of the general public. The OTS monitors trends in financial positions so that adverse conditions can be reminded promptly. These respondents are primarily savings associations.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 21 hrs., 32 min.
Frequency of Response: Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 551,040 hours.
Clearance Officer: Colleen Devine, (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–21048 Filed 9–2–92; 8:45 am]
BILLING CODE 4810–25–M

federal register

Thursday
September 3, 1992

Part V

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

August 26, 1992.

The Honorable Dan Quayle,
President of the Senate,
Washington, DC 20510.

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one deferral of budget authority, totaling $17.6 million. Including this deferral, funds withheld in FY 1992 now total $5.8 billion.

The deferral affects the Agency for International Development. The details of this deferral are contained in the attached report.

Sincerely,

George Bush,
The White House.

BILLING CODE 3110-01-M

Deferral No. 92–12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 47,801,000 (P.L. 102–266)
BUREAU: Agency for International Development	**Other budgetary resources**..... $ 34,063,947
Appropriation title and symbol: Housing guaranty program 7220401	**Total budgetary resources**..... $ 81,864,947 **Amount to be deferred:** **Part of year**..... $ 17,630,494 **Entire year**..... $ _____
OMB identification code: 72–0401–0–1–151 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Type of account or fund: [X] Annual [ ] Multi–year: _____ (expiration date) [ ] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: The Housing Guaranty program extends guarantees to U.S. private investors who make loans to developing countries to assist them in formulating and executing sound housing and community development policies that meet the needs of lower income groups.

As required by the Federal Credit Reform Act of 1990, this account records, for the Housing Guaranty program, the subsidy costs associated with the loan guarantees committed in FY 1992 and beyond, as well as administrative expenses of this program. The subsidy amounts are estimated on a present value basis; the administrative expenses are estimated on a cash basis.

This action defers funds pending review of specific loan guarantees to eligible countries. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 92–21206 Filed 9–2–92; 8:45 am]
BILLING CODE 3110–01–C

federal register

Thursday
September 3, 1992

Part VI

Department of Housing and Urban Development

Low Income Housing; Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

(Docket No. N-92-3486; FR-3288-N-01)

Low Income Housin; Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces the availability of up to $15.0 million in funding for technical assistance planning grants to facilitate acquisitions of certain HUD-insured or -assisted multifamily projects by Community-Based Nonprofit Organizations (CBOs), Resident Councils (RCs), resident groups, and community groups. These grants are to facilitate the development of a CBO or RC and the purchase of projects under the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). In the body of this document is information concerning eligible applicants, the funding available, the application kit and its processing, as well as the selection criteria. Applicants should be aware that the determination of which regulatory requirements apply to an acquisition depends on the preservation program under which the owner has filed a Notice of Intent. Thus applicants must comply with 24 CFR part 248 and with either ELIHPA or LIHPRHA, as appropriate. Regulations covering both of these programs will be included in the application kit (applicants should note that an Interim Rule revising 24 CFR part 248 was published in the Federal Register on April 8, 1992 (57 FR 11992)).

DATES: An application kit will be available beginning October 5, 1992. There is no deadline for an application, however an application must be submitted in a timely fashion that would permit a purchase transaction within the statutory marketing period. An application may be submitted as soon as the applicant becomes eligible under the terms of this NOFA and as long as funds remain available. In order to avoid unnecessary duplication, an applicant is only required to submit one application, which includes all the required information about the applicant, regardless of the number of phases for which funding will be sought under this NOFA. However, an applicant will only be approved for funding in one phase at a time; before being approved for funding for any subsequent phase, the applicant must submit supplemental exhibits demonstrating completion of work for the applicable antecedent phase.

ADDRESSES: Application kits may be requested by contacting the appropriate Field Office, listed in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director, Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, NW, Washington, DC 20410; telephone (202) 708-2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300. (Except for the TDD number, telephone numbers are not toll free).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the Federal Register.

I. Purpose and Substantive Description

A. Authority and Background

The funding made available under this NOFA is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, (Pub. L. 102-139, approved October 28, 1991) in order to provide technical assistance funding under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101-625, section 601 of the National Affordable Housing Act (NAHA), approved November 28, 1990) (LIHPRHA).

The origins of LIHPRHA were in Title II, the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA), of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). The purpose of ELIHPA was to preserve low-income affordability restrictions on certain HUD-insured or -assisted multifamily projects. ELIHPA authorized the use of incentives to encourage owners to retain low-income affordability restrictions or to transfer the property to purchasers who would agree to retain those restrictions. The fundamental principles underlying ELIHPA were that the low-income housing should be preserved for the intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investments.

ELIHPA was intended to be a temporary measure that would allow Congress time to fashion a permanent program for the preservation of existing low-income housing projects. This permanent program is LIHPRHA, which replaced ELIHPA except to the extent that section 604 of NAHA provides a transition option for certain owners. In addition, section 226 of LIHPRHA establishes the Resident Homeownership Program, under which tenants may become qualified purchasers of eligible low income housing.

The Department's regulations implementing these statutory provisions were published as an Interim Rule amending 24 CFR part 248 (57 FR 11992, April 8, 1992). All references in this NOFA to §§ 248.1 through 248.183 are to those sections as set out in the Interim Rule.

B. Allocation of Amounts

The purpose of this NOFA is to make available a total of up to $15 million in funds to eligible resident and community groups, RCs, and CBOs for technical assistance planning grants. Prospective applicants may be awarded funds in up to three phases. Phase I provides funds for organizing as a legal nonprofit entity under applicable Federal, State and local laws. Phase II provides funds for submitting an expression of interest and a purchase offer. If the offer is accepted, Phase III provides funds for preparing a Plan of Action to transfer ownership of the project. An eligible applicant must seek to purchase "eligible low-income housing" (as that term is defined at 24 CFR 248.101) whose owner has expressed a willingness to entertain an offer from the applicant (under ELIHPA) or filed a Notice of Intent to sell the project (under LIHPRHA).

All applicants must complete training, either conducted by or sponsored through HUD, covering ELIHPA and LIHPRHA prepayment and acquisition procedures and, if applicable, the Resident Homeownership Program. This

training must be completed before an applicant may receive funding for activities in any second phase. If an owner accepts a purchase offer from any other qualified purchaser, then no further funding will be available to the applicant.

In order to avoid unnecessary duplication, an applicant is only required to submit one application, which includes all the required information about the applicant, regardless of the number of phases for which funding will be sought. However, an applicant will only be approved for funding in one phase at a time; before being approved for funding for any subsequent phase, the applicant must submit supplemental exhibits demonstrating completion of work for the applicable antecedent phase. Upon submission of evidence of the tasks completed in a currently funded phase and a reasonable work plan and budget for the next phase, the applicant will receive funding for the next phase requested, if funds remain available. In requests for funding in subsequent phases, the applicant will be required to amend appropriate exhibits (e.g., describing and projecting the costs of activities, and describing the subject property) in the application, as well as certify that all unamended information from the original application remains accurate.

The Department can deobligate funding at any time that it determines that continuing to provide funding would not be in the best interests of the Department. The Department may make this determination upon finding that stated tasks have not been accomplished; there has been fraud, waste, or mismanagement; or purchasing the project is not technically feasible. An applicant may be required to demonstrate that it has sufficient capacity to warrant continued consideration for funding. Recaptured funds will be made available for additional grant awards.

Any expenses incurred by an applicant prior to being awarded a grant under this NOFA will not be reimbursed from the grant under any circumstances. Once a Plan of Action is approved and the purchase completed, the purchaser may be reimbursed for certain expenses pursuant to 24 CFR 248.157(m)(6) and (7) that are not covered by grants received under this NOFA.

C. Timeliness of Application

An application including a request for Phase I or Phase II funding will be returned to the applicant if the Field Office concludes that it is too late in the marketing period (i.e., after the end of the 13th month of the statutory offering period) to permit a purchase transaction, unless the owner expresses in writing a willingness to extend the marketing period. An applicant requesting only Phase III funding should submit its application within 30 days of the project owner's acceptance of a bona fide purchase offer.

D. Phases to be Funded

(1) *PHASE I—Start-Up Funding.* Section I.E, Eligibility, of this NOFA specifies that resident groups and community groups that may not yet be formally organized into RCs or CBOs are eligible applicants, in addition to RCs and CBOs. This is because Phase I grant activity is targeted toward organizing and legally incorporating such groups into RCs or CBOs for the purpose of making legal and feasible purchase offers of eligible low-income housing. After an owner files a Notice of Intent or an expression of interest (i.e., letter or other signed document) under ELIHPA or an Initial Notice of Intent to sell under LIHPRHA, an eligible applicant who submits an acceptable application may receive up to $25,000 for Phase I start-up funding. The funds requested must be at reasonable levels and for a reasonable mix of activities, so that the applicant will complete all tasks necessary to proceed to undertake Phase II activities. The kinds of activities appropriate for this phase include:

- Establishing and organizing Resident Councils or Community-Based Nonprofit Organizations;
- Providing training to project and community residents, board members, and affiliated persons regarding ELIHPA and LIHPRHA acquisition opportunities, housing management and development;
- Assisting residents and CBO members in choosing among homeownership and rental options for the project;
- Incorporating the purchasing entity and applying for tax exempt status under section 501(c) of the Internal Revenue Code;
- Establishing accounting procedures; and
- Related activities.

Note: For Phase I funding, a fully organized Resident Council or Community-Based Nonprofit Organization is not required; however, for Phases II and III the applicant must meet the definition of a RC or CBO, as discussed in Section I.E of this NOFA, and the activities in the first phase must have been accomplished, even if those activities were not funded under this NOFA.

(2) *PHASE II—Expression of Interest and Development of Purchase Offer.* After the owner files a Second Notice of Intent to sell under LIHPRHA or evidences in writing a commitment to sell ELIHPA, an eligible applicant that files an acceptable application may receive up to $50,000 to develop an expression of interest and submit a purchase offer. An applicant shall be considered eligible if it has completed all tasks required of a Phase I applicant and it meets the other requirements specified in Section I.E, Eligibility, of this NOFA. For those applicants who intend to develop a Resident Homeownership Plan, the Resident Council formed must work with a HUD-approved public agency or a public or private nonprofit organization to develop a viable and workable homeownership plan. The funds requested must be at reasonable levels and for a reasonable mix of activities, so that the applicant will complete all tasks necessary to qualify for Phase III funding. Funds may be used for:

- Submission of an expression of interest and the preparation of a bona fide offer;
- Architectural and engineering services, as necessary to supplement the capital needs assessment developed by HUD;
- Financial and legal services;
- Training for the board and members of the purchasing entity; and
- Related activities.

(3) *PHASE III—Preparation of Plan of Action.* If a project owner accepts the applicant's bona fide purchase offer, an eligible applicant that files an acceptable application may receive up to $50,000 for preparation of a Plan of Action. An applicant shall be considered eligible if the owner has accepted a bona fide purchase offer from the applicant, the owner is working with the applicant towards the joint submission of an acceptable Plan of Action or the applicant is developing a Resident Homeownership Plan, and the applicant meets the other requirements set forth in Section I.E, Eligibility, of this NOFA. The funds requested must be at reasonable levels and for a reasonable mix of activities, so that the applicant will complete all tasks necessary to submit a successful Plan of Action or Resident Homeownership Plan. Funds may be used for:

- Preparation of a Plan of Action or Resident Homeownership Plan;
- Architectural and engineering services; as necessary to supplement the capital needs assessment developed by HUD;
- Financial and legal services;
- Training for the board and members of the purchasing entity and for residents of the project;

• Preparation of the Transfer of Physical Assets package; and
• Related activities.

E. Eligibility

(1) *Eligible Applicants:* An eligible applicant is one of the following entities that represents the residents of the eligible property, intends to purchase the property, and complies with the applicable criteria. Before receiving funding for activities in any second phase, an applicant must have completed training, either conducted by or sponsored through HUD, covering ELIHPA and LIHPRHA prepayment and acquisition procedures and, if applicable, the Resident Homeownership Program. In addition, before being approved for funding for any subsequent phase, an applicant must demonstrate completion of work for the applicable antecedent phase.

(a) *Resident group*—For an applicant to be considered a resident group the following must be submitted:

(i) Evidence that adult residents of the greater of 5% of occupied units or 10 units of the subject property are group members;

(ii) A copy of a notice announcing an organizational meeting to discuss the possible purchase of the project (at least one public meeting must have occurred prior to application);

(iii) A copy of the agenda of the organizational meeting referred to in item (ii) of this paragraph;

(iv) A list of attendees of the organizational meeting referred to in item (ii) of this paragraph;

(v) A certification that the resident group intends to form a Resident Council (as defined in 24 CFR 248.101) to purchase the project for either rental purposes or homeownership; and

(vi) A certification that, if the residents are interested in homeownership, the resident group will work with a HUD-approved public agency or a public or private nonprofit organization to form a Resident Council (as defined in § 248.101), with the purpose of purchasing the project.

(b) *Community group*—For an applicant to be considered a community group, the following must be submitted:

(i) A copy of a notice announcing an organizational meeting to discuss the possible purchase of the project (at least one public meeting must have occurred prior to application);

(ii) A copy of the agenda of the organizational meeting referred to in item (i) of this paragraph;

(iii) A list of attendees of the organizational meeting referred to in item (i) of this paragraph;

(iv) A petition signed by adult residents of the greater of 5% of occupied units or 10 units, supporting the community group as their representative;

(v) Certification that the community group intends to work with the residents in developing a plan to purchase the project; and

(vi) Certification by the community group that it intends to meet the definition of a Community-Based Nonprofit Organization (as defined in § 248.101), within the terms of Phase I funding.

(c) *Resident Council (RC)*—For an application to be considered an RC, it must meet the definition of "resident council" as set out in § 248.101 of the Interim Rule.

(d) *Community-Based Nonprofit Organization (CBO)*—For an applicant to be considered a CBO, it must meet the definition of "community-based nonprofit organization" as set out in § 248.101 of the Interim Rule.

(2) *Resident and community groups* that are in the initial stages of organizing are eligible for Phase I funding, but are prohibited from receiving Phase II and Phase III funding until formally organized into a Resident Council or Community-Based Nonprofit Organization. When a community group (including a CBO) and a resident organization (including a RC) are working together to prepare a joint application, the resident organization will be the applicant with primary responsibility for the administration of the grant.

(3) *Eligible projects.* Those projects that conform to the definition of "eligible low income housing" in § 248.101 are eligible within the meaning of this NOFA when the following is also true:

(a) *For LIHPRHA Properties:* (i) *Phase I, only*—The owner of the project has submitted an Initial Notice of Intent to sell under LIHPRHA and the eligible applicant submits an application for Phase I funding only.

(ii) *Phase I and Phase II, or Phase II*—The owner of the project has submitted a Second Notice of Intent to sell under LIHPRHA and the eligible applicant submits an application for Phase I and Phase II funding or Phase II funding.

(iii) *Phase III*—The owner of the project has accepted a bona fide offer, and eligible applicant submits an application for Phase III funding.

(b) *For ELIHPA Properties:* (i) *Phase I or Phase II*—The owner of the project has submitted a Notice of Intent under ELIHPA and there is an expression of interest (i.e., a letter or other signed document) by the owner of the project indicating that the owner is willing to at least consider a sale, and the eligible applicant submits an application for Phase I or Phase II funding.

(ii) *Phase III*—The eligible applicant can provide evidence that there is an agreement to sell or a contract for sale of the property, or that an offer has been accepted by the owner, and the eligible applicant submits an application for Phase III funding.

Note: Two proposals will not be accepted for the same project.

F. Ineligible Applicants

Entities that have applications pending for funds under any of the HOPE 2 grants announced in or subsequent to the HOPE 2 NOFA (published 57 FR 1585, January 14, 1992) are not eligible to apply for funding under this NOFA (because the owner would have already elected to proceed under the distinct requirements applicable to HOPE 2 grants, and is precluded from concurrently filing the prerequisite Notice of Intent under LIHPRHA or ELIPHA). An entity that had been selected for HOPE 2 funding is ineligible to apply for a grant under this NOFA until notified by the administering HUD Field Office that the HOPE grant has been terminated due to the owner's filing of a Notice of Intent under ELIHPA or LIHPRHA.

G. Eligible Activities

Specific activities that are approved by HUD may be funded and carried out by an eligible applicant. However, an applicant must certify that assistance provided under this NOFA will not be used to supplant or duplicate other funding for the proposed activities. These activities may include any combination of, but are not limited to, the following:

(1) Legal services to incorporate the applicant, establish a board of directors, write by-laws and establish non-profit status;

(2) Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A–110;

(3) Engineering studies, such as site, water, and soil analyses; mechanical inspections; and estimations of the costs of rehabilitation and of meeting local building and zoning codes, in anticipation of purchasing a property, as necessary to supplement the capital needs assessment developed by HUD (see the Final Guidelines for Determining Appraisals of Preservation Value Under LIHPRHA, 57 FR 19970 (May 8, 1992));

(4) Preparing bona fide offers, including contracts and other documents to purchase the property;

(5) Securing financing, and the preparation of mortgage documents, transfer documents, and other documentation incident to closing a purchase offer;

(6) Training residents, RC staff and Board members in skills related to the operations and management of the project, including leadership training;

(7) Developing potential management functions or tasks to be undertaken;

(8) Developing and negotiating management contracts and related contract monitoring and management procedures;

(9) Preparing market studies and management plans; and

(10) Other activities related to this NOFA that are approved by HUD as achieving the purposes of this NOFA, and are reasonable both in cost and timeliness.

H. Ineligible Activities

Examples of activities that are not eligible to be funded under this NOFA include:

(1) Entertainment, including associated costs, such as food and beverages;

(2) Purchase of land or buildings or any improvements to land or buildings;

(3) Activities not directly related to the Eligible Activities listed in Section I.G of this NOFA;

(4) Payment of fees for lobbying services;

(5) Earnest money deposits;

(6) Activities funded from other sources; and

(7) Activities completed prior to the date funding is approved under this NOFA.

I. Selection Criteria

Technical assistance planning grants will be awarded to eligible applicants that have submitted applications according to Section III of this NOFA and the following selection criteria. The HUD Field Office staff must determine that the application meets these criteria before awarding a grant.

(1) The plan for achieving a resident supported purchase of the property must be reasonable, feasible, and in conformance with the appropriate program regulations and guidelines;

(2) The budget submitted with the application must reflect reasonable costs directly associated with the grant activities that would result in the development of a feasible purchase;

(3) The estimate of time necessary to achieve completion of activities and delivery of products must be reasonable, realistic, and within the time frames set forth in the applicable program regulation.

J. Selection Process

The selection process for ELIHPA or LIHPRHA Planning Grants consists of a threshold screening to determine whether the application meets the technical requirements for application submission contained in this NOFA and the application kit. (An application that submits a technically deficient application will be permitted to correct those deficiencies as provided in Section IV of this NOFA.) If the application meets the technical requirements, it will then be reviewed by the appropriate Field Office according to the selection criteria in Section I.I of this NOFA. The Field Office will select for funding those applicants that satisfy the selection criteria. HUD may award less than the amount applied for, or fund fewer than all the activities identified in the budget, based on the extent to which the proposed activities met the eligibility requirements. Within thirty days from receipt of a completed application, the Field Office will notify an applicant of its selection or rejection. Applicants that are selected to receive assistance will be required to sign a grant agreement.

II. Application Process

A. Obtaining applications

An application kit, including instructions for preparing the application, is available beginning October 5, 1992 from the appropriate HUD Field Offices (see the list of HUD Field Offices attached as an appendix to this NOFA).

B. Submitting Applications

Additional information regarding the submission of an application will be included in the package. There is no deadline for an application, except as provided in Section I.C, Timeliness of Application, of this NOFA. An application may be submitted as soon as the applicant becomes eligible under the terms of this NOFA and as long as funds remain available.

Only an application submitted to the correct Field Office will be considered for funding. An application must be submitted to the local HUD Field Office where the owner had submitted the Initial Notice of Intent; an application is not to be submitted to HUD Headquarters. The application should be addressed to the attention of: Director, Housing Management Division. A list of HUD's Field Offices appears as an Appendix to this NOFA. Applicants are advised to contact their local office to confirm the appropriate place for submission.

An application transmitted by facsimile machine will not be accepted.

III. Checklist of application Submission Requirements

A. Submitting Applications

Complete application submission requirements are contained in the application kit. All potential applicants are urged to contact their local HUD Field Office for information and guidance about program requirements and preparation of an application, and for the time and place of any workshops or training sessions scheduled to assist potential applicants in the preparation of an application.

B. Submission Requirements

An applicant must provide the following:

(1) *Each applicant*—A completed application, including the following, as applicable:

(a) OMB Standard form 424;

(b) Summary information;

(c) Description of activities and costs;

(d) General information on the applicant and its experience;

(e) Owner's statement of interest;

(f) Description of property;

(g) Resident organization resolution;

(h) Certification that assistance provided under this NOFA will not be used to supplant or duplicate other resources for the proposed activities. For purposes of this paragraph, "other resources" means resources provided from any source other than under this NOFA;

(i) Other disclosures, certifications, and assurances (including Drug-Free Workplace certification), as required under the law and this NOFA; and

(j) Other information and materials as may be described in the application kit.

(2) *For LIHPRHA properties:* (a) *Phase I*—Evidence that an Initial Notice of Intent to sell has been filed, for a Phase I only funding application. Evidence that a Second Notice of Intent to sell has been filed for an application requesting both Phase I and Phase II funding.

(b) *Phase II*—Evidence that a Second Notice of Intent to sell has been filed, for an application requesting any Phase II funding. The applicant also must demonstrate completion of prerequisite tasks and the ability to perform the Phase II work tasks. Work tasks must be clearly and reasonably stated and must be supported with reasonable cost estimates directly related to each task.

(c) *Phase III*—Evidence that the owner has accepted a bona fide offer

from the eligible applicant. The applicant also must demonstrate completion of prerequisite tasks and the ability to perform the Phase III work tasks. Work tasks must be clearly and reasonably stated and must be supported with reasonable cost estimates directly related to each task.

(d) *RCs and CBOs that are currently organized*—Evidence that the entity meets the applicable definition provided in 24 CFR 248.101.

(3) *For ELIHPA properties:* (a) *Phase I*—Evidence that the owner has submitted a Notice of Intent and that there is an agreement to sell or an expression of interest (i.e., a letter or other signed document) by the owner indicating that the owner is at least willing to consider a sale.

(b) *Phase II*—Evidence that there is an agreement to sell or an expression of interest (i.e., a letter or other signed document) by the owner indicating that the owner is at least willing to consider a sale. The applicant also must demonstrate completion of prerequisite tasks and ability to perform the Phase II work tasks. Work tasks must be clearly and reasonably stated and must be supported with reasonable cost estimates directly related to each task.

(c) *Phase III*—Evidence of an agreement to sell or a contract of sale. The applicant also must demonstrate completion of prerequisite tasks and ability to perform the Phase III work tasks. Work tasks must be clearly and reasonably stated and must be supported with reasonable cost estimates directly related to each task.

(d) *RCs and CBOs that are currently organized*—Evidence of that the entity meets the applicable definition provided in 24 CFR 248.101.

IV. Corrections to Deficient Applications

(1) HUD shall screen each application submitted to determine if it:

(a) Is complete;

(b) Is internally consistent; and

(c) Contains correct computations where appropriate.

(2) Where HUD determines that an application is technically deficient in one or more areas, HUD shall notify the applicant in writing and give the applicant an opportunity to correct those technical deficiencies. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close of business within 30 calendar days after the date of the written notification to the applicant. HUD may not extend this deadline for actual receipt of the corrected or additional material for any reason.

HUD will not consider further any application that, upon expiration of the 30-day cure period, is not complete and internally consistent, or that fails to comply with program requirements. However, an applicant whose application was rejected because of technical or substantive deficiencies is permitted to submit a new application subsequently.

V. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this notice relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the funds available under this NOFA will be used to preserve the stock of HUD-insured multifamily housing. Although some local governments may elect to participate in these efforts, the funded activities will have no significant direct impact on States or their political subdivisions.

Family Executive Order

The General Counsel, as the designated official under Executive Order 12606, The Family, has also determined that some of policies in this NOFA will likely have a beneficial impact on the formation, maintenance, and general well-being of the family. Achievement of home ownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling families to live in decent, safe and sanitary housing; and by giving families the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is considered necessary.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has

specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 12 U.S.C. 1715 *et seq.*, 42 U.S.C. 3535(d).

Dated: August 20, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix: Listing of HUD Regional Offices and Field Offices With Multifamily Inventories

Regian I

Jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Baston, Massachusetts Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St., Room 375, Boston, MA 02222–1092, (617) 565–5234, (FTS) 835–5234

Hartford, Connecticut Office

Manager, HUD—Hartford Office, 330 Main St., Hartford, Connecticut 06106–1860, (203) 240–4522, (FTS) 244–4523

Manchester, New Hampshire Office

Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681, (FTS) 834–7681

Providence, Rhode Island Office

Manager, HUD—Providence Office, 330 John O. Pastore Federal Building & U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785, (401) 528–5351, (FTS) 838–5351

Regian II

Jurisdiction: New York, New Jersey

New Yark Regianal Office

Regional Administrator-Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, (FTS) 264–8068

Buffalo, New Yark Office

Manager, HUD—Buffalo Office, Lafayette Court, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, (FTS) 437–5733

Newark, New Jersey Office

Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662, (FTS) 349–1808

Regian III

Jurisdiction: Pennsylvania, Washington, D.C., Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania Regianal Office

Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th St., Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, (FTS) 597–2560

Baltimore, Maryland Office

Manager, HUD—Baltimore Office, The Equitable Building, 10 North Calvert St., 3rd Fl., Baltimore, Maryland 21202–1865, (301) 962–2520, (FTS) 922–3047

Charlestan, West Virginia Office

Manager, HUD—Charleston Office, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, (FTS) 930–7036

Pittsburgh, Pennsylvania Office

Manager, HUD—Pittsburgh Office, Old Post Office Courthouse Building, 7th Ave. & Grant St., Pittsburgh, Pennsylvania 15219–1906, (412) 644–6428, (FTS) 722–6388

Richmond, Virginia Office

Manager, HUD—Richmond Office, 400 North 8th St., Richmond, Virginia 23240, (804) 771–2721, (FTS) 925–2721

Washingtan, D.C. Office

Manager, HUD—Washington Office, 820 First Street NE., Washington, D.C. 20002–4205, (202) 275–9200, (FTS) 275–9206

Region IV

Jurisdiction: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Geargia Regianal Office

Regional Administrator-Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street S.W., Atlanta, Georgia 30303–3388, (404) 331–5136, (FTS) 841–5136

Birmingham, Alabama Office

Manager, HUD—Birmingham Office, Beacon Ridge Towers, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617, (FTS) 229–1617

Caribbean Office

Manager, HUD—Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, (FTS) 498–5201

Columbia, South Carolina Office

Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592, (FTS) 677–5592

Greensboro, North Carolina Office

Manager, HUD—Greensboro Office, 415 North Edgeworth Street, Greensboro, North Carolina 27401–2107, (919) 333–5361, (FTS) 699–5363

Jacksan, Mississippi Office

Manager, HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 W. Capitol St.,

Room 910, Jackson, Mississippi 39269–1096, (601) 965–5308, (FTS) 490–4738

Jacksonville, Florida Office

Manager, HUD—Jacksonville Office, 325 West Adams Street, Jacksonville, Florida 32202–4303, (904) 791–2626, (FTS) 946–2626

Knoxville, Tennessee Office

Manager, HUD—Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, Tennessee 37902–2526, (615) 549–9384, (FTS) 854–9384

Louisville, Kentucky Office

Manager, HUD—Louisville Office, 601 W. Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251, (FTS) 352–5251

Nashville, Tennessee Office

Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, (FTS) 852–5213

Region V

Jurisdiction: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois Regional Office

Regional Administrator-Regional Housing Commissioner, HUD—Chicago Regional Office, Ralph Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, IL 60604, (312) 353–5680, (FTS) 353–5680

Cincinnati, Ohio Office

Manager, HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main Street, Cincinnati, Ohio 45202–3253, (513) 684–2884, (FTS) 684–2884

Cleveland, Ohio Office

Manager, HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Avenue, Rm. 420, Cleveland, Ohio 44114–1670, (216) 522–4058, (FTS) 942–4065

Columbus, Ohio Office

Manager, HUD—Columbus Office, 200 N. High Street, Columbus, Ohio 43215–2499, (614) 469–5737, (FTS) 943–7345

Detroit, Michigan Office

Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–7900, (FTS) 226–7900

Grand Rapids, Michigan Office

Manager, HUD—Grand Rapids Office, 2922 Fuller Avenue N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2100, (FTS) 372–2182

Indianapolis, Indiana Office

Manager, HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303, (FTS) 331–6303

Milwaukee, Wisconsin Office

Manager, HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 297–3214, (FTS) 362–1493

Minneapolis-St. Paul, Minnesota Office

Manager, HUD—Minneapolis-St. Paul Office, 220 2nd Street, S., Minneapolis, Minnesota 55401–2195, (612) 370–3000, (FTS) 333–3002

Region VI

Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas Regional Office

Regional Administrator-Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401, (FTS) 728–5401

Houston, Texas Office

Manager, HUD—Houston Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 653–3274, (FTS) 522–3271

Little Rock, Arkansas Office

Manager, HUD—Little Rock Office, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201–3707, (501) 324–5900, (FTS) 740–5401

New Orleans, Louisiana Office

Manager—New Orleans Office, Fisk Federal Building, 1661 Canal Street, New Orleans, Louisiana 70172–2887, (504) 589–7200, (FTS) 682–7200

Oklahoma City, Oklahoma Office

Manager, HUD—Oklahoma City Office, Alfred P. Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4181, (FTS) 736–4891

San Antonio, Texas Office

Manager, HUD—San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207–4563, (512) 229–6800, (FTS) 730–6806

Region VII

Jurisdiction: Iowa, Kansas, Missouri, Nebraska

Kansas City Regional Office

Regional Administrator-Regional Housing Commissioner, HUD—Kansas City Regional Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 236–2162, (FTS) 757–2162

Des Moines, Iowa Office

Manager, HUD—Des Moines Office, Federal Building, 210 Walnut Street, Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512, (FTS) 862–4512

Omaha, Nebraska Office

Manager, HUD—Omaha Office, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3100, (FTS) 492–3101

St. Louis, Missouri Office

Manager, HUD—St. Louis Office, 1222 Spruce Street, Room 3.207, St. Louis, MO 63103–2836, (314) 539–6583, (FTS) 262–6560

Region VIII

Jurisdiction: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado Regional Office

Regional Administrator—Regional Housing Commissioner, HUD—Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–4513, (FTS) 564–4513

Region IX

Jurisdiction: Arizona, California, Hawaii, Nevada, Guam, American Samoa

San Francisco, California Regional Office

Regional Administrator—Regional Housing Commissioner, HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, (FTS) 556–4752

Honolulu, Hawaii Office

Manager, HUD—Honolulu Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 500, Honolulu, Hawaii 96813–4918, (808) 541–1323, (FTS) 551–1343

Los Angeles, California Office

Manager, HUD—Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122, (FTS) 983–7122

Phoenix, Arizona Office

Manager, HUD—Phoenix Office, Two Arizona Center, 400 N. 5th Street, Suite 1600, Phoenix, Arizona 85004–2361, (602) 379–4434, (FTS) 261–4434

Sacramento, California Office

Manager, HUD—Sacramento Office, 777 12th Street, Suite 200, Sacramento, California 95814–1997, (916) 551–1351, (FTS) 460–1351

Region X

Jurisdiction: Alaska, Idaho, Oregon, Washington

Seattle, Washington Regional Office

Regional Administrator—Regional Housing Commissioner, HUD—Seattle Regional Office, Arcade Plaza Building, 1321 2nd Avenue, Seattle, Washington 98101–2058, (206) 553–5414, (FTS) 399–5414

Anchorage, Alaska Office

222 West 8th Avenue, #64, Anchorage, Alaska 99513–7537, (907) 271–4170, (FTS) 868–4170

Portland, Oregon Office

Manager, HUD—Portland Office, 520 S.W. 6th Avenue, Portland, Oregon 97204–1596, (503) 326–2561, (FTS) 423–2561.

[FR Doc. 92–21232 Filed 9–2–92; 8:45 am]
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federal register

Thursday
September 3, 1992

Part VII

Department of Agriculture

Forest Service

Timber Sales: Northern Region; Notices

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Gone Beaver Blowdown Salvage Project from Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a salvage timber sale project designed to recover windstorm damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In October 1991, 20 acres of timber adjacent to the Blown Beaver Area Salvage Timber Sale were blown down during a severe windstorm. In 1992 the Bonners Ferry District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through an environmental analysis documented in the Gone Beaver Blowdown Salvage Environmental Assessment (EA), that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished by early 1993 to avoid further deterioration of sawtimber and to reduce the risk for spruce bark beetle infestation in adjacent healthy timber stands.

EFFECTIVE DATE: Effective on September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie Henderson-North, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forest, Route 4, Box 4860, Bonners Ferry, ID 83805.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 20 acres of timber within and around the Blown Beaver Area Salvage Sale. The windthrown timber is within Management Area 7 as designated by the Idaho Panhandle Forest Plan, August 1987, and consists of lands designated for caribou habitat management and timber production.

In July 1992, the Bonners Ferry District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of the trees killed by the 1991 windstorms. This proposal was designed to meet the following needs, (a) implement integrated pest management prescriptions to reduce the potential for future spruce bark beetle infestations in adjacent healthy timber stands and (b) contribute to a continuing supply of timber for industry by salvaging merchantable timber products. An interdisciplinary team was convened, and scoping began in 1992. Three environmental issues were identified and were the basis for the environmental analysis disclosed in the EA. Two alternatives were analyzed; a No Action Alternative and the Proposed Action (salvage) alternative.

The selected alternative would salvage 250 MBF of dead and damaged timber from approximately 20 acres. All salvage areas are accessible from existing roads. No road construction or reconstruction is planned for this sale.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to minimize the risk of a spruce bark beetle epidemic and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as . . . severe wind . . . when the Regional Forester . . . determines and gives notice in the Federal Register that good causes exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Gone Beaver Blowdown Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 28, 1992.

John M. Hughes,

Deputy Regional Forester Northern Region.

[FR Doc. 92-21219 Filed 9-2-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Exemption of They Go 4 Blowdown Salvage Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a salvage timber sale project designed to recover windstorm damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: As a result of windstorms during the spring and fall of 1991, isolated patches of timber adjacent to the Italian Creek Timber Sale were blown down. In 1992 the Bonners Ferry District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through an environmental analysis documented in the They Go 4 Blowdown Salvage Environmental Assessment (EA), that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished by early 1993 to avoid further deterioration of sawtimber, to reduce the risk for insect infestation and fire in adjacent healthy timber stands, and to restock lands managed for timber production.

EFFECTIVE DATE: Effective on September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Debbie Henderson-Norton, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forest, Route 4, Box 4860, Bonners Ferry, ID 83805.

SUPPLEMENTARY INFORMATION: Severe windstorms in the spring and fall of 1991 damaged isolated pockets of timber in a 180 acre area within and around the Italian Creek Timber Sale area. The windthrown timber is within Management Area 2 as designated by the Idaho Panhandle Forest Plan, August 1987, and consists of lands designated for grizzly habitat management and timber production.

In July 1992, the Bonners Ferry District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of merchantable timber blown down by the 1991 windstorms. This proposal was designed to meet the following needs, (a) implement integrated pest management prescriptions to reduce the potential for future insect infestations and fire in adjacent healthy timber stands, (b) rehabilitate timber stands that are understocked due to severe wind damage, and (c) contribute to a continuing supply of timber for industry by salvaging merchantable timber products. An interdisciplinary team was convened, and scoping begin in 1992. Three environmental issues were identified and were the basis for the environmental analysis disclosed in the EA. Two alternatives were analyzed, a No Action Alternative and the Proposed Action (salvage) alternative.

The selected alternative would salvage 294 MBF of dead and damaged timber from isolated patches of windthrown timber on 180 acres. All salvage areas are accessible from existing roads. No road construction or reconstruction is planned for this sale.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to minimize disturbance to grizzly bears and their habitat, reduce the risk of future insect infestations and the potential for catastrophic wild fire, and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217(a)(11) are being followed.

Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as . . . severe wind . . . when the Regional Forester . . . determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the They Go 4 Blowdown Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 28, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92–21218 Filed 9–2–92; 8:45 am]

BILLING CODE 3410–11–M

federal register

Thursday
September 3, 1992

Part VIII

Department of Energy

Office of Energy Research

10 CFR Part 605

Office of Energy Research Financial Assistance Program; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Research

10 CFR Part 605

Office of Energy Research Financial Assistance Program

AGENCY: Office of Energy Research, DOE.

ACTION: Final rule.

SUMMARY: The final rule being issued today by the Department of Energy's (DOE) Office of Energy Research (ER) is in response to the President's Regulatory Review Program as set forth in Presidential memoranda of January 28 and April 29, 1992, and revises the existing regulation at 10 CFR Part 605 (the Special Research Grant Program) in order to improve, streamline, make uniform, clarify, and reduce the paperwork burden of, administrative requirements yet continue to provide reasonable and workable financial assistance policies and procedures.

EFFECTIVE DATE: This final rule is effective for all awards issued after October 1, 1992.

FOR FURTHER INFORMATION CONTACT:

Robert A. Zich, Director, Acquisition and Assistance Management Division, Office of Energy Research, ER–64/GTN, U.S. Department of Energy, Washington, DC 20585, (301) 903–5544.

Marya Rowan, Office of the Assistant General Counsel for Civilian Nuclear Programs, GC–31, U.S. Department of Energy, Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Discussion of Comments on Proposed Rules

The Office of Energy Research, U.S. Department of Energy issued two proposed rules on 10 CFR part 605 in the Federal Register. The first one appeared on June 24, 1992, (57 FR 28137) and the last one appeared on July 8, 1992, (57 FR 30171).

These notices of proposed rulemaking were issued tc revise the existing regulation to clarify, improve, reduce burden, streamline and update financial assistance policies and procedures in accordance with the President's Regulatory Review Program pursuant to the President's memoranda for certain department and agency heads on "Reducing the Burden of Government Regulation," dated January 28, 1992, and on "Implementing Regulatory Reforms," dated April 29, 1992. Comments were requested on these two rulemakings through August 7, 1992. In response to these **Federal Register** publications, DOE received written comments from three university research administration offices, one non-profit organization, one association that represents 136 national research colleges and universities and two comments from DOE Field Offices.

Three commenters requested that proposed § 605.16(b) which would limit indirect cost allowances on training grants and cooperative agreements to 8 percent of total direct costs, be deleted since both the cost and burden associated with the restriction would fall invariably upon the recipient without consideration of the circumstances. Upon ER's review of this comment, it was determined that this suggestion held merit and therefore ER should delete the proposed revision and in the future decide indirect cost allowability on a program basis. Another commenter requested that § 605.9 and 605.19 use the same term to describe reports required under this rule. ER again agreed with this suggestion and has adopted for use under this rule the term "progress report" instead of performance and progress reports. The term "progress report" is now used throughout 10 CFR part 605 in lieu of other terms in order to reduce confusion for award recipients. Three commenters objected to the increase of time for submission of renewal applications from 6 months to 9 months under § 605.9. ER, upon further review of this suggested revision, has decided that pre-award activities that require the additional time can be modified and thereby allow the proposed 3-month increase to be deleted. One commenter requested deletion of the § 605.19 requirement for additional information on graduate students, DOE mission and foreign travel in progress reports, as this information is already required as part of budget and cost documentation and as information on foreign travel and DOE mission are specifically required in separate trip reports or applications. ER has determined that adequate information in these three areas is already provided and the proposed requirement has been deleted. However, § 605.19(a)(1) of this final rule does include additional language that involves the use of threshold percentages to assist award recipients in understanding and in making determinations on reporting unexpended balances or in including detailed budget information during the term of an ER award. This section also includes the addition of the word "generally" under the requirement for a two page progress report to indicate that the report can be more or less as determined by the project director. Two commenters requested language changes to the newly proposed § 605.9(j) on renewal application progress reports. Language suggested by one commenter was adopted for use under this section in the final rule and will satisfy both commenters' concerns and ER's requirements for progress reports and renewal applications. ER also revised the proposed rule to include additional language clarifications that were suggested by one commenter for 605.19(a)(1). In addition to the suggested changes listed above, all of the commenters enthusiastically supported the proposed changes as providing a more efficient and less burdensome financial assistance program for DOE.

In § 605.3 the definition of *related conference* now includes language to cover conferences for educational and training activities since the final rule provides coverages of these activities. The definition for *special purpose equipment* also is revised to indicate the same coverage. Appendix A and § 605.5(b) are revised to indicate recent revisions to and reorganization activities within the Office of Energy Research. For example, the "Technology Analysis" area is deleted and is covered under Field Operations Management as a new sub program entitled "Laboratory Technology Transfer Program." Other ER and STA program descriptions in this final rule contain revisions that update and clarify research, training and related funding opportunities. This final rule in § 605.8(d) also deletes the need for publishing program announcements in the Commerce Business Daily (CBD). (The preamble to the notice of June 24, 1992, **Federal Register** at 57 FR 28137 proposed this deletion, but the proposed regulatory language neglected to do so.) In addition, § 605.20(a) was revised by deleting the term "to the scientific community" and thereby, consistent with the expansion to include educational and training activities, allowing project directors to publish in other than scientific media. Finally, ER incorporated some minor editorial changes, corrected errors discovered during review of the final document, and revised the table of contents to

accurately reflect changes made necessary by the final rule. In addition, for ease of readability and accurate reference for ER award recipients, 10 CFR part 605 is reprinted in its entirety.

II. Review Under Executive Order 12291

This final rule has been reviewed by OMB under Executive Order 12291 (46 FR 13192, February 17, 1981). Prior to publication of the final rule, DOE concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

III. Review Under Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 95 Stat. 1164) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small business, small organizations, and small governmental jurisdictions. DOE concluded that this final rule would only affect small entities as they apply for and receive cooperative agreements and grants and does not create additional economic impacts on small entities. Accordingly, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

IV. Review Under the Paperwork Reduction Act

The collection of information requirements contained in this final rule have been approved by OMB under control numbers 1910–0400 and 1910–1400.

V. Review Under the National Environmental Policy Act

DOE has concluded that the final rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and the DOE guidelines (10 CFR part 1022) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VI. Intergovernmental Review

This program is generally not subject to the intergovernmental review requirements of Executive Order 12372 as implemented by 10 CFR part 1005. However, certain applications may be. All applications from governmental or nongovernmental entities which involve research, development or demonstration activities when such activities: (1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area; (2) necessitate the preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public are subject to the provisions of the Executive Order and 10 CFR part 1005. Those planning to submit covered applications should immediately contact ER for further information.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Today's final rule will amend existing regulations for a financial assistance program to stimulate research and development, as well as educational and training activities. There will not be any substantial direct effect on States.

VIII. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

IX. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Office of Energy Research Financial Assistance Program is 81.049.

List of Subjects in 10 CFR Part 605

Energy, Grant programs—energy, Reporting and recordkeeping requirements, Research.

In consideration of the foregoing, part 605 of chapter II of title 10 of the Code of Federal Regulations is revised as set forth below.

Issued in Washington, DC, on August 27, 1992.

James F. Decker,

Deputy Director, Office of Energy Research.

Part 605 of chapter II of title 10, Code of Federal Regulations, is revised as follows:

PART 605—THE OFFICE OF ENERGY RESEARCH FINANCIAL ASSISTANCE PROGRAM

Sec.

Authority: Section 31 of the Atomic Energy Act, as amended, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, 88 Stat. 1878 (42 U.S.C. 5901 *et seq.*); secs. 644 and 648 of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 599

(42 U.S.C. 7254 and 7256); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

§ 605.1 Purpose and scope.

This part sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements by the DOE Office of Energy Research (ER) and the Science and Technology Advisor (STA) Organization for basic and applied research, educational and/or training activities, conferences and related activities.

§ 605.2 Applicability.

(a) This part applies to all grants and cooperative agreements awarded after the effective date of this amended rule.

(b) Except as otherwise provided by this part, the award and administration of grants and cooperative agreements shall be governed by 10 CFR part 600 (DOE Financial Assistance Rules).

§ 605.3 Definitions.

In addition to the definitions provided in 10 CFR part 600, the following definitions are provided for purposes of this part—

Basic and applied research means basic and applied research and that part of development not related to the development of specific systems or products. The primary aim of research is scientific study and experimentation directed toward advancing the state of the art or increasing knowledge or understanding rather than focusing on a specific system or product.

Educational/Training means support for education or related activities for an individual or organization that will enhance education levels and skills in particular scientific or technical areas of interest to DOE.

Principal investigator means the scientist or other individual designated by the recipient to direct the project.

Recipient obligation means the amounts of orders placed, contracts and subawards issued, services received, and similar transactions during a given period that will require payment by the recipient during the same or a future period.

Related conference means scientific or technical conferences, symposia, workshops or seminars for the purpose of communicating or exchanging information or views pertinent to ER/STA.

Special purpose equipment means equipment which is used only for research, medical, scientific, educational, or other related project activity.

§ 605.4 Deviations.

Single-case deviations from this part may be authorized in writing by the Director or Deputy Director of ER or the Head of a Contracting Activity upon the written request of DOE staff, an applicant for an award, or a recipient. A request from an applicant or a recipient must be submitted to or through the cognizant contracting officer. Whenever a proposed deviation from this part would be a deviation from 10 CFR part 600, the deviation must also be authorized in accordance with the procedures prescribed in that part.

§ 605.5 The Office of Energy Research Financial Assistance Program.

(a) DOE may issue, under the Office of Energy Research Financial Assistance Program, 10 CFR part 605, awards for basic and applied research, educational/training activities, conferences, and other related activities under the ER program areas set forth in paragraph (b) of this section and described in appendix A of this part.

(b) The Program areas are:

(1) Basic Energy Sciences

(2) Field Operations Management

(3) Fusion Energy

(4) Health and Environmental Research

(5) High Energy and Nuclear Physics

(6) Scientific Computing Staff

(7) Superconducting Super Collider

(8) University and Science Education Programs

(9) Program Analysis; and

(10) Other program areas of interest as may be described in a notice of availability published in the Federal Register.

§ 605.6 Eligibility.

Any university or other institution of higher education or other non-profit or for-profit organization, non-Federal agency, or entity is eligible for a grant or cooperative agreement. An unaffiliated individual also is eligible for a grant or cooperative agreement.

§ 605.7 [Reserved]

§ 605.8 Solicitation.

(a) The Catalog of Federal Domestic Assistance number for this program is 81.049, and its solicitation control number is ERFAP 10 CFR part 605.

(b) An application for a new or renewal award under this solicitation may be submitted at any time to DOE at the address specified in paragraph (c) of this section. New or renewal applications shall receive consideration for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE.

(c) Applicants may obtain application forms, described in § 605.9(b), and additional information from the Acquisition and Assistance Management Division, Office of Energy Research, ER–64, Department of Energy, Washington, DC 20585, (301) 903–5544, and shall submit applications to the same address.

(d) DOE shall publish annually, in the Federal Register, a notice of the availability of the Office of Energy Research Financial Assistance Program. DOE shall also publish notices or abbreviated notices of availability in trade and professional journals, and news media, and use other means of communication, as appropriate.

(1) Each notice of availability shall cite this part and shall include:

(i) The Catalog of Federal Domestic Assistance number and solicitation control number of the program;

(ii) The amount of money available or estimated to be available for award;

(iii) The name of the responsible DOE program official to contact for additional information, and an address where application forms may be obtained;

(iv) The address for submission of applications; and

(v) Any evaluation criteria in addition to those set forth in § 605.10.

(2) The notice of availability may also include any other relevant information helpful to applicants such as:

(i) Program objectives,

(ii) A project agenda or potential areas for project initiatives,

(iii) Problem areas requiring additional effort, and

(iv) Any other information which identifies areas in which grants or cooperative agreements may be made.

(e) DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

(f) DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted.

(g) To be considered for a renewal award under this part, an incumbent recipient shall submit a renewal application as provided in § 605.9 (c) and (h).

§ 605.9 Application requirements.

(a) An original and seven copies of the application for initial support must be submitted except that State governments, local governments, or Indian tribal governments shall not be required to submit more than the original and two copies of the application.

(b) Each new or renewal application in response to this part must include

(1) An application face page, DOE Form 4650.2 (approved by OMB under OMB Control No. 1910–1400). However, the facesheet of the application for State and local governments and Indian tribal government applicants shall be the facesheet of Standard Form (SF) 424 (approved by OMB under OMB Control Number 0348–0043).

(2) A detailed description of the proposed project, including the objectives of the project, in relationship to DOE's program and the applicant's plan for carrying it out;

(3) Detailed information about the background and experience of the principal investigator(s) (including references to publications), the facilities and experience of the applicant, and the cost-sharing arrangements, if any.

(4) A detailed budget for the entire proposed period of support with written justification sufficient to evaluate the itemized list of costs provided on the entire project.

(i) Numerical details on items of cost provided by State and local government and Indian tribal government applicants shall be on Standard Form 424A, Budget Information for Non-Construction Programs (approved under OMB Control No. 0348–0044). All other applicants shall use budget form ERF 4620.1 (approved by OMB under Control No. 1910–1400).

(ii) DOE may, subsequent to receipt of an application, request additional budgetary information from an applicant when necessary for clarification or to make informed preaward determinations under 10 CFR Part 600.

(5) Any preaward assurances required pursuant to 10 CFR parts 600 and 605.

(c) Applications for a renewal award must be submitted in an original and seven copies, except that State governments, local governments, or Indian tribes are required to submit only an original and two copies. (Approved by OMB under OMB Control Numbers 0348–0005—0348–0009).

(d) The application must be signed by an official who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the award, if one is issued, or if unaffiliated, by the individual applicant. (See § 605.19(a)(1) for requirements on continuation awards.)

(e) All applications which involve research, development, or demonstration activities when such activities:

(1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area;

(2) Necessitate the preparation of an Environmental Impact Statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)); or

(3) Are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public, are subject to the provisions of Executive Order 12372 and 10 CFR part 1005.

Anyone planning to submit such applications should contact ER for further information about compliance requirements.

(f) DOE may return an application which does not include all information and documentation required by statute, this part, 10 CFR part 600 or the notice of availability, when the nature of the omission precludes review of the application.

(g) During the review of the complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

(h) In addition to including the information described in paragraphs (b), (c), and (d) of this section, an application for a renewal award must be submitted no later than six months prior to the scheduled expiration of the project period and must be on the same forms and include the same type of information as that required for initial applications. The renewal application must outline and justify a program and budget for the proposed project period, showing in detail the estimated cost of the proposed project, together with an indication of the amount of funds needed and the amount of cost sharing, if any. The application also shall describe and explain the reasons for any change in the scope or objectives of the proposed project, and shall compare and explain any difference between the estimates in the proposed budget and actual costs experienced as of the date of the application.

(i) DOE is not required to return to the applicant an application which is not selected or funded.

(j) Renewal applications must include a separate section that describes the results of work accomplished through the date of the renewal application and how such results relate to the activities proposed to be undertaken in the renewal period.

§ 605.10 Application evaluation and selection.

(a) Applications shall be evaluated for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE. After DOE has held an application for 6 months, the applicant may, in response to DOE's request, be required to revalidate the terms of the original application.

(b) DOE staff shall perform an initial evaluation of all applications to ensure that the information required by this part is provided, that the proposed effort is technically sound and feasible, and that the effort is consistent with program funding priorities. For applications which pass the initial evaluation, DOE shall review and evaluate each application received based on the criteria set forth below and in accordance with the Merit Review System developed as required under DOE Financial Assistance Regulations, 10 CFR part 600.

(c) DOE shall select evaluators on the basis of their professional qualifications and expertise. Evaluators shall be required to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

(d) DOE shall evaluate new and renewal applications based on the following criteria which are listed in descending order of importance:

(1) Scientific and/or technical merit or the educational benefits of the project;

(2) Appropriateness of the proposed method or approach;

(3) Competency of applicant's personnel and adequacy of proposed resources;

(4) Reasonableness and appropriateness of the proposed budget; and

(5) Other appropriate factors established and set forth by ER in a notice of availability or in a specific solicitation.

(e) Also, DOE shall consider, as part of the evaluation, other available advice or information as well as program policy factors such as ensuring an appropriate balance among the program areas listed in § 605.5(b) of this part.

(f) In addition to the evaluation criteria set forth in paragraphs (d) and (e) of this section, DOE shall consider the recipient's performance under the existing award during the evaluation of a renewal application.

(g) Selection of applications for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed application to ER's mission, and fund availability. Cost reasonableness and realism will also be considered to the extent appropriate.

(h) After the selection of an application, DOE may, if necessary, enter into negotiation with an applicant. Such negotiations are not a commitment that DOE will make an award.

§ 605.11 Additional requirements.

(a) A recipient performing research, development, or related activities involving the use of human subjects must comply with DOE regulations in 10 CFR part 745, "Protection of Human Subjects," and any additional provisions which may be included in the Special Terms and Conditions of an award.

(b) A recipient performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later revision of those guidelines as may be published in the Federal Register. (The guidelines are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892.)

(c) Any recipient performing research on warm-blooded animals shall comply with the Federal Laboratory Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture at 9 CFR chapter I, subchapter A, pertaining to the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal awards. The recipient shall comply with the guidelines described in DHHS Publication No. [NIH] 86–23, "Guide for the Care and Use of Laboratory Animals," or succeeding revised editions. (This guide is available from the Office for Protection from Research Risks, Office of the Director, National Institutes of Health, Building 31, room 4B09, Bethesda, Maryland 20205.)

§ 605.12 Funding.

(a) The project period during which DOE expects to provide support for an approved project under this part shall generally not exceed 3 years and may exceed 5 years only if DOE makes a renewal award or otherwise extends the award. The project period shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1).

(b) Each budget period, of an award under this part, shall generally be 12 months and may be as much as 24 months as determined appropriate by ER.

§ 605.13 Cost sharing.

Cost sharing is not required nor will it be considered as a criterion in the evaluation and selection process unless otherwise provided under § 605.10(d)(5).

§ 605.14 Limitation of DOE liability.

Awards under this part are subject to the requirement that the maximum DOE obligation to the recipient is the amount shown in the Notice of Financial Assistance Award as the amount of DOE funds obligated. DOE shall not be obligated to make any additional, supplemental, continuation, renewal or other awards for the same or any other purpose.

§ 605.15 Fee.

(a) Notwithstanding 10 CFR part 600, a fee may be paid, in appropriate circumstances, to a recipient which is a small business concern as qualified under the criteria and size standards of 13 CFR part 121 in order to permit the concern to participate in the ER Financial Assistance Program. Whether or not it is appropriate to pay a fee shall be determined by the Contracting Officer who shall, at a minimum, apply the following guidelines:

(1) Whether the acceptance of an award will displace other work the small business is currently engaged in or committed to assume in the near future; or

(2) Whether the acceptance of an award will, in the absence of paying a fee, cause substantial financial distress to the business. In evaluating financial distress, the Contracting Officer shall balance current displacement against reasonable future benefit to the company. (If the award will result in the beneficial expansion of the existing business base of the company, then no fee would generally be appropriate.) Fees shall not be paid to other entities except as a deviation from 10 CFR part 600, nor shall fees be paid under awards in support of conferences.

(b) To request a fee, a small business concern shall submit with its application a written self certification that it is a small business concern qualified under the criteria and size standards in 13 CFR part 121. In addition, the application must state the amount of fee requested for the entire project period and the basis for requesting the amount, and must also state why payment of a fee by DOE would be appropriate.

(c) If the Contracting Officer determines that payment of a fee is appropriate under paragraph (a) of this section, the amount of fee shall be that determined to be reasonable by the Contracting Officer. The Contracting Officer shall, at a minimum, apply the following guidelines in determining the fee amount:

(1) The fee base shall include the estimated allowable cost of direct salaries and wages and allocable fringe benefits. This fee base shall exclude all other direct and indirect costs.

(2) The fee amount expressed as a percentage of the appropriate fee base pursuant to paragraph (c)(1) of this section, shall not exceed the percentage rate of fee that would result if a Federal agency contracted for the same amount of salaries, wages, and allocable fringe benefits under a cost reimbursement contract.

(3) Fee amounts, determined pursuant to paragraphs (c)(1) and (c)(2) of this section, shall be appropriately reduced when:

(i) Advance payments are provided; and/or

(ii) Title to property acquired with DOE funds vests in the recipient (10 CFR part 600).

(d) Notwithstanding 10 CFR part 600, any fee awarded shall be a fixed fee and shall be payable on an annual basis in proportion to the work completed, as determined by the Contracting Officer, upon satisfactory submission and acceptance by DOE of the progress report. If the project period is shortened due to termination, or the project period is not fully funded, the fee shall be reduced by an appropriate amount.

§ 605.16 Indirect Cost Limitations.

Awards issued under this part for conferences and scientific/technical meetings will not include payment for indirect costs.

§ 605.17 [Revised]

§ 605.18 National Security.

Activities under ER's Financial Assistance Program shall not involve classified information (i.e., Restricted Data, formerly Restricted Data, National Security Information). However, if in the opinion of the recipient or DOE such involvement becomes expected prior to the closeout of the award, the recipient or DOE shall notify the other in writing immediately. If the recipient believes any information developed or acquired may be classifiable, the recipient shall not provide the potentially classifiable information to anyone, including the DOE officials with whom the recipient normally communicates, except the Director of Classification, and shall protect such information as if it were classified until notified by DOE that a determination has been made that it does not require such handling. Correspondence which includes the specific information in question shall be sent by registered mail to U.S. Department of Energy, Attn: Director of Classification, DP–32, Washington, DC 20585. If the information is determined to be classified, the recipient may wish

to discontinue the project in which case the recipient and DOE shall terminate the award by mutual agreement. If the award is to be terminated, all material deemed by DOE to be classified shall be forwarded to DOE, in a manner specified by DOE, for proper disposition. If the recipient and DOE wish to continue the award, even though classified information is involved, the recipient shall be required to obtain both personnel and facility security clearances through the Office of Safeguards and Security for Headquarters awards, or from the cognizant field office Division of Safeguards and Security for awards obtained through DOE field organizations. Costs associated with handling and protecting any such classified information shall be negotiated at the time that the determination to proceed is made.

§ 605.19 Continuation Funding and Reporting Requirements.

(a) A recipient shall periodically report to DOE on the project's progress in meeting the project objectives of the award. The following types of reports shall be used:

(1) Progress reports. After issuance of an initial award and if future support is recommended, recipients must submit a satisfactory progress report in order to receive continuation awards for the remainder of the project period. The original and two copies of the required report (generally not to exceed two pages per project or task) must be submitted to the ER program manager 90 days prior to the anticipated continuation funding date and contain the following information: on the first page, provide the project title, principal investigator/project director name, period of time report covers, name and address of recipient organization, DOE award number, the amount of unexpended funds, if any, that are anticipated to be left at the end of the current budget period, and if the amount exceeds 10 percent of the funds available for the budget period, provide information as to why the excess funds are anticipated to be available and how they will be used in the next budget period. Report should state whether aims have changed from original application and if they have, provided revised aims. Include results of work to date. Emphasize findings and their significance to the field, and any real or anticipated problems. A completed budget page must be submitted with the continuation progress report when a change to anticipated future costs will exceed 25 percent of the original recommended future budget.

(2) Notice of Energy R&D Project. A Notice of Energy R&D Project, DOE Form 1430.22, which summarizes the purpose and scope of the project, must be submitted in accordance with the Distribution and Schedule of Documents set forth at the end of this section. Copies of the form may be obtained from a DOE Contracting Office.

(3) Special Reports. The recipient shall report the following events to DOE as soon after they occur as possible:

(i) Problems, delays, or adverse conditions which will materially affect the ability to attain project objectives, or prevent the meeting of time schedules and goals. The report must describe the remedial action the recipient has taken or plans to take and any action DOE should take to alleviate the problems.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

(4) Final Report. A final report summarizing the entire investigation must be submitted by the recipient within 90 days after the final project period ends or the award is terminated. Satisfactory completion of an award will be contingent upon the receipt of this report. The final report shall follow the same outline as a progress report. Manuscripts prepared for publication should be appended.

(5) Financial status report (FSR) (OMB No. 0348–0039). The FSR is required within 90 days after completion of each budget period; for budget periods exceeding 12 months, an FSR is also required within 90 days after this first 12 months unless waived by the Contracting Officer.

(b) DOE may extend the deadline date for any report if the recipient submits a written request before the deadline which adequately justifies an extension.

(c) A table summarizing the various types of reports, time for submission, number of copies is set forth below. The schedule of reports shall be as prescribed in this table, unless the award document specifies otherwise.

(d) DOE review of performance. DOE or its authorized representatives may make site visits, at any reasonable time, to review the project. DOE may provide such technical assistance as may be requested.

(e) Subrecipient progress reporting. Recipients may place progress reporting requirements on a subrecipient consistent with the provisions of this section.

DISTRIBUTION AND SCHEDULE OF DOCUMENTS

Type	When due	Number of copies to be submitted
1. Summary: 200 words on scope and purpose (Notice of Energy R&D Project).	Immediately after award and with each application for renewal.	3
2. Renewal	6 months before the project period ends.	8
3. Progress Report	90 days prior to the next budget period (or as part of a renewal application).	3
4. Other progress reports, brief topical reports, etc. (Designated when significant results develop or when work has direct programmatic impact).	As deemed appropriate by the recipient.	3
5. Reprints, Conference papers.	Same as 4 above	3
6. Final Report	Within 90 days after termination of the project.	3
7. Financial Status Report. (FSR).	Within 90 days after completion of the project period; for budget periods exceeding 12 months an FSR is also required within 90 days after the first 12-month period.	3

NOTE: Report types 5 and 6 require with submission two copies of DOE Form 1332.16, University-Type Contractor and Grantee Recommendations for Disposition of Scientific and Technical Document.

§ 605.20 Dissemination of results.

(a) Recipients are encouraged to disseminate project results promptly. DOE reserves the right to utilize, and have others utilize, to the extent it deems appropriate, the reports resulting from awards.

(b) DOE may waive progress reporting requirements set forth in § 605.19, if the recipient submits to DOE a copy of its own report which is published or accepted for publication in a recognized scientific or technical journal and which satisfies the information requirements of the program.

(c) Recipients are urged to publish results through normal publication channels in accordance with the applicable provisions of 10 CFR Part 600.

(d) The article shall include an acknowledgment that the project was supported, in whole or in part, by a DOE

award, and specify the award number, but state that such support does not constitute an endorsement by DOE of the views expressed in the article.

Appendix A to Part 605—The Energy Research Program Office Descriptions

1. Basic Energy Sciences

This program supports basic science research efforts in a variety of disciplines to broaden the energy supply and technological base knowledge. The major science division and its objectives are as follows:

(a) Energy Biosciences

The primary objective of this program is to generate a basis of understanding of fundamental biological mechanisms in the areas of botanical and microbiological sciences that will support biotechnology development related to energy. The research serves as the basic information foundation with respect to renewable resource productivity for fuels and chemicals, microbial conversions or renewable materials and biological systems for the conservation of energy. This office has special requirements on the submission of preapplications, when to submit, and the length of the preapplication/application; applicants are encouraged to contact the office regarding these requirements.

(b) Chemical Sciences

This program sponsors experimental and theoretical research on liquids, gases, plasmas, and solids. The focus is on their chemical properties and the interactions of their component molecules, atoms, ions, and electrons. The subprogram objective is to expand, through support of basic research, our knowledge in the various areas of chemistry; the long-term goal is to contribute to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas covered include physical, organic, and inorganic chemistry; chemical physics; atomic physics; photochemistry; radiation chemistry; thermodynamics; thermophysics; separations science; analytical chemistry; and actinide chemistry.

(c) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of the energy-related aspects of processes within the earth and at the solar-terrestrial interface. The emphasis is on the upper levels of the earth's crust and the focus is on geophysics and geochemistry of rock-fluid systems and interactions. Specific topical areas receiving emphasis include: High resolution geophysical imaging; fundamental properties of rocks, minerals, and fluids; scientific drilling; and sedimentary basin systems. The resulting improved understanding and knowledge base are needed to assist efforts in the utilization of the Nation's energy resources in an environmentally acceptable fashion.

(d) Engineering Research

This program's objectives are: (1) To extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output and performance quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies. Long-term research topics of current interest include: foundations of bioprocessing of fuels and energy related wastes, fracture mechanics, experimental and theoretical studies of multiphase flows, intelligent machines, and diagnostics and control for plasma processing of materials.

(e) Materials Sciences

The objective of this program is to increase the understanding of phenomena and properties important to materials behavior that will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, solid state physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

(f) Advanced Energy Projects

The objective of this program is to support exploratory research on novel concepts related to energy. The concepts may be in any field related to energy but must not fall into an area of programmatic responsibility of an existing ER technical program. The research is usually aimed at establishing the scientific feasibility of a concept and, where appropriate, at estimating its economic viability.

2. Field Operations Management

This office administers special purpose support programs that cut across DOE program areas. In conjunction with this activity, it supports related conferences, research, and training initiatives that further these areas of interest.

(a) Laboratory Technology Transfer Program

The ER Laboratory Technology Transfer (LTT) Program has dedicated funding which fulfills the legislative mandate to more effectively transfer research and technology from Energy Research laboratories to industry. By design, this program provides only partial funding for technology research projects and personnel exchanges with industry and universities. Mandatory cost-sharing by industry and other partners ensures that cooperative projects will focus on those that generate real interest in the private sector and facilitate the transfer of technology. The program supports laboratory-industry personnel exchanges; comprehensive program evaluation; and cost-shared technology research, especially CRADAs to advance precompetitive research projects to a point where they can be evaluated for commercial applications. Other activities of the ER Laboratory Technology Transfer Program include coordinating technology transfer operations throughout the ER laboratory system; coordinating technology transfer elements of the institutional planning process; contributing to Departmental technology transfer policy development; and implementing appropriate outreach activities.

3. Fusion Energy

The magnetic fusion energy program is an applied research and development program whose goal is to develop the scientific and technological information required to design and construct magnetic fusion energy systems. This goal is pursued by three divisions, whose major functions are listed below.

(a) Applied Plasma Physics (APP)

This Division seeks to develop that body of physics knowledge which permits advancement of the fusion program on a sound basis. APP research programs provide: (1) The theoretical understanding of fusion plasmas necessary for interpreting results from present experiments, and the planning and design of future confinement devices; (2) the data on plasma properties, atomic physics and new diagnostic techniques for operational support of confinement experiments; research and development of Heavy Ion Fusion Accelerator (HIFAR) and reactor studies in support of the development of Inertial Fusion Energy (IFE).

(b) Confinement Systems

This Division has as its primary objective the conduct of research efforts to investigate and resolve basic physics issues associated with medium- to large-scale confinement devices. These devices are used to experimentally explore the limits of specific confinement concepts as well as to study associated physical phenomena. Specific areas of interest include: the production of increased plasma densities and temperatures; the understanding of the physical laws governing plasma energy transport and confinement scaling; equilibrium and stability of high plasma pressure; the investigation of plasma interaction with radio-frequency waves; and the study and control of particle transport in the plasma.

(c) Development and Technology

This Division supports research and development of the technology necessary for fabrication and operation of present and future plasma and fusion devices. The program also pursues R&D and system studies pertaining to critical feasibility issues of fusion technology and development.

4. Health and Environmental Research

The goals of this research program are as follows: (1) To provide, through basic and applied research, the scientific information required to identify, understand and anticipate the long-term health and environmental consequences of energy use and development; and (2) to utilize the Department's unique resources to solve major scientific problems in medicine, biology and the environment. The goals of the program are accomplished through the effort of its divisions, which are:

(a) Health Effects and Life Sciences Research

This is a broad program of basic and applied biological research. The objectives are: (1) To develop experimental information from biological systems for estimating or predicting risks of carcinogenesis,

mutagenesis, and delayed toxicological effects associated with low level human exposures to energy-related radiations and chemicals; (2) to define mechanisms involved in the induction of biological damage following exposure to low levels of energy-related agents; (3) to develop new technologies for detecting and quantifying latent health effects associated with such agents; (4) to support fundamental research in structural biology user facilities at DOE laboratories; and (5) to create and apply new technologies and resources for characterizing the molecular nature of the human genome.

Increasing emphasis will be placed on: Understanding of mechanisms by which low level exposures to radiation and/or energy-related chemicals produce long-term health impacts; development of new technologies for estimating human health risks from low level exposures; development and application of technologies and approaches for cost-effective characterization of the human genome.

(b) Medical Applications and Biophysical Research

The objectives of this program comprise several areas: (1) To develop new concepts and techniques for detecting and measuring hazardous physical and chemical agents related to energy production; (2) to evaluate chemical and radiation exposures and dosimetry for health protection application; (3) to determine the physical and chemical mechanisms of radiation action in biological systems; and (4) to develop new instrumentation and technology for biological and biomedical research. In addition, Medical Application research is aimed at enhancing the beneficial applications of radiation, and radionuclides, in the diagnosis, study, and treatment of human diseases. This includes the development of new techniques for radioactive isotope production, labeled pharmaceuticals, imaging devices, and radiation beam applications for the improved diagnosis and therapy of human diseases or the study of human physiological processes. A new area of interest involves the integration of Nuclear Medicine and Molecular Biology. This includes development of radioisotopes and new molecular radiopharmaceutical probes specific to disease-associated targets for improved diagnosis and therapy.

(c) Environmental Sciences

The objectives of the program relate to environmental processes affected by energy production and use. For example, the program develops information on the physical, chemical and biological processes that cycle and transport energy related material and nutrients through the atmosphere, and the ocean margin. Specific emphasis is placed on hydrological transport, mobility and degradation of energy-related contaminants by microorganisms in subsurface systems.

This program also addresses global environmental change from increases in atmospheric carbon dioxide and other greenhouse gases. The scope of the global change program encompasses the carbon cycle, climate modeling and diagnostics, ecosystem responses, the role of the ocean in global change and experiments to quantify the links between greenhouse gas increases and climate change. A new dimension of this program addresses the role of molecular biology in understanding the ecosystem response to global change.

5. High Energy and Nuclear Physics

This program supports 90 percent of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter.

(b) High Energy Physics

The primary objectives of this program are to understand the nature and relationships among fundamental forces of nature and to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents.

6. Scientific Computing Staff

The goal of this program is to advance the understanding of the fundamental concepts of mathematics, statistics, and computer science underlying the complex mathematical models of the key physical processes involved in the research and development programs of DOE. Broad emphasis is given in three major categories: analytical and numerical methods, information analysis techniques, and advanced concepts.

7. Superconducting Super Collider (SSC)

The goals of the Superconducting Super Collider are to build a proton-proton collider with an energy of 20 TeV per proton, to construct and operate experimental systems to study the interactions of these protons, to establish the premier international laboratory for high energy physics reasearch, and to create a major resource for science education. The Office of the Superconducting Super Collider administers research grants associated with the SSC Laboratory's physics, accelerator, and associated technology research and development programs.

8. University and Science Education

The Office of University and Science Education supports a variety of science, mathematics and engineering education precollege through postgraduate programs aimed at strengthening the Nation's science education and research infrastructure. DOE's education mission has been expanded to include increasing emphasis on the precollege and general public literacy areas. Much of the support involves the use of the unique resources (scientists, facilities and equipment) at DOE's national laboratories and research facilities, and includes research and/or other "hands-on" opportunities for precollege and postsecondary students, teachers, and faculty members. In addition to programs centered in DOE facilities, a number of other educational activities are supported, including:

(a) Pre-Freshman Enrichment Program (PREP)

PREP supports projects at colleges and universities aimed at seeking out gindividuals, typically under-represented in science-based careers, during junior high school and early high school years (sixth through tenth grades) and providing these individuals with pre-freshman enrichment activities to identify, motivate and prepare them for science-based careers. Projects must include concentrated, integrated activities that enhance the student's understanding of science and mathematics, must have a summer component at least four weeks in length, and may also include a pre-summer or post-summer component.

(b) Museum Science Education Program

This program funds museum projects that support the development of the media of informal energy-related science education. The media of informal science education include, but are not limited to: Interactive exhibits, demonstrations, hands-on activities, teacher-student curriculum and film/video/software productions. Examples of energy-related subjects include, but are not limited to: high energy and nuclear physics, nuclear science and technologies, global warming, waste management, energy efficiency, new materials development, fossil energy resources, renewable technologies, risk assessment, energy/environment and other timely topics. The purpose of the program is the development and use of creative informal science education media which focus on energy-related science and technology.

(c) University Research Instrumentation Program

The University Research Instrumentation Program has been developed as part of an interagency effort under the coordination of the Office of Science and Technology Policy to help alleviate the overall shortage of sophisticated state-of-the-art instruments required for advanced scientific and technical research at universities. The overall program objective is to assist university and college scientists in strengthening their capabilities to conduct long-range experimental/scientific research in specific energy areas of direct interest to DOE through the acquisition of large scientific/technical pieces of equipment. Only those colleges and universities that currently have DOE funded research projects, which require the requested equipment, totalling at least $150,000 in the specific area will be selected (more complete eligibility guidelines and principal research areas of particular DOE interest in any given year are available from the program office). Smaller research instruments (less than $100,000 each) are not eligible for consideration in this program. No specific fraction of cost sharing is required but the level of non-Federal funds to be provided will be considered in final selection of awards under the program.

(d) Experimentol Program To Stimulote Competitive Reseorch

The purpose of the DOE Experimental Program to Stimulate Competitive Research is to enhance the capabilities of the eligible designated States to develop science and engineering manpower in energy-related areas and to conduct nationally competitive energy-related research. Planning committees within eligible States may apply for planning, implementation and/or training efforts (list of eligible States and activities to be supported in any given year as well as cost-sharing requirements are available from the program office). Separate applications for planning/implementation and graduate traineeships are required. Planning/implementation applications must contain information that details development of a State-wide improvement plan for energy-related research and human resources, while training grant applications must detail the need for energy-related specific and technical educational disciplines.

(e) Nuclear Engineering Reseorch

The objective of this program is to support research efforts aimed at strengthening University-based nuclear engineering programs. Specific areas of basic and applied research of interest include, but are not limited to: (1) Material behavior in a radiation environment typical of advanced nuclear power plants; (2) real-time instrumentation that identifies and applies innovative measurements technologies in nuclear-related fields; (3) advanced nuclear reactor concepts; (4) applied nuclear sciences that address improvements in the applications of radiation and the understanding of the interaction of radiation with matter; (5) engineering science research applicable to advanced nuclear reactor concepts, industry safety and reliability concerns; (6) neutronics that address improvements in reactor computational methodologies and knowledge of the basic fission processes; and (7) nuclear thermal hydraulics that address improvements of models and analysis of thermal hydraulic behavior in an advanced nuclear reactor system.

(f) Used Energy-Reloted Laboratory Equipment (ERIE) Program

In accordance with DOE's responsibility to encourage research and development in the energy area, grants of used energy-related laboratory equipment for use in energy-oriented educational programs in the life, physical and environmental sciences, and engineering are available to universities, colleges and other non-profit educational institutions of higher learning in the United States. An institution is not required to have a current DOE grant or contract in order to participate in this program. The program office should be contacted for specific information on how to access the list of eligible equipment under this program. The cost of care and handling incident to the grant must be borne by the institution.

9. Program Analysis

The Office of Program Analysis conducts assessments to identify research opportunities in specific areas of interest to DOE programs.

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Federal Register

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Thursday, September 3, 1992

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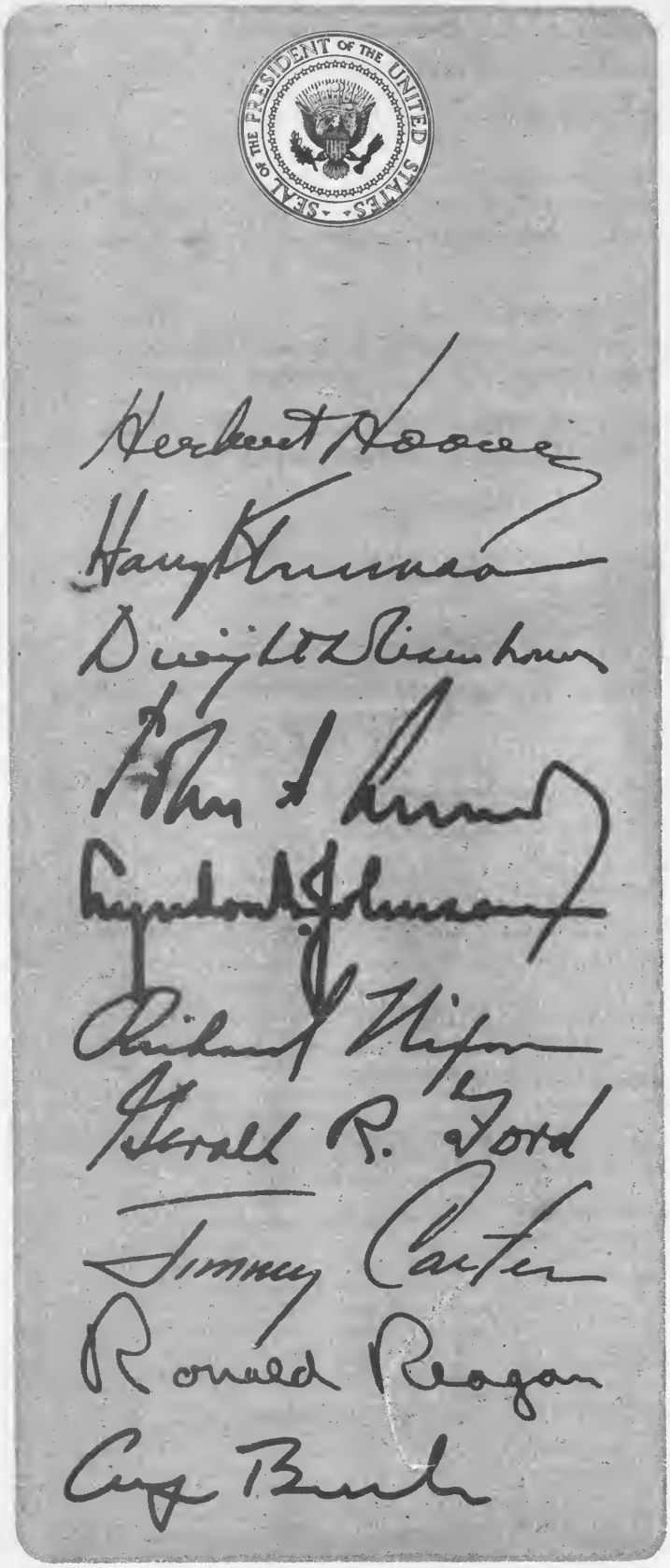

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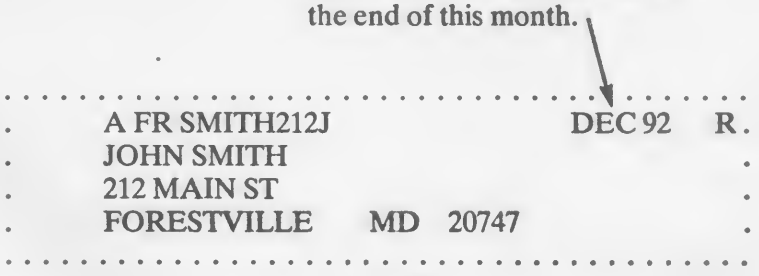

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