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Pages 37475–37754

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Monday
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Contents

Federal Register

Vol. 63, No. 133

Monday, July 13, 1998

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
911.....37475
915.....37475

9 CFR
3.....37480
93.....37483

11 CFR
Proposed Rules:
102.....37721
103.....37721
106.....37721

12 CFR
208.....37630
209.....37659
216.....37665
250.....37630
904.....37483

14 CFR
71.....37489
Proposed Rules:
27.....37745
29.....37745
39.....37508
71.....37510

17 CFR
240 (2 documents).....37490, 37688
Proposed Rules:
240 (2 documents).....37746

27 CFR
178.....37739

33 CFR
100 (2 documents).....37490, 37491
165.....37492

34 CFR
Proposed Rules:
668.....37713

40 CFR
52.....37493

42 CFR
409.....37498
410.....37498
411.....37498
413.....37498
424.....37498
483.....37498
489.....37498

47 CFR
0.....37499
63.....37499

49 CFR
191.....37500
192.....37500
193.....37500
194.....37500
195.....37500

50 CFR
285.....37506
679.....37507

Rules and Regulations

Federal Register
Vol. 63, No. 133
Monday, July 13, 1998

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV98–911–2 IFR]

Limes and Avocados Grown in Florida; Relaxation of Container Dimension, Weight, and Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the container requirements prescribed under the Florida lime and avocado Federal marketing orders. The marketing orders are administered locally by the Florida Lime Administrative Committee and the Avocado Administrative Committee (committees). This rule simplifies container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. This rule also removes weight limits on lime and avocado containers packed within a master container, and relaxes certain minimum weight requirements on containers of avocados. In addition, this rule eliminates specific container dimension requirements for both limes and avocados, but maintains net weight requirements. These changes will reduce handling costs and provide greater flexibility in lime and avocado packing operations.

DATES: Effective July 14, 1998; comments received by September 11, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 126 and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida, and Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in Florida, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the terms of the marketing orders, fresh market shipments of Florida limes and avocados are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. Current pack and container requirements outline the types of information and the number of times this information needs to appear on a container. The requirements also list the specific dimensions of the containers in which the fruit can be packed and the weight restrictions the packed containers must meet.

This rule makes several changes to the orders' pack and container rules and regulations. This rule simplifies container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. In addition, this rule removes net weight limits on lime and avocado containers packed within a master container, and relaxes certain minimum net weight requirements on containers of avocados. This rule also eliminates specific container dimension requirements for both limes and avocados. These changes will reduce handling costs and provide greater flexibility in lime and avocado packing operations. The committees met several times to discuss and recommend changes needed in the container regulations. The committees met and unanimously recommended these changes on July 9, 1997, August 13, 1997, and February 11, 1998.

Section 911.48 and 915.51 of the orders provide the authority to issue regulations establishing specific pack

and container requirements for limes and avocados, respectively. These requirements are specified under sections 911.311, 911.329 and 911.344 for limes, and under sections 915.305 and 915.306 for avocados. These sections specify, in part, container size, weight, and marking requirements.

This rule makes several changes to the pack and container provisions under the orders. The first change reduces the number of times the size for limes and the grade for avocados need to appear on a container. Sections 911.311(5)(d) and 915.306(a)(6) of the rules and regulations outline the container marking requirements for limes for size and avocados for grade, respectively. Current requirements specify that the size for limes be marked in letters at least one inch in height on two sides of the container. For avocados, the grade must be stamped in letters at least one inch in height on the top and two sides of the lid. This rule relaxes these requirements by establishing that containers be stamped only once, anywhere except the bottom of the container.

The size and grade information on a container is usually applied automatically by machine, or stamped individually by hand. Each time a container is stamped, there is an associated cost. The committees recommended reducing the number of times a container must be stamped, as well as expanding the possible stamp location, to provide handlers additional flexibility, and to reduce costs.

The committees believe this change will benefit both large and small packing operations. Larger operations use automated stamping. Current stamping requirements mean that each packing line needs to have at least two in-line stamp rollers or ink jet printers. In cases where the line has only one stamping device, the containers must be reversed and run through the line a second time for limes, and three times for avocados. This can take a considerable amount of time. This change will allow containers to move more rapidly through the packing line, reduce the number of stamping machines required, and decrease the costs associated with these activities.

Most smaller operations stamp the containers by hand. To meet the current requirements, each box must be rotated and stamped in more than one location. This increases the time and effort needed to pack each box. Reducing the number of times a container must be stamped will decrease the amount of labor needed and the associated stamping costs required to meet these requirements.

The requirement that containers be stamped more than once with size or grade information originated from the way limes and avocados were marketed by retailers in the past. Limes and avocados were, at one time, marketed and sold out of the containers in which the fruit was originally packed. Having the information on the container appear in several locations was done so that the customer could read it. However, the way limes and avocados are marketed has changed. Rather than being presented in the shipping container, retailers move the fruit to display bins.

The stamping of containers with required information benefits the retailer and helps the committees' check that the lots (shipments) meet order requirements. Retailers tend to buy in large lots, purchasing a specified size and grade. The number of times an individual box needs to be stamped is less important. The committees anticipate that this change will reduce costs and give handlers additional flexibility under the rules and regulations. Therefore, the committees recommended relaxing the stamping requirements for both limes and avocados.

The next change this rule makes is to the weight limits on individual containers that are packed inside larger master containers. Sections 911.329(a)(3) and 915.305(b) specify that individual packages of limes or avocados contained within master containers are not to exceed four pounds in weight. This rule relaxes this weight limit, allowing packaged limes or avocados contained within master containers to exceed four pounds in weight.

The committees are always looking for ways to strengthen and expand the market for limes and avocados. One way they do this is through the approval of experimental containers not currently included under the regulations. This is done for market research purposes. The committees use such research to determine the benefits and acceptance of different containers in the marketplace.

The use of master containers packed with limes and avocados in packages in excess of 4 pounds has been approved on an experimental basis. The approvals were made to allow handlers to meet specific requests from their customers.

Consequently, these larger sized packages within a master container have been shown to have a market potential.

The committees both discussed the merits of eliminating the four pound limit on packages within a master container. The committees believe this change will provide handlers with additional marketing flexibility, increased sales potential, and with more opportunities to satisfy customers with special needs. Based on the information collected from the use of the trial containers, the committees recommended that the four pound limit on packages within a master container be removed.

This rule also lowers certain minimum net weight requirements for containers of avocados. Section 915.305 specifies minimum weight requirements for avocados packed under the marketing order for avocados grown in Florida. The current regulations specify that avocados be packed in containers of 8.5, 12½, 25, 32, or 34 pounds designated net weights. This rule reduces the net weight requirements of 12½, 25, 32, and 34 pounds to 12, 24, 31, and 33 pounds, as recommended by the Avocado Administrative Committee (AAC). AAC members agreed that the problems prompting this change were more prevalent in the containers associated with the last four weights. Therefore, no change was recommended for the 8.5 pound designated net weight.

Handlers use containers that are associated by size with the minimum weights listed under the rules and regulations. These weight requirements closely match the capacity of the containers. These containers are inspected by the Federal-State Inspection Service (FSIS). One of the things FSIS checks is whether the packed containers meet the established minimum weight requirements.

An allowable tolerance for variation from the requirements is specified under the rules and regulations. With respect to each lot of containers of minimum weights 12½ and 25 pounds, only 5 percent or less, by count, of the individual containers in the lot may fail to meet the applicable specified weight. The tolerance is 10 percent for minimum weights of 32 and 34 pounds. If the allowable tolerances are exceeded, the lot fails inspection and would need to be reworked and repacked before it could meet inspection.

Failing inspection and having to rework a lot after it has been packed results in a considerable loss of time and money for the individual handler. One AAC member used the example of a 12½ pound net weight container packed with 16 ounce avocados in a single layer with 12 avocados per layer to illustrate the problem. He said that when FSIS found the minimum weight to be 8 ounces short in enough boxes to exceed the tolerance, they would fail the lot, requiring it to be redone. Handlers then are forced to make a choice between adding an additional avocado

to each container, or risk the possibility of failing the minimum net weight requirement. AAC members concurred with the problem presented by this particular situation. Several handlers stated that rather than risk being underweight, they would force an additional avocado into the container. The handlers agreed that in many cases, this meant that they were literally giving one avocado per pack away.

In addition, members stated that this practice of over packing the containers was having a negative effect on the avocados during shipment. The AAC discussed that some shipments were being received out of the production area in poor condition due to the over filling of containers to ensure compliance with the minimum net weight requirements. The containers were so tightly packed that the avocados were bruised or damaged in transit.

The AAC understands the benefits of a uniform pack. However, in this case, the requirements were having a negative effect on the condition of the avocados. Changing container sizes to better accommodate the required weights would be difficult and costly. Handlers have containers in inventory, and have their equipment adjusted to those containers. By lowering the minimum net weights, handlers will be able to use the boxes they have. This change will also reduce the need to add additional avocados to meet net weight requirements. In addition, it will help reduce the possibility of containers failing the minimum weight requirement, and save handlers the expense of reworking failed lots of avocados. This change also will benefit growers by providing greater packouts and additional grower revenue. Therefore, the AAC recommended lowering the minimum net weights of 12½, 25, 32, and 34 pounds to 12, 24, 31, and 33 pounds designated net weights. However, this action does not change the established tolerances or the requirement for a fairly tight pack.

The final change made by this rule is the elimination of specific container dimension requirements from both orders' rules and regulations. Current requirements include dimensions for all authorized containers of limes and avocados, specifying specific measurements for height, width, and depth. This rule eliminates the specific dimension constraints, but maintains the container net weight requirements.

Sections 911.329 and 915.305 of the rules and regulations outline container dimension requirements for limes and avocados, respectively. These sections establish specific interior dimensions in inches for containers approved for use under the orders. The dimensions vary from a small 5.5 pound container with measurements of 7½ × 11⅞ × 4¼ inches to a large 42 pound container with measurements of 12¾ × 15¼ × 10¾ inches for limes. Avocados also have similar specific interior dimensions, from a small 8.5 pound container with dimensions of 16½ × 13½ × 3¼ inches to a large 34 pound container with dimensions of 11 × 16¼ × 10¾ inches.

A recent review of the containers in use throughout the industry revealed that interior dimensions varied from handler to handler, and in many cases, were different than those specified in the rules and regulations. Some of the differences occurred in the box manufacturing process, where tolerances were granted to allow for equipment adjustments.

While the dimensions of containers has varied throughout the industry, the adherence to the net weight requirements has not. Under current inspection procedures, the containers are being weighed and checked for compliance with net weight requirements. This means that even though container dimensions may vary somewhat among individual handlers, the essential volume among like containers is the same. Therefore, rather than revising the rules and regulations to incorporate numerous additional containers with specific dimensions, the committees voted to eliminate the references to set measurements while maintaining the container net weight requirements.

The committees concluded that requiring handlers to use containers with specific dimensions is not necessary as long as the containers used contain a net weight specified in the requirements. The committees believe that even with this change, the rules and regulations continue to promote the shipment of a uniform product. The committees also anticipate that this change will reduce costs by allowing handlers to use boxes in inventory, rather than ordering new containers and making adjustments to equipment. They thought that removing specific container dimension requirements provided handlers with additional packing flexibility under the rules and regulations. They also agreed this change made more sense than trying to add the dimensions of all the containers currently in use to the requirements. Therefore, the committees recommended removing the regulations requiring specific interior dimensions for containers. However, all containers must continue to meet the specific net weight requirements as they appear in the rules and regulations.

Section 8e of the Act provides that when certain domestically produced commodities, including limes and avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule changes the container marking and minimum net weight requirements currently issued under these orders. Therefore, no change is necessary in the lime or avocado import regulations.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 111 lime producers and 141 avocado producers in the production area and approximately 33 lime handlers and 49 avocado handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (SBA) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000 (13 CFR 121.601).

Based on the Florida Agricultural Statistical Service and committee information, the average on-tree price for fresh limes during the 1996–97 season was $7.10 per 88 pound box equivalent and shipments totaled 398,279 bushels (55 pound bushel). Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments.

The average price for fresh avocados during the 1997–98 season was $14.60 per 55 pound bushel box equivalent for all domestic shipments and the total shipments were 937,568 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many lime and avocado handlers ship other tropical fruit and vegetable products which are not included in the committees' data but

would contribute further to handler receipts.

Using these prices, about 90 percent of lime and avocado handlers could be considered small businesses under the SBA definition and about 10 percent of the handlers could be considered large businesses. The majority of Florida lime and avocado producers and handlers may be classified as small entities.

Under § 911.48 and § 915.51 of the marketing orders for limes and avocados grown in Florida, the committees have the authority to establish and modify pack and container requirements for limes and avocados handled under the order. Current pack and container requirements outline the types of information and the number of times this information needs to appear on a container. The requirements also list the specific requirements as to container size and weight restrictions the packed container must meet.

This rule makes several changes to §§ 911.311 and 911.329, and §§ 915.305 and 915.306 of the rules and regulations concerning the pack and container requirements for limes and avocados, respectively. This rule simplifies container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. This rule also removes net weight limits on lime and avocado containers packed within a master container, and relaxes certain minimum net weight requirements on packed avocados. In addition, this rule eliminates specific container dimension requirements for both limes and avocados. These changes will reduce handling costs and provide greater flexibility in lime and avocado packing operations.

This rule will have a positive impact on affected entities. The changes were recommended to reduce costs and provide additional flexibility in packing limes and avocados. None of the changes are expected to increase costs associated with the pack and container requirements.

The change in the stamping requirement will allow containers to move more rapidly through the packing line, reduce the number of stamping machines and labor needed, and decrease costs associated with complying with the marking requirements.

The committees believe this change will benefit both large and small packing operations. Larger operations use automated stamping. Current stamping requirements mean that each packing line needs to have at least two in-line stamp rollers or ink jet printers. In cases where the line has only one stamping device, the containers must be reversed and run through the line a second time for limes, and three times for avocados. This can take a considerable amount of time. This change will allow containers to move more rapidly through the packing line, reduce the number of stamping machines required, and decrease the costs associated with these activities.

Most smaller operations stamp the containers by hand. To meet the current requirements, each box must be rotated and stamped in more than one location. This increases the time and effort needed to pack each box. Reducing the number of times a container must be stamped will decrease the amount of labor needed and the associated stamping costs required to meet these requirements.

The change in net weight of a container packed within a master container will provide handlers with more options in how they use a master container, and provide handlers greater flexibility in addressing the needs of customers.

Lowering certain minimum net weight requirements for avocados will reduce the practice of over filling containers to ensure compliance with the minimum net weight requirements. Some handlers have been packing the containers so tightly that the avocados were bruised or damaged in transit. This change will reduce the need to add additional avocados to meet net weight requirements, thus, saving on costs from adding additional fruit to the containers and damaged fruit. This change also will help reduce the possibility that containers will fail the minimum weight requirement, saving the handler the expense of reworking failed lots of avocados. Growers also might benefit from this change. If less fruit damage results in increased customer satisfaction and higher f.o.b. prices, some additional revenue might be passed on to the growers.

A recent review of the containers in use throughout the industry revealed that the interior dimensions varied with each packer, and in many cases, were different than those specified in the rules and regulations. Absent this change eliminating specific container dimensions, some handlers would need to bear the expense of ordering new boxes, and take a loss on the boxes they have in inventory, or petition the committees to expand the list of approved container dimensions. The elimination of specific container dimension requirements from both orders' rules and regulations will reduce costs to handlers by allowing handlers to use boxes in inventory, rather than having to order new containers.

As long as the containers contain enough limes or avocados to meet net weight requirements, the committees believe that different container dimensions are not necessary. The committees believe that even with this change, the rules and regulations will continue to promote the shipment of uniform product, while providing handlers additional latitude in their choice of containers.

These changes are intended to reduce costs and provide additional flexibility for all those covered under the orders. The opportunities and benefits of this rule are expected to be equally available to all lime and avocado handlers and growers regardless of their size of operation.

Other alternatives to the actions approved were considered by the committees prior to making the recommendations. One alternative discussed by the committees regarding the stamping question was to require containers to continue to be stamped on two sides for limes, and on the top and two sides of the lid for avocados. The committees believed that this is a duplicate effort that provides little benefit and increases associated packing costs. They rejected this alternative.

The committees also considered an alternative to the change recommended regarding the weight of containers packed within a master container. The committees discussed establishing another net weight limitation above the current four pound restriction. However, the committees believed that just increasing the weight limit would still limit flexibility and rejected that option.

The AAC considered several alternatives to relaxing specific minimum net weight requirements. One alternative discussed was increasing the percentage tolerance in terms of the number of containers that could fail to meet the weight requirements before the entire lot would fail. Members were concerned that raising the allowable tolerance would have a negative impact on the uniformity of the pack, allowing for too much variance from the standard. There was also concern that this may not fully address the problem. Even with the increased tolerance, to avoid reaching the limit, there would still be cause to over pack containers. Another alternative considered was to change the way the tolerance was measured, changing from containers per lot to an average of containers packed on a given day. Under this alternative, a handler would not know if they had exceeded the allowable tolerance until

the end of the packing day. This would mean that if a handler was found to be out of compliance, they would be out of compliance for the whole day, requiring a rework of all the fruit packed that day rather than only the lots that failed. The committees also considered changing the container requirements to specify containers that were wider and longer than present containers. Discussion concluded that there were already numerous containers and that adding or changing several containers to cover all the weights, sizes, and varieties would make things more complicated. It would also increase the financial burden by requiring the purchase of new boxes, and the modifying of equipment and pallets to accommodate the change. Therefore, the committees dismissed these alternatives.

Two alternatives to eliminating specific container dimension requirements were presented for discussion. One alternative was to leave all lime and avocado containers as they are now. A review of the containers in use throughout the industry revealed that interior dimensions varied from handler to handler and in many cases, were different than those specified in the rules and regulations. However, not making this change could result in additional costs for handlers. The second alternative centered on adjusting the regulations to accommodate all the containers currently in use. The committees rejected the idea of adding more containers to the regulations as making things overly complicated with little discernable benefit. The committees believed that the recommended change will continue to promote the shipment of uniform product, require no additional cost, and allow handlers additional flexibility in choice of containers. Based on this discussion, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large lime or avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committees' meetings were publicized throughout the lime and avocado industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations. Like all the committees' meetings, the July 9, 1997, August 13, 1997, and February 11, 1998, meetings were public meetings and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the committees' recommendations, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the pack and container requirements currently prescribed under the Florida lime and avocado marketing orders. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are currently shipping limes and will begin to ship avocados shortly; (2) the committees unanimously recommended these changes at public meetings and interested persons had an opportunity to provide input; (3) this rule relaxes container size, weight, and marking requirements; (4) Florida lime and avocado handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

2. In § 911.311, the introductory text of paragraph (d) is revised to read as follows:

§ 911.311 Florida lime pack and container marking regulation.

* * * * *

(d) No handler shall handle any container of seedless limes, grown in the production area, unless such container is marked once on the top or on any one side of the container, not to include the bottom, with letters at least one inch in height with one of the size designations shown in column 1 of the following table: *Provided,* That the number of seedless limes in a ten pound sample of a particular size designation, representative of the limes in the container, corresponds to the permissible size range in column 2 of such table for such size designation: *Provided further,* That not more than 10 percent of the containers in any lot may fail to meet these requirements.

* * * * *

3. In § 911.329, paragraphs (a)(2)(iv) through (a)(2)(xi) are removed, and paragraphs (a)(2)(i) through (a)(2)(iii) and paragraph (a)(3) are revised to read as follows:

§ 911.329 Florida lime container regulation.

(a)(1) * * *

(2) * * *

(i) All limes shall be packed in containers of 5.5, 8, 10, 20, and 38 pounds designated net weights. The net weight of the contents shall not be less than the designated net weight. The net weight of limes shall not exceed the designated net weight by more than two pounds for 10 and 20 pound containers, and shall not exceed the designated net weight by more than four pounds for 38 pound containers. Further, the net weight shall not exceed the designated net weight by more than one pound for 8 pound containers, and this container shall be for export shipments only.

(ii) When a container of 38 pounds designated net weight is used as a master container for bagged limes, the minimum net weight of limes shall be 35 pounds, provided the container is marked "Master Container."

(iii) Such other types and sizes of containers as may be approved by the Florida Lime Administrative Committee, with the approval of the Secretary, for testing in connection with a research project conducted by or in cooperation with said committee: *Provided,* That the handling of each lot of limes in such test containers shall be

subject to the prior approval, and under the supervision of, the Florida Lime Administrative Committee.

(3) The limitations set forth in paragraph (a)(2) of this section shall not apply to master containers of individual packages, including individual bags of limes: Provided, That the markings or labels, if any, on such packages do not conflict with the markings or labels on the master container.

* * * * *

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

4. Section 915.305, is revised to read as follows:

§ 915.305 Florida Avocado Container Regulation 5.

(a) No handler shall handle any avocados for the fresh market from the production area to any point outside thereof in containers having a capacity of more than 4 pounds of avocados unless the containers meet the requirements specified in this section: *Provided,* That the containers authorized in this section shall not be used for handling avocados for commercial processing into products pursuant to § 915.55(c). All avocados shall be packed in containers of 33, 31, 24, 12, and 8.5 pounds designated net weights and shall conform to all other applicable requirements of this section:

(1) Containers shall not contain less than 33 pounds net weight of avocados, except that for avocados of unnamed varieties, which are avocados that have not been given varietal names, and for Booth 1, Fuchs, Trapp varieties, such weight shall be not less than 31 pounds with respect to each lot of such containers, not to exceed 10 percent, by count, of the individual containers in the lot may fail to meet the applicable specified weight but no container in such lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight, and each avocado in such container in a lot shall weigh at least 16 ounces, except that not to exceed 10 percent, by count, of the fruit in the lot may fail to meet such weight requirement but not more than double such tolerance shall be permitted for an individual container in the lot; or

(2) Containers shall not contain less than 24 pounds net weight of avocados: *Provided,* That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in two layers and the net weight of all avocados in any such container shall not be less than 24 pounds: *Provided,* That the requirement as to placing avocados in two layers only shall not apply to such container if each of the avocados therein weighs 14 ounces or less; or

(3) Containers shall not contain less than 12 pounds net weight of avocados: *Provided,* That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in one layer only and the net weight of all avocados in any such container shall not be less than 12 pounds; or

(4) Containers shall not contain less than 8.5 pounds net weight of avocados: *Provided,* That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in one layer only and the net weight of all avocados in any such container shall not be less than 8.5 pounds. Such containers shall be for export shipments only.

(5) Such other types and sizes of containers as may be approved by the Avocado Administrative Committee, with the approval of the Secretary, for testing in connection with a research project conducted by or in cooperation with said committee: *Provided,* That the handling of each lot of avocados in such test containers shall be subject to prior approval, and under the supervision of, the Avocado Administrative Committee.

(b) The limitations set forth in paragraph (a) of this section shall not apply to master containers for individual packages of avocados: *Provided,* That the markings or labels, if any, on the individual packages within such master containers do not conflict with the markings or labels on the master container.

5. In § 915.306, paragraph (a)(6) is revised to read as follows:

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a)* * *

(6) Such avocados when handled in containers authorized under § 915.305, except for those to export destinations, are marked once with the grade of fruit in letters and numbers at least one inch in height on the top or one side of the container, not to include the bottom, effective each fiscal year from the first Monday after July 15 until the first Monday after January 1.

* * * * *

Dated: July 7, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–18459 Filed 7–10–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 98–044–1]

Animal Welfare; Primary Enclosures for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations under the Animal Welfare Act pertaining to primary enclosures for dogs and cats by removing the requirement that primary enclosures with flooring made of mesh or slatted construction include a solid resting surface. This requirement was erroneously added in a recent final rule that amended the requirements for primary enclosures for dogs and cats to prohibit bare wire flooring in such enclosures. However, we do not believe that it is necessary for primary enclosures with acceptable flooring of mesh or slatted construction to include a solid resting surface. Therefore, this action relieves an unnecessary and unintended requirement.

DATES: Interim rule effective July 14, 1998. Consideration will be given only to comments received on or before September 11, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–044–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–044–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Animal and Plant Health Inspection Service. Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains specific standards for the humane handling, care, treatment, and transportation of dogs and cats.

On January 21, 1998, we published in the **Federal Register** a final rule (63 FR 3017–3023, Docket No. 95–100–2, effective February 20, 1998) that amended the regulations pertaining to primary enclosures for dogs and cats. The final rule added two new requirements: (1) If a primary enclosure has a suspended floor made of metal strands, the strands must be greater than ⅛ of an inch in diameter or coated with a material such as plastic or fiberglass, and (2) any kind of suspended floor in a primary enclosure must be strong enough so that the floor does not bend or sag between the structural supports. In essence, the final rule prohibited the use of bare wire (meaning uncoated metal strands having a diameter of ⅛ of an inch or less) in suspended flooring of primary enclosures for dogs and cats. We made these changes because we determined that bare wire flooring is uncomfortable for the feet of dogs and cats and contributes to foot injuries and that suspended flooring made of coated wire or of metal strands larger in diameter than wire causes fewer such problems. We have also found that many dogs acquire foot lesions and suffer psychological trauma from trying to balance on suspended floors that sag and bend. The rule was effective February 20, 1998, but had two compliance dates: For primary enclosures constructed on or after February 20, 1998, and for floors installed or replaced on or after that date, the compliance date was February 20, 1998; for all other primary enclosures, the compliance date is January 21, 2000.

In the final rule, we removed the word "wire" in reference to flooring material in dog and cat primary enclosures from every section in the regulations where the word appeared. We made these changes because, as stated previously in this document and in the preamble to the final rule, we consider wire to be metal strands ⅛ of inch or less in diameter, and the final rule effectively prohibited the use of wire in flooring of primary enclosures for dogs and cats, unless the wire is coated with a material such as plastic or fiberglass.

One section of the regulations where the word "wire" appeared is § 3.6(a)(2), which specifies requirements for the construction and maintenance of primary enclosures for dogs and cats. Prior to publication of the final rule, § 3.6(a)(2)(x) provided, among other things: "If the floor of the primary enclosure is constructed of wire, a solid resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably must be provided." The solid resting surface was necessary to provide relief to animals housed in primary enclosures with bare wire flooring.

The final rule removed the words "constructed of wire" from this sentence and replaced them with the words "of mesh or slatted construction." We made this change in error. By changing the words "constructed of wire" in § 3.6(a)(2)(x) to "of mesh or slatted construction," we unintentionally promulgated a new requirement.

Dog and cat primary enclosures with suspended floors of mesh or slatted construction (other than those constructed of bare wire) were not previously required to include a solid resting surface. As a result of the change to § 3.6(a)(2)(x) in our final rule, all primary enclosures with suspended flooring of mesh or slatted construction are required to include a solid resting surface. We do not believe that this requirement is necessary. Because suspended floors of mesh or slatted construction, except for those made of bare wire, are relatively safe and comfortable for dogs and cats, we do not believe that a separate solid resting surface in primary enclosures with suspended flooring of acceptable materials is necessary to ensure the animals' comfort and safety. Moreover, we have found that some regulated parties find it difficult to keep solid resting surfaces in primary enclosures for dogs and cats clean and sanitary because of problems associated with the animals' waste.

Because bare wire floors are now prohibited in primary enclosures, and because we believe that other types of mesh or slatted floors are safe and comfortable for dogs and cats, we are amending § 3.6(a)(2)(x) to remove the requirement that a solid resting surface or surfaces must be provided in primary enclosures with floors of mesh or slatted construction. As a result, solid resting surfaces are not required in primary enclosures with any kind of suspended flooring. However, this interim rule does not prohibit the inclusion of solid resting surfaces in dog and cat primary enclosures with suspended flooring. Regulated parties who can maintain solid resting surfaces in dog and cat primary enclosures and wish to provide such surfaces for their animals may do so.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to relieve unnecessary restrictions on regulated parties. Prior to publication of a final rule in the January 21, 1998, **Federal Register** (63 FR 3017–3023, Docket No. 95–100–2), primary enclosures with suspended floors of mesh or slatted construction (other than those made of bare wire) were not required to include solid resting surfaces for the enclosed dogs or cats. In that final rule, we unintentionally added a requirement that dog and cat primary enclosures with such flooring include a solid resting surface. We do not believe that this requirement is necessary to ensure the safety and well-being of dogs and cats covered by the Animal Welfare Act. Therefore, we are publishing this action, which relieves an unnecessary requirement that was promulgated in error, as an interim rule.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for

the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule removes a requirement under the Animal Welfare Act (AWA) regulations that primary enclosures used for dogs and cats and having suspended flooring of mesh or slatted construction include solid resting surfaces. Promulgated in error, this requirement has placed an unnecessary and unintentional burden on regulated entities. As explained below, this rule will benefit entities who house dogs and cats in primary enclosures that have suspended flooring of mesh or slatted construction. These regulated entities will avoid the cost of purchasing the resting surfaces, as well as the cost of cleaning those surfaces following installation. However, the rule does not preclude regulated entities who wish to provide such surfaces for their animals from doing so.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rules on small entities. This rule will primarily affect animal dealers and research facilities licensed or registered under the AWA. The exact number of entities affected by the rule is unknown because the number of AWA licensees and registrants who house dogs and cats in primary enclosures that have suspended floors of mesh or slatted construction is unknown. However, it is estimated that roughly half of the 4,265 licensed dealers and many of the 2,506 registered research facilities will be affected.[1] The rule's impact on regulated exhibitors is insignificant because most do not exhibit dogs and cats. Registered carriers and intermediate handlers are also largely unaffected because they only transport animals so they do not maintain "primary" enclosures for regulated animals.

The number of dealers and research facilities that are considered small entities under U.S. Small Business Administration (SBA) standards is unknown because information as to their size (in terms of gross receipts or number of employees) is not available. However, it is reasonable to assume that most are small in size, based on composite data for providers of the same and similar services in the United States. In 1992, the per-firm average gross receipts for all 6,804 firms in SIC (Standard Industrial Classification) 0752, which includes dog and cat breeders, was $115,290, well below the SBA's small entity threshold of $5 million. Similarly, the 1992 per-establishment average employment for all 3,826 U.S. establishments in SIC 8731, which includes research facilities, was 29, well below the SBA's small entity threshold of 500 employees. It is very likely, therefore, that small entities will be the principal beneficiaries of the rule.

Solid resting surfaces used in dog and cat primary enclosures are made of a variety of materials, including fiberglass, galvanized metal, or wood, but the most common material used is rubber matting. The average cost of such surfaces is minimal—about $5 per enclosure. The resting surfaces are usually not affixed to the enclosures; they are simply placed on top of the suspended flooring, so as to allow for easy removal and cleaning. For that reason, there is virtually no labor cost associated with the installation of such surfaces. Thus, if a breeder had to install resting surfaces in 120 enclosures, the total cost would be about $600. However, solid resting surfaces have to be replaced over time. The replacement rate is unknown and depends on the type of material used. Those resting surfaces made of fiberglass or galvanized metal, for example, have to be replaced less frequently than those made of wood. As a result of the rule, affected entities will avoid this ongoing replacement cost.

Resting surfaces are usually cleaned by hosing them down. They are cleaned outside the enclosures, to prevent the animals from getting wet. Cleaning resting surfaces can be a costly undertaking, largely because it is labor intensive. For a dog breeder with 120 enclosures, for example, the annual cost is conservatively estimated at $21,900 per year. This estimate assumes that: (1) Each resting surface is cleaned once each day; (2) it takes 5 minutes to clean each resting surface; and (3) labor is paid at a rate of $6 per hour.

The impact of the rule on individual entities will vary, depending on the number of enclosures maintained. However, the impact of the rule on all regulated entities will be beneficial.

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

[1] In FY96, 10,366 facilities were licensed or registered under the AWA. Of those facilities, 4,265 were licensed dealers, 2,422 were licensed exhibitors, and 3,679 were registrants. The dealers are subdivided into two classes. Class A dealers (3,043) breed animals, and Class B dealers (1,222) serve as animal brokers. The registrants comprise research facilities (2,506), carriers and intermediate handlers (1,142), and exhibitors (31). As used here, the term *facilities* represents sites, the physical location where animals are housed. Some licensees and registrants have more than one site.

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR part 3 is amended as follows:

PART 3—STANDARDS

1. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 3.6(a)(2)(x) is revised to read as follows:

§ 3.6 Primary enclosures.

* * * * *

(a) * * *

(2) * * *

(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor; and

* * * * *

Done in Washington, DC, this 8th day of July 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–18594 Filed 7–10–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 98–070–1]

Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Cancellation of lottery for HSTAIC.

SUMMARY: In anticipation that the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, FL, may be closed, we are giving notice that we do not plan to hold a lottery in December 1998 for exclusive use of HSTAIC in calendar year 1999. In addition, we do not intend to enter into any more cooperative-service agreements with prospective importers for exclusive use of the facility unless it is certain the animals can enter HSTAIC on or before December 31, 1998. Ensuring that no animals enter HSTAIC after this date would allow us to close HSTAIC before the end of fiscal year 1999 if a decision is made to close the facility.

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276; or e-mail gcolgrove@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 93 (referred to below as the regulations) govern the importation of animals into the United States to prevent the introduction of serious communicable diseases of livestock and poultry. Under the regulations, certain animals may only be imported into the United States if, among other things, they are quarantined upon arrival at the Harry S Truman Animal Import Center (HSTAIC), a Federal facility in Fleming Key, FL, that provides maximum biosecurity.

Importers pay the costs of using HSTAIC while their animals are in the facility. However, the Animal and Plant Health Inspection Service (APHIS) must pay for staff, electricity, telephone, and other overhead costs when the facility is not occupied, as well as for general maintenance and repairs. HSTAIC has been consistently underutilized since it opened in 1979, and demand for use of the facility has been falling. Consequently, APHIS is losing an average of $220,000 annually keeping HSTAIC available to importers. In addition, HSTAIC urgently needs approximately $4.5 million worth of repairs and upgrades for which APHIS does not have an appropriation. This would significantly increase the already substantial fees for use of HSTAIC if the cost of the repairs and upgrades were to be recovered from users. In addition, the purpose for a facility such as HSTAIC, to import new bloodlines from countries with exotic diseases such as foot-and-mouth disease and rinderpest, can now be accomplished more cheaply and more easily by importing germplasm, such as semen and embryos.

Under these circumstances, we are considering closing HSTAIC and plan to publish a proposed rule in the **Federal Register** for public comment on this issue in the near future. If we decide to close the facility following this rulemaking, we would like to do so before the end of fiscal year 1999 to minimize expenses we are incurring to keep the facility operating. To close by then, all animals would have to be out of the facility by about April of 1999. Even if a decision is made to try to keep HSTAIC open for use, and funding can be obtained for the needed repairs and upgrades, it will take many months to complete the needed repairs and upgrades. To allow for these possible actions, we are announcing that we do not plan to hold a lottery in December 1998 for exclusive use of HSTAIC in calendar year 1999. (Under § 93.430 of the regulations, APHIS enters into a cooperative agreement with only one importer at a time for use of HSTAIC. We refer to this arrangement as "exclusive use.") This notice also announces our intention not to enter into any more cooperative agreements with prospective importers for exclusive use of the facility unless it is certain the animals can enter HSTAIC on or before December 31, 1998.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 6th day of July 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–18436 Filed 7–10–98; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 904

[No. 98–26]

RIN 3069–AA71

Revisions to the Freedom of Information Act Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is revising its Freedom of Information Act (FOIA) regulation to comply with new statutory requirements. The Finance Board is also reorganizing and streamlining the FOIA regulation to clarify the Finance Board's practices and procedures in responding to requests for information.

DATES: The interim final rule will become effective on July 13, 1998. The Finance Board will accept comments on the interim final rule in writing on or before September 11, 1998.

ADDRESSES: Mail comments to Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Elaine L. Baker, Secretary to the Board and Associate Director, Executive Secretariat, Office of the Managing Director, 202/408–2837, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Congress amended FOIA by enacting the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). *See* 5 U.S.C. 552, *as amended by* Pub. L. 104–231, 110 Stat. 3048 (Oct. 2, 1996). Among other procedural changes, EFOIA increases the time for responding to a FOIA request from 10 to 20 days, specifically applies FOIA disclosure requirements to electronic records, and adds frequently requested records as a category of reading room records. EFOIA also requires an agency to promulgate regulations that provide for the expedited processing of FOIA requests.

In addition to amending its FOIA regulation, codified at 12 CFR part 904, to comply with these statutory changes, the Finance Board is reorganizing and streamlining the regulation to clarify its practices and procedures in responding

to requests for information. The reorganization is technical and procedural in nature and will have no substantive effect on the operation of the Finance Board's FOIA process.

II. Analysis of the Interim Final Rule

A. Elimination of Obsolete Provisions

In order to streamline the FOIA regulation, the Finance Board is removing two provisions that restate statutory requirements, § 904.1, purpose and scope, and § 904.3(a), published information. *See* 12 CFR 904.1, 904.3(a); 5 U.S.C. 552(a). The Finance Board is also eliminating § 904.10 in its entirety. 12 CFR 904.10. Section 904.10(a), which concerns service of process under FOIA, is unnecessary because service of process under FOIA is governed by the Federal Rules of Civil Procedure. *Id.* § 904.10(a); Fed. R. Civ. P. 4(i). Section 904.10 (b) and (c), which concerns disclosure of Finance Board records by persons other than Finance Board employees, is being deleted because the Finance Board does not have the authority to enforce the stated restrictions. 12 CFR 904.10(b)–(c).

B. Implementation of New Statutory Requirements and Clarification of the Current Regulation

1. Definitions

The interim final rule restates the definitions of the terms "Finance Board," "FOIA," "requester," and "search" without substantive change. To reflect an internal agency reorganization, the term "Secretary to the Board" replaces the term "Executive Secretary." The address for the Secretary to the Board is now included in the definition of that term. The definitions of the terms that relate to the assessment and collection of FOIA fees, *i.e.*, "commercial use request," "direct costs," "educational institution," and "representative of the news media," are relocated without substantive change to § 904.8, the fees section of the interim final rule.

To include changes made by EFOIA, the Finance Board has amended the definition of the term "unusual circumstances" and added specific references to records maintained in an electronic format in the definitions of the terms "duplication" and "record." *See* 5 U.S.C. 552(a)(3)(B)–(C), (6)(B)(iii), (f)(2). To ensure consistency with FOIA, the interim final rule includes a definition of the term "agency" with the same meaning as under FOIA. *Id.* 552(f)(1).

To broaden the coverage of the regulatory provisions concerning financial regulatory agency records, the definition of the term "financial regulatory agency" now includes the Farm Credit Administration and any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a financial institution, including an insurance company. To avoid repetition within the FOIA regulation, the term "working day" is defined to exclude Saturdays, Sundays, and legal public holidays.

2. Records Available to the Public

Section 904.2 of the interim final rule restates § 904.3(b)–(d), § 904.4, and § 904.7(c)(1) of the current rule with minor changes required by EFOIA. *See* 12 CFR 904.3(b)–(d); 904.4; 904.7(c)(1). The EFOIA changes include a separate paragraph, designated as § 904.2(b), which clarifies the types of records that are available for public inspection in the Finance Board's reading room. In addition to the records listed in § 904.4(b) of the current rule, the Finance Board considers the following records to be reading room records: (1) records previously disclosed to any requester pursuant to FOIA which, because of the nature of their subject matter, the Finance Board has determined will likely be the subject of subsequent requests for substantially the same records, and a general index thereof; (2) current indices that provide identifying information about all matters issued, adopted, or promulgated by the Finance Board; and (3) the FOIA report the Finance Board submits to the Attorney General pursuant to 5 U.S.C. 552(e). *See* 5 U.S.C. 552(a)(2). As required by EFOIA, the Finance Board is making each reading room record created on or after November 1, 1996 available by computer telecommunications or other electronic means, such as on computer diskettes or on the Finance Board's Internet Web site, found at http://www.fhfb.gov. *Id.* To maximize the availability of records to the public, the Finance Board will provide copies of reading room records in response to a FOIA request in accordance with the procedures and fee schedule in its FOIA regulation.

3. Requests For Records

Section 904.3 of the interim final rule is a restatement of § 904.5(a) and (b)(1) and (2) of the current rule. *See* 12 CFR 904.5(a), (b)(1)–(2). Like the current rule, the interim final rule describes the information a requester must provide in order for the Finance Board to process a FOIA request and requires a requester to submit the request in writing to the Secretary to the Board. *Id.* § 904.5(a), (b)(1). A new provision in the interim final rule provides that if a request is incomplete, the Secretary to the Board may advise the requester that additional information is needed. If the requester submits a corrected request, the Finance Board will treat the corrected request as a new request. *Id.* § 904.5(b)(2). This provision will allow the Secretary to the Board to close out its FOIA files. If the Secretary to the Board notifies a requester that the request is incomplete, the requester is free to initiate a new request that includes the necessary information.

4. Responses to Requests for Records

Section 904.4 of the interim final rule, which concerns the Finance Board's initial response to a FOIA request, restates § 904.5(b)(4)–(5) and (f) and § 904.6(d), (k), and (m) of the current rule and adds a new provision concerning expedited processing. *See id.* § 904.5(b)(4)–(5), (f); 904.6(d), (k), (m). EFOIA increases the time limit for initial FOIA responses from 10 to 20 days. *See* 5 U.S.C. 552(a)(6)(A)(i). Accordingly, § 904.4(a) of the interim final rule requires the Secretary to the Board to grant or deny each complete request within 20 working days of receipt.

Section 904.4(c), which concerns extensions of this 20-day time limit, includes a revision required by EFOIA allowing a requester to narrow a request so that it may be processed within the 20-day time limit or arrange an alternative time frame for processing the request. *Id.* 552(a)(6)(B)(i)–(ii).

EFOIA also requires an agency to promulgate regulations providing for expedited processing of FOIA requests. *Id.* 552(a)(6)(E). The Finance Board has included an expedited processing provision that conforms to the statutory requirements in § 904.4(d) of the interim final rule.

Section 904.4(e) of the interim final rule combines provisions appearing in § 904.6(d), (k), and (m) of the current rule. *See* 12 CFR 904.6(d), (k), (m). It provides that the Finance Board will furnish one copy of a record to a requester in any form or format requested if the record is readily reproducible by the Finance Board in that form or format. The record will be provided by regular U.S. mail to the address indicated in the request unless other arrangements are made, such as taking delivery at the Finance Board or an agreement by the requester to pay additional fees for transmission by facsimile or other express delivery methods.

If the Finance Board denies a request in whole or in part, the requester may appeal under § 904.8 of the interim final

rule. As under § 904.5(c), (e), and (f) of the current rule, § 904.8(a) permits a requester to file an appeal within 30 days of the initial determination and requires a response from the Finance Board within 20 working days, or in unusual circumstances, within 30 working days, of receipt of an application for appeal. *Id.* § 904.5(c), (e), (f). Section 904.8(b), which concerns administrative appeals during judicial review, is a restatement of § 904.5(d) of the current rule. *Id.* § 904.5(d).

5. FOIA Exemptions

Section 904.5(a) of the interim final rule incorporates all of the disclosure exemptions provided by FOIA. *See* 5 U.S.C. 552(b); 12 CFR 904.7(a). Consistent with § 904.7(b) of the current rule, under § 904.5(b) of the interim final rule the Finance Board will provide a requester with any reasonably segregable portion of a record after redacting the portion that is exempt from disclosure. *See* 5 U.S.C. 552(b); 12 CFR 904.7(b). As required by EFOIA, the Finance Board will make a reasonable effort to estimate the volume of redacted information and provide that information to the requester unless providing the estimate would harm an interest protected by the exemption under which the redaction is made. *See* 5 U.S.C. 552(a)(6)(F). The Finance Board also will indicate the estimated volume of redacted information on the released portion of the record, and, if technically feasible, will make the indication at the place in the record where the redaction is made unless the indication would harm an interest protected by the exemption under which the redaction is made. *Id.* 552(b).

Like § 904.4(a) of the current rule, § 904.5(c) permits the Finance Board to disclose otherwise exempt records if disclosure is in the public interest. *See* 12 CFR 904.4(a).

6. Disclosure of Examination Reports and Other Records of Financial Regulatory Agencies

Section 904.6 of the interim final rule, which concerns disclosure of Federal Home Loan Bank examination reports to financial regulatory agencies, is a restatement of § 904.8 of the current rule. *Id.* § 904.8. The only change other than reorganizing the provision, is replacement of a reference to the Finance Board's former District Banks Directorate with a reference to the Finance Board.

Section 904.7 of the interim final rule, which prohibits the Finance Board from disclosing records of other financial regulatory agencies, is a restatement of § 904.9 of the current rule without substantive change. *Id.* § 904.9.

7. Fees

Section 904.9 of the interim final rule concerns the assessment and collection of fees for providing FOIA services. Other than modestly increasing the amount of the charges the Finance Board will assess for certain services, this provision is not substantively different than the current FOIA fee provision. *Id.* § 904.6.

III. Notice and Public Participation

The Finance Board is promulgating these technical, procedural changes as an interim final rule in order to conform its FOIA regulation to the EFOIA amendments that have already taken effect. However, because FOIA requires notice and receipt of public comment, the Finance Board will accept written comments on the interim final rule on or before September 11, 1998.

IV. Effective Date

For the reasons stated in part III above, the Finance Board for good cause finds that the interim final rule should become effective on July 13, 1998. *See* 5 U.S.C. 553(d)(3).

V. Regulatory Flexibility Act

The Finance Board is adopting the amendments to part 904 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

VI. Paperwork Reduction Act

The interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in Part 904

Confidential business information, Federal home loan banks, Freedom of information. For the reasons stated in the preamble, the Finance Board hereby revises 12 CFR part 904 to read as follows:

PART 904—FREEDOM OF INFORMATION ACT REGULATION

Sec.

Authority: 5 U.S.C. 552; 52 FR 10012 (Mar. 27, 1987).

§ 904.1 Definitions.

For purposes of this part:

(a) *Agency* has the same meaning as in 5 U.S.C. 552(f)(1).

(b) *Duplication* means the process of making a copy of a record in order to respond to a FOIA request, including paper copies, microfilm, audio-video materials, and computer diskettes or other electronic copies.

(c) *Finance Board* means the agency established as the Federal Housing Finance Board.

(d) *Financial regulatory agency* means the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration, or a state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a financial institution, including an insurance company.

(e) *FOIA* means the Freedom of Information Act, as amended (5 U.S.C. 552).

(f) *Record* means information or documentary material the Finance Board maintains in any form or format, including an electronic form or format, which the Finance Board:

(1) Made or received under federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of Finance Board operations or activities or because of the value the information it contains; and

(3) Controls at the time it receives a request.

(g) *Requester* means any person, including an individual, corporation, firm, organization, or other entity, who makes a request to the Finance Board under FOIA for records.

(h) *Review* means the process of examining a record to determine whether all or part of the record may be withheld, and includes redacting or otherwise processing the record for disclosure to a requester. It does not include time spent:

(1) Resolving legal or policy issues regarding the application of exemptions to a record; or

(2) At the administrative appeal level, unless the Finance Board determines that the exemption under which it

withheld records does not apply and the records are reviewed again to determine whether a different exemption may apply.

(i) *Search* means the time spent locating records responsive to a request, manually or by electronic means, including page-by-page or line-by-line identification of responsive material within a record.

(j) *Secretary to the Board* means the Secretary to the Board of Directors of the Finance Board. The address for the Secretary to the Board is Executive Secretariat, Office of the Managing Director, Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006.

(k) *Unusual circumstances* means the need to:

(1) Search for and collect records from establishments that are separate from the office processing the request;

(2) Search, review, and duplicate a voluminous amount of separate and distinct records in order to process a single request; or

(3) Consult with another agency or among two or more components of the Finance Board that have a substantial interest in the determination of a request.

(l) *Working days* do not include Saturdays, Sundays, and legal public holidays.

§ 904.2 Records available to the public.

(a) *General.* (1) It is the policy of the Finance Board to respond promptly to all FOIA requests.

(2) The Finance Board may disclose records that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties without complying with this part. These records include, but are not limited to, the annual report the Finance Board submits to Congress pursuant to section 2B(d) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(d)), press releases, Finance Board forms, and materials published in the **Federal Register**.

(3) Except as provided in the Privacy Act (5 U.S.C. 552a), the Finance Board's Privacy Act regulation (12 CFR part 909), or paragraph (a)(2) of this section, the Finance Board shall not disclose records except in accordance with the requirements of this part.

(b) *Reading room.* (1) Subject to §§ 904.5 through 904.7, the following records shall be available for public inspection and copying in the Finance Board reading room from 9:00 a.m. to 4:00 p.m. each working day:

(i) Final opinions or orders of the Finance Board in the adjudication of cases.

(ii) A record of the final votes of each member of the Board of Directors in every Finance Board proceeding.

(iii) Statements of policy and interpretations adopted by the Finance Board that are not published in the **Federal Register**.

(iv) Administrative staff manuals and instructions to staff that affect a member of the public.

(v) Records previously disclosed to any requester pursuant to this part which, because of the nature of their subject matter, the Finance Board has determined will likely be the subject of subsequent requests for substantially the same records, and a general index thereof.

(vi) Current indices that provide identifying information about all matters issued, adopted, or promulgated by the Finance Board.

(vii) The report the Finance Board submits to the Attorney General pursuant to 5 U.S.C. 552(e).

(2) The Finance Board shall make each reading room record created on or after November 1, 1996 available by computer telecommunications or other electronic means, such as on computer diskettes or on the Finance Board's Internet Web site, found at http://www.fhfb.gov.

(3) The Finance Board shall assess fees for searching, reviewing, or duplicating reading room records in accordance with § 904.9.

§ 904.3 Requests for records.

(a) *Request requirements.* Requests for access to, or copies of, Finance Board records shall be in writing and addressed to the Secretary to the Board. Each request shall include the following:

(1) A description of the requested record that provides sufficient detail to enable the Finance Board to locate the record with a reasonable amount of effort;

(2) The requester's full name, mailing address, and a telephone number where the requester can be reached during normal business hours;

(3) A statement that the request is made pursuant to FOIA; and

(4) At the discretion of the requester, a dollar limit on the fees the Finance Board may incur to respond to the request for records. The Finance Board shall not exceed such limit.

(b) *Incomplete requests.* If a request does not meet all of the requirements of paragraph (a) of this section, the Secretary to the Board may advise the requester that additional information is needed. If the requester submits a corrected request, the Finance Board shall treat the corrected request as a new request.

§ 904.4 Finance Board response to requests for records.

(a) *Response deadline.* Subject to § 904.9(f), within 20 working days of receipt of a request meeting the requirements of § 904.3(a) and any extensions of time under paragraph (c) of this section, the Secretary to the Board shall:

(1) Determine whether to grant or deny the request in whole or in part;

(2) Notify the requester in writing of the determination and the reasons therefor; and

(3) Make the records, if any, available to the requester.

(b) *Denials.* If the Secretary to the Board denies the request in whole or in part, the notice required under paragraph (a)(2) of this section shall state that the Secretary to the Board is the person responsible for the denial, the denial is not a final agency action, and the requester may appeal the denial under § 904.8.

(c) *Extensions of time.* In unusual circumstances, the Secretary to the Board may extend the time limit in paragraph (a) of this section for a period not to exceed 10 working days by notifying the requester in writing of:

(1) The reasons for the extension;

(2) The date on which a determination is expected; and

(3) The opportunity for the requester to either limit the scope of the request so that the Finance Board may process it in accordance with paragraph (a) of this section, or arrange an alternative time frame for processing the request or a modified request.

(d) *Expedited processing.* (1) The Finance Board shall process a request for records as soon as practicable if it determines that expedited processing is appropriate or the requester demonstrates a compelling need. To demonstrate a compelling need, a requester shall submit a written application certified to be true and correct to the best of the requester's knowledge and belief to the Secretary to the Board. The application shall state that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a requester who is primarily engaged in disseminating information, such as a representative of the news media as defined in § 904.9(a)(4)(iv), there is urgency to inform the public concerning actual or alleged Finance Board activity.

(2) Within 10 working days of receipt of an application for expedited processing that meets the requirements

of paragraph (c)(1) of this section, the Secretary to the Board shall determine whether to grant or deny the application and notify the requester in writing of the determination.

(3) A requester may appeal the denial of an application for expedited processing by submitting a written application stating the grounds for the appeal to the Secretary to the Board. The Finance Board shall expeditiously determine whether to grant or deny the appeal and shall notify the requester in writing of the determination, the name and title or position of the person responsible for the determination, and of the provisions for judicial review of this final action under 5 U.S.C. 552(a)(4) and (6).

(e) *Providing responsive records.* The Finance Board shall provide one copy of a record to a requester in any form or format requested if the record is readily reproducible by the Finance Board in that form or format by regular U.S. mail to the address indicated in the request unless other arrangements are made, such as taking delivery of the document at the Finance Board. At the option of the requester and upon the requester's agreement to pay fees in accordance with § 904.9, the Finance Board shall provide copies by facsimile transmission or other express delivery methods.

§ 904.5 Records not disclosed.

(a) *Records exempt from disclosure.* Except as otherwise provided in this part, the Finance Board shall not disclose records that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(2) Related solely to the Finance Board's internal personnel rules and practices.

(3) Specifically exempted from disclosure by a statute other than FOIA if such statute requires the record to be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of records to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter- or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Finance Board.

(6) Personnel, medical, or similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, any private institution, or a Federal Home Loan Bank, which furnished information on a confidential basis, and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Finance Board, a Federal Home Loan Bank, or a financial regulatory agency.

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Reasonably segregable portions.* (1) The Finance Board shall provide a requester with any reasonably segregable portion of a record after redacting the portion that is exempt from disclosure under paragraph (a) of this section.

(2) The Finance Board shall make a reasonable effort to estimate the volume of redacted information and provide that information to the requester unless providing the estimate would harm an interest protected by the exemption under which the redaction is made.

(3) The Finance Board shall indicate the estimated volume of redacted information on the released portion of the record unless providing the estimate would harm an interest protected by the exemption under which the redaction is made. If technically feasible, the Finance Board shall make the indication at the place in the record where the redaction is made.

(c) *Public interest.* The Finance Board may disclose records it has authority to withhold under paragraph (a) of this section upon a determination that disclosure would be in the public interest.

§ 904.6 Disclosure of Federal Home Loan Bank examination reports.

The Finance Board may disclose an examination, operating, or condition report of a Federal Home Loan Bank or a related record to a financial regulatory agency upon a determination that:

(a) The person requesting the record on behalf of the financial regulatory agency has the authority to make such request;

(b) The financial regulatory agency is requesting the record for a legitimate regulatory purpose; and

(c) The financial regulatory agency making the request agrees that it shall not disclose the record pursuant to FOIA, the agency's regulations, or any other authority.

§ 904.7 Records of financial regulatory agencies held by the Finance Board.

The Finance Board shall not disclose an examination, operating, or condition report, or other record prepared by, on behalf of, or for the use of a financial regulatory agency. Upon a receipt of a request for such records, the Finance Board shall promptly refer the request to the appropriate agency and notify the requester of the referral.

§ 904.8 Appeals.

(a) *Procedure.* (1) If the Secretary to the Board has denied a request in whole or in part, the requester may appeal the denial by submitting a written application to the Secretary to the Board stating the grounds for the appeal within 30 working days of the date of the Finance Board's determination under § 904.4.

(2) Subject to § 904.9(f), within 20 working days of receipt of an application for appeal meeting the requirements of paragraph (a)(1) of this section and any extensions of time under paragraph (a)(3) of this section, the Finance Board shall determine whether to grant or deny the appeal and notify the requester in writing of the determination, the name and title or position of the person responsible for the determination, and the provisions for judicial review of this final action under 5 U.S.C. 552(a)(4).

(3) In unusual circumstances, the Secretary to the Board may extend the time limit in paragraph (a)(2) of this section for a period not to exceed 10

working days by notifying the requester in writing of the reasons for the extension and the date on which a determination is expected.

(b) *Appeal during pendency of judicial review.* If a requester files an action in a United States district court under 5 U.S.C. 552(a)(4) concerning a request for Finance Board records before exhausting the administrative appeals process for that request under paragraph (a) of this section, the Finance Board may:

(1) Initiate and process an administrative appeal; or

(2) Continue to process an administrative appeal previously filed under paragraph (a) of this section.

§ 904.9 Fees.

(a) *Fees.* Except as otherwise provided in a statute specifically providing for setting fees for particular types of records or in this section, the Finance Board shall assess against each requester the direct costs of responding to a request for records.

(1) If the records are requested for a commercial use, the direct costs are limited to the reasonable operating costs the Finance Board incurs to search, review, and duplicate records.

(2) If the records are not requested for a commercial use and the requester is an educational institution, non-commercial scientific institution, or representative of the news media, the direct costs are limited to the reasonable operating costs the Finance Board incurs to duplicate records in excess of 100 pages.

(3) If neither the request nor the requester is described in paragraphs (a)(1) or (2) of this section, the direct costs are limited to the reasonable operating costs the Finance Board incurs to search in excess of two hours and duplicate records in excess of 100 pages.

(4) For purposes of this section, the term:

(i) *Commercial use request* means a request from, or on behalf of, a person who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) *Educational institution* means a preschool, public or private elementary or secondary school, or institution of undergraduate, graduate, professional, or vocational higher education that operates a program of scholarly research.

(iii) *Non-commercial scientific institution* means a nonprofit institution operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media* means a requester who is actively gathering information that is about current events or would be of current interest to the public for an entity that is organized and operated to publish or broadcast news to the public.

(b) *Fees when no records are provided.* The Finance Board may assess a fee for the direct costs of searching for a requested record the Finance Board cannot locate or if located, determines to be exempt from disclosure under § 904.5.

(c) *Interest.* The Finance Board may assess interest at the rate prescribed in 31 U.S.C. 3717 on any unpaid fees beginning 31 days after the earlier of the date of the Finance Board's determination under § 904.4 or the date a fee statement is mailed to a requester. Interest shall accrue from such date.

(d) *Exceptions.* Notwithstanding paragraphs (a) or (b) of this section, the Finance Board may determine not to assess a fee or to reduce a fee if:

(1) The routine cost of collecting and processing the fee is likely to equal or exceed the amount of the fee.

(2) The fee is equal to or less than 10 dollars.

(3) Disclosure of the record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(i) A requester may apply in writing to the Secretary to the Board for a waiver of fees under this paragraph (b)(3). A fee waiver request shall include the following:

(A) The requester's interest in and proposed use of the record;

(B) Whether the requester will derive income or other benefit from the record;

(C) An explanation of how the public will benefit from disclosure, including the requester's ability and intention to disseminate the information to the public; and

(D) The requester's expertise in the subject area of the record.

(ii) In determining whether disclosure of a record is in the public interest, the Finance Board shall consider whether the record:

(A) Concerns identifiable operations or activities of the Finance Board;

(B) Is meaningfully informative in relation to the subject matter of the request;

(C) Contributes to an understanding of the subject matter by the public at large, and the significance of that contribution; and

(D) Furthers, or is primarily in, the requester's commercial interest.

(e) *Aggregating requests.* If the Finance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, it may aggregate such requests and assess fees in accordance with this section.

(f) *Collecting fees.* (1) The Finance Board shall deem any request for Finance Board records as an agreement by the requester to pay fees and interest assessed in accordance with this section.

(2) To pay fees and interest assessed under this section, a requester shall deliver to the Secretary to the Board a check or money order made payable to the "Federal Housing Finance Board."

(3) Prior to disclosing any record, the Finance Board may require a requester to agree in writing to pay actual fees and interest incurred in accordance with this section if the estimated fee will likely exceed $25 but not $250.

(4) The Finance Board may require a requester to pay an estimated fee in advance if:

(i) The Secretary to the Board determines that the fee will likely exceed $250; or

(ii) The requester has previously failed to pay a fee assessed under this section within 30 days of the earlier of the date of the Finance Board's determination under § 904.4 or the date a fee statement was mailed to a requester.

(5) The Finance Board shall promptly refund to a requester any estimated advance fee paid under paragraph (f)(4) of this section that exceeds the actual fee. The Finance Board shall assess the requester for the amount by which the actual fee exceeds the estimated advance fee payment.

(g) *Fee schedule.* The Finance Board shall assess fees in accordance with the following schedule:

Search:	
Manual: Supervisory/Professional Staff	$34.00 per hour.
Manual: Clerical Staff	$17.00 per hour.
Computer: Operator	$34.00 per hour.
Computer output (PC)	actual cost.

Diskettes (3½ × 5¼)	$5.00 per diskette.
Review	$34.00 per hour.
Duplication:	
Photocopy	$.10 per page.
Computer generated	$.76 per 1000 lines.
Copy of microfiche	$.30 per page.
Transcription of audio tape	$4.50 per page.
Certification, seal and attestation by the Secretary to the Board	$5.00 per document.
Delivery:	
Facsimile transmission (long distance)	Long distance charges plus $.25 per page.
Facsimile transmission (local)	$.25 per call plus $.25 per page.
Express delivery service	Actual cost.

Dated: May 29, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 98–18468 Filed 7–10–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–11]

Modification of Class E Airspace; Ukiah, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Ukiah, CA, by lowering a portion of the base of controlled airspace from 9,500 feet mean sea level, (MSL) to 1,200 feet above ground level (AGL). This action is due to the establishment of a new federal airway (V–607) between Mendocino and Arcata, CA. The airway will have a minimum enroute altitude of 9,000 feet MSL. The intended effect of this action is to provide adequate controlled airspace extending upward from 1200 feet or more above the surface of the earth to contain aircraft flying V–607 between Mendocino and Arcata, CA.

EFFECTIVE DATE: 0901 UTC October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On May 1, 1998, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Ukiah, Ca (63 FR 24140). Additional controlled airspace extending upward from 1200 feet above the surface is needed to contain IFR aircraft flying V–607 between Mendocino and Arcata, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 1200 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Ukiah, CA. The establishment of federal airway V–607 has made this action necessary. The effect of this action will provide adequate airspace needed to contain IFR aircraft flying V–607 between Mendocino and Arcata, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 1200 feet or more above the surface of the earth.

* * * * *

AWP CA E5 UKIAH, CA [Revised]

Ukiah Municipal Airport, CA
(lat. 39°07′34″ N, long. 123°12′03″ W)
Fortuna VORTAC (lat. 40°40′17″ N, long. 124°14′04″ W)
Mendocino VORTAC (lat. 39°03′12″ N, long. 123°16′27″ W)
Red Bluff VORTAC (lat. 40°05′56″ N, long. 122°14′11″ W)

That airspace extending upward from 1,200 feet above the surface within a 17.4 mile radius of the Mendocino VORTAC, excluding that airspace east of the western edge of V25 and that airspace bounded by a line from lat. 39°32′00″ N, long 123°33′14″ W; to lat. 39°32′00″ N, long 123°11′34″ W; to lat. 39°21′37″ N, long. 123°04′54″ W; to lat. 39°19′07″ N, long. 123°07′22″ W, thence counterclockwise via the 17.4 mile radius of the Mendocino VORTAC to lat. 39°19′04″ N, long. 123°25′40″ W; to lat. 39°32′00″ N, long. 123°33′14″ W. That airspace extending upward from 7,500 feet MSL south of the Red Bluff VORTAC between the 20.9- and 39.9-mile arcs of the Red Bluff VORTAC bounded on the northwest by the

northwest edge of V–199 and on the southeast by the southeast edge of V–25. That airspace extending upward from 8,500 feet MSL south of the Red Bluff VORTAC bounded on the northeast by a 39.1-mile arc of the Red Bluff VORTAC, on the southeast by the southeast edge of V–25, on the south and southwest by the north edge of V–200 and a 17.4-mile arc of the Mendocino VORTAC, and on the northwest by the northwest edge of V–199. That airspace extending upward from 9,500 feet MSL bounded on the southeast by the northwest edge of V–199 to lat. 39°21′37″ N, long. 123°04′54″ W; to lat. 39°32′00″ N, long. 123°11′34″ W; to lat. 39°32′00″ N, long. 123°20′33″ W, and on the west by the east edge of V–607, and on the north by a line 7.8 miles south of a parallel to the Red Bluff VORTAC 291° and Fortune VORTAC 110° radii to the 17.4-mile arc of the Red Bluff VORTAC, thence counterclockwise to the northwest edge of V–199, and that airspace bounded on the east by the western edge of V607 to lat. 39°46′40″ N, long. 123°35′50″ W, and on the west by the east edge of V–27 to the 24-mile radius of the Fortuna VORTAC, thence counterclockwise to the west edge of V–607. That airspace extending upward from 5,300 feet MSL bounded on the east by the southwest edge of V–27 and on the west by the west/southwest edge of V–494.

* * * * *

Issued in Los Angeles, California. on June 29, 1998.

Alton D. Scott,

Acting Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 98–18553 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–98–001]

Special Local Regulations; Parker International Waterski Marathon

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is amending the table of events in 33 CFR 100.1102 by adding an entry for the Parker International Waterski Marathon. The Parker International Waterski Marathon is conducted on the navigable waters of the Colorado River, beginning at Bluewater Marina in Parker, AZ, and extending approximately 10 miles south to La Paz County Park. It occurs annually on the second full weekend of March every year, and lasts a total of 2 days. The special local regulations applicable to this event are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Petty Officer Greg Nelson, U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, California; telephone number (619) 683–6492.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 2, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) for this regulation in the **Federal Register** (63 FR 16179–16180). The comment period ended 18 May 98. The Coast Guard received no comments on the proposal. A public hearing was not requested and no hearing was held.

Background and Purpose

The Parker International Waterski Marathon consist of various waterski activities. The event takes place, annually, over a two day period commencing on the second full weekend of March. The special local regulations applicable to this event are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events.

Discussion of Rule

The course of the event is approximately 10 miles long and encompasses the entire water area of the Colorado River from Bluewater Marina in Parker, AZ, south to La Paz County Park. The course will be marked by buoys and sponsor vessels to alert non-participants. On the following days and times, the race zone will be in use by vessels competing in the event: annually, commencing on the second full weekend of March every year, and lasting a total of 2 days, from 8 a.m. until 5 p.m. (PST) each day. During these times the Colorado River from Bluewater Marina in Parker, AZ, south to La Paz County Park will be closed to all traffic with the exception of emergency vessels. No vessels other than participants, official patrol vessels, or emergency vessels will be allowed to enter into, transit through, or anchor within this zone unless specifically cleared by or through an official patrol vessel.

Pursuant to 33 CFR 100.1101(b)(3), Commander, Coast Guard Activities San Diego, is designated Patrol Commander for this event; he or she has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard. Once the zone is established, authorization to remain within the zone is subject to termination by Patrol Commander at any time. The Patrol Commander may impose other restrictions within the zone if circumstances dictate. Restrictions will be tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary to safely conduct the event.

Discussion of Comments

No comments were received.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. *Small entities* may include small businesses and not-for-profit organizations that are not dominant in their fields and (2) governmental jurisdictions with populations less than 50,000.

Because it expects the impact of this regulation to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this rule will not have a substantial impact on a significant number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria in Executive Order 12612 and

has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(h), it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket maintained at the address listed in **ADDRESSES.**

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 100

Regattas, Marine parades.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 100, section 100.1102, as follows:

PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.36; 33 CFR 100.35.

2. Section 100.1102, Table 1, is amended by adding an entry for the Parker International Waterski Marathon immediately following the last entry, to read as follows:

§ 100.1102 Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker Arizona).

* * * * *

TABLE 1

* * * * *

Parker International Waterski Marathon

Sponsor: Parker International Waterski Association.

Dates: Annually, commencing on the second full weekend of March every year, and lasting a total of 2 days, from 8 a.m. (PST) until 5 p.m. (PST) each day.

Location: The entire water area of the Colorado River beginning at Bluewater Marina in Parker, AZ, and extending approximately 10 miles to La Paz County Park.

Dated: June 25, 1998.

R.D. Sirois,

Acting Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 98–18558 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–96–008]

RIN 2115–AE46

Special Local Regulation; Winter Harbor Lobster Boat Race, Winter Harbor, ME

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for a boat race known as the Winter Harbor Lobster Boat Race. The event is held annually on the second Saturday in August between the hours of 8 a.m. and 2 p.m. This boat race takes place in the waters of Winter Harbor, Winter Harbor, ME. The actual date and time will be published in a Coast Guard Notice to Mariners. This regulation is needed to protect the boating public from the hazards associated with high-speed powerboat racing in confined waters.

EFFECTIVE DATE: This rule is effective on August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Timothy J. Carton, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was published on February 26, 1996, (61 FR 7089) proposing the establishment of a permanent special local regulation for the Winter Harbor Lobster Boat Race. The proposed rulemaking was published citing an incorrect section number § 100.114, which is already in use. This final rule will correct the section number.

The NPRM restricted vessels from transiting a specified regulated area to ensure the safety of life and property in the immediate vicinity of the event. No comments were received and no hearing was requested.

Background and Purpose

The Winter Harbor Lobster Boat Race is a local, traditional event that has been held for more than thirty years in Winter Harbor, ME. In the past, the Coast Guard has promulgated individual regulations for each year's race. Given the recurring nature of the event, the Coast Guard desires to establish a permanent regulation for this event. This rule establishes a regulated area on Winter Harbor and provides specific guidance to control vessel movement during the race.

This event includes up to 50 power-driven lobster boats and draggers competing in heats on a marked course at speeds approaching 25 m.p.h. The event typically attracts approximately 75 spectator craft. The Coast Guard will assign a patrol craft to the event, and the racecourse will be marked. Due to the speed, large wakes, and proximity of the participating vessels, it is necessary to establish a special local regulation to control spectator and commercial vessel movement within this confined area. Spectator craft are authorized to watch the race from any area as long as they remain outside the designated regulated area.

In emergency situations, provisions may be made to establish safe escort by a Coast Guard or designated Coast Guard vessel for vessels requiring transit through the regulated area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 25, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the event, the extensive advisories that will be made to the affected maritime community and the minimal restrictions

that the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section, 100.109, is added to read as follows:

§ 100.109 Winter Harbor Lobster Boat Race, Winter Harbor, ME.

(a) *Regulated area.* The regulated area includes all waters of Winter Harbor, ME, within the following points (NAD 83):

Latitude	*Longtitude*
44 23'07" N	068 04'52" W
44 22'12" N	068 04'52" W
44 22'12" N	068 05'08" W
44 23'07" N	068 05'08" W

(b) *Special local regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more short blasts from a Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective Period.* This section is effective from 8 a.m. to 2 p.m., annually on the second Saturday in August, unless specified in a Coast Guard Notice to Mariners. In case of inclement weather, this section will be in effect the second Sunday in August at the same time, unless otherwise specified in a Coast Guard Notice to Mariners.

Dated: June 29, 1998.

R.M. Larrabee,

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

[FR Doc. 98–18556 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08–98–038]

RIN 2115–AE84

Regulated Navigation Area; Ohio River, Mile 461.0–462.0, Cincinnati, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area on the Ohio River from mile 461.0 to mile 462.0. These regulations are needed to protect and control recreation and commercial vessel traffic during two concerts by musician Jimmy Buffet at the Riverbend Music Center, Cincinnati, Ohio. These regulations will restrict general navigation in the regulated area for the safety of recreational and commercial vessels.

DATES: These regulations are effective from 8 p.m. until 11:30 p.m. on July 24 and 25, 1998.

ADDRESSES: Unless otherwise indicated, all documents referred to in these regulations are available for review at Marine Safety Office, Louisville, 600 Martin Luther King Jr. Place, Rm 360, Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, Kentucky at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this regulation are Lieutenant Jeff Johnson, Port Management Officer for the Captain of the Port of Louisville, Kentucky, and Lieutenant Junior Grade Michael A. Woodruff, Project Attorney, Eighth Coast Guard District, New Orleans, LA.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

For the past few years performance artist Jimmy Buffet has performed annual concerts at the Riverbend Music Center and over that period of time the concerts have increased in popularity. In the last few years, this particular concert series has attracted an increasingly large number of spectator craft, posing a significant hazard to navigation. This increased number of vessels has contributed to an unusually high number of close calls between spectator craft and commercial traffic. The purpose of this regulation is to establish navigation and operating restrictions which will serve to separate recreational vessels from commercial vessel traffic, and if needed, to escort

commercial traffic through the regulated navigation zone.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under sections 6(a)(3) of that order. Its has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, Louisville, Kentucky will monitor river conditions and will ease restrictions in the regulated area as conditions permit. Change will be announced by Marine Safety Information Radio Broadcast (Broadcast Notice to Mariners) on VHF marine band radio, channel 22 (157.1 MHZ). Mariners may also call the Port Management Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

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

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Temporary Regulations

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165–T08–038 is added to read as follows:

§ 100–T08–038 Regulated navigation area: Ohio River.

(a) *Location.* The Ohio River between mile 461.0 and 462.0 is established as a regulated navigation area.

(b) *Regulations.* (1) Commercial vessels transiting the regulated navigation area shall proceed at minimum steerage and at the direction of the Coast Guard officers or petty officers who will be patrolling the regulated area on board Coast Guard vessels.

(2) Recreational vessels within the area shall not anchor or moor in the navigable channel.

(3) Depending on on-scene conditions, the Captain of the Port, Louisville, Kentucky, upon request, or for good cause, may authorize deviation from this section if the Captain of the Port, Louisville, Kentucky, finds that the proposed or needed operations can be performed safely.

(4) The Captain of the Port, Louisville, Kentucky will notify the maritime community of river conditions affecting the area covered by this regulated navigation area by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

(c) *Effective date:* This section will be effective from 8 p.m. to 11:30 p.m. on July 24 and 25, 1998.

Dated: June 25, 1998.

Paul J. Fluta,

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

[FR Doc. 98–18557 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM35–1–7366; FRL–6118–4]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for New Mexico and Albuquerque

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The EPA is revising the format of 40 CFR part 52, subpart GG for materials submitted by New Mexico and Albuquerque that are incorporated by reference (IBR) into the State Implementation Plans (SIPs). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA. This format revision will primarily affect the "Identification of plan" sections of CFR 52.1620, as well as the format of the SIP materials that will be available for public inspection at the EPA Region 6 office, the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC., and the Office of the Federal Register. The sections of 40 CFR 52.1620 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review and 40 CFR 52.1621 through 52.1639 remain unchanged.

EFFECTIVE DATE: This action is effective July 13, 1998.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733;

Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L) at the above Region 6 address or at (214) 665–7354.

SUPPLEMENTARY INFORMATION:

Background

Each State is required by section 110(a)(1) of the Act, to have a SIP that contains the control measures and strategies which will be used to attain

and maintain the national ambient air quality standards. The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA pursuant to 110(k) of the Act, after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the State is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a State not enforce its SIP-approved regulations.

The SIP is an active or changing document which can be revised by the State as necessary to address the unique air pollution problems in the State as long as changes are not contrary to federal law. Therefore, EPA, from time to time, must take action to incorporate into the SIP, revisions of the state program which may contain new and/or revised regulations. Regulations approved into the SIP are then incorporated by reference into part 52. As a result of consultations between EPA and the Office of Federal Register, EPA revised the procedures on May 22, 1997 (62 FR 27968), for incorporating by reference federally-approved SIPs and began the process of developing pursuant to 110(h)(1) of the Act: (1) A revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

Content of Revised IBR Document

The new SIP compilations contain the federally-approved portion of state regulations and source specific permits submitted by each State agency. These regulations and source-specific permits have all been approved by EPA through previous rulemaking actions in the **Federal Register**. The SIP compilations are stored in 3-ring binders and will be updated primarily on an annual basis. If no significant changes are made for any state to the SIP during the year, an update will not be made during that year. If significant changes occur during the year, an update could be done on a more frequent basis, as applicable. Typically, only the revised section of the compilation will be updated. Complete resubmittals of a state SIP compilation will be done on an as-needed basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains the source-specific permits that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these states. The regional EPA offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 6 EPA Office developed and will maintain the compilations for New Mexico and for Albuquerque. A copy of the full text of the State's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center. The EPA is beginning the phasing in of SIP compilations for individual states, and expects to complete the conversion of the revised "Identification of plan" format and IBR documentation for all states by May 1999. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Act.

Revised Format of the "Identification of Plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section of 40 CFR section 52.1620. The EPA is including additional information which will more clearly identify what provisions constitute the enforceable elements of the SIP.

The revised "Identification of plan" section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source-specific permits, and (e) EPA approved nonregulatory provisions, such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

Enforceability and Legal Effect

This change to the procedures for incorporation by reference announced today will not alter in any way the enforceability or legal effect of approved SIP materials, including both those approved in the past or to be approved in the future. As of the effective date of the final rule approving a SIP revision, all provisions identified in the **Federal Register** document announcing the SIP approval will be federally enforceable, both by EPA under section 113 of the Act and by citizens under section 304 of the Act, where applicable. All revisions to the applicable SIP are federally enforceable as of the effective date of EPA approval even if they have not yet been incorporated by reference. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of Plan" section, previously appearing in the CFR as the first or second section of part 52 for each State subpart.

Notice of Administrative Change

Today's action constitutes a "housekeeping" exercise to ensure that federally approved state plans are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA Regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that today's rule falls under the "Good Cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" since the codification only reflects existing law. Immediate revision to the CFR benefits the public by removing outdated citations.

Administrative Requirements

A. Executive Order (E.O.) 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review. In addition, this regulatory action is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities, 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The regulations affected by this format change to 40 CFR part 52 have all been previously submitted by the respective State agency and approved by EPA. Therefore, the Regional Administrator certifies that there is no significant impact on any small entities affected.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Judicial Review

The EPA has determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions approving each individual component of New Mexico and Albuquerque SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to provide an additional opportunity for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 9, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

§ 52.1620 [Redesignated as § 52.1640]

2. Section 52.1620 is redesignated as § 52.1640 and the section heading and paragraph (a) are revised to read as follows:

§ 52.1640 Original identification of plan section.

(a) This section identifies the original "State of New Mexico Implementation Plan" and all revisions submitted by New Mexico that were federally approved prior to January 1, 1998.

* * * * *

3. A new § 52.1620 is added to read as follows:

§ 52.1620 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for New Mexico under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (e) of this section with an EPA approval date prior to January 1 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register.** Entries in paragraphs (c) and (e) of this section with EPA approval dates after January 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of January 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 6 EPA Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460; or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(c) EPA approved regulations.

EPA Approved New Mexico Regulations

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
Part 1	General Provisions	10/27/95	11/25/97, 62 FR 50514	This date reflects a recodification, not EPA approval of underlying requirement.
Part 2	Definitions	11/30/95	11/25/97, 62 FR 50514	
Part 3	Ambient Air Quality Standards	11/30/95	11/25/97, 62 FR 50514	
Part 5	Source Surveillance	11/30/95	11/25/97, 62 FR 50514	
Part 7	Excess emissions during Malfunction, Startup, Shutdown, or Scheduled Maintenance.	11/30/95	11/25/97, 62 FR 50514	
Part 8	Emissions Leaving New Mexico	11/30/95	11/25/97, 62 FR 50514	
Part 10	Woodwaste Burners	11/30/95	11/25/97, 62 FR 50514	
Part 11	Asphalt Process Equipment	11/30/95	11/25/97, 62 FR 50514	
Part 12	Cement Kilns	11/30/95	11/25/97, 62 FR 50514	
Part 13	Gypsum Processing Plants	11/30/95	11/25/97, 62 FR 50514	
Part 14	Particulate Emissions From Coal Burning Equipment.	11/30/95	11/25/97, 62 FR 50514	
Part 15	Pumice, Mica and Perlite Process Equipment.	11/30/95	11/25/97, 62 FR 50514	
Part 16	Nonferrous Smelters (New and Existing)-Particulate Matter.	11/30/95	11/25/97, 62 FR 50514	
Part 17	Nonferrous Smelters (Existing)-Particulate Matter.	11/30/95	11/25/97, 62 FR 50514	
Part 18	Oil Burning Equipment-Particulate Matter.	11/30/95	11/25/97, 62 FR 50514	
Part 19	Potash, Salt or Sodium Sulfate Processing Equipment-Particulate Matter.	11/30/95	11/25/97, 62 FR 50514	
Part 20	Lime Manufacturing Plants-Particulate Matter.	11/30/95	11/25/97, 62 FR 50514	
Part 21	Fugitive Particulate Matter Emissions from Nonferrous Smelters.	11/30/95	11/25/97, 62 FR 50514	
Part 22	Fugitive Particulate Matter Emissions from Roads within the Town of Hurley.	11/30/95	11/25/97, 62 FR 50514	
Part 30	Kraft Mills	11/30/95	11/25/97, 62 FR 50514	
Part 31	Coal Burning Equipment-Sulfur Dioxide.	11/30/95	11/25/97, 62 FR 50514	
Part 32	Coal Burning Equipment-Nitrogen Dioxide.	11/30/95	11/25/97, 62 FR 50514	
Part 33	Gas Burning Equipment-Nitrogen Dioxide.	11/30/95	11/25/97, 62 FR 50514	
Part 34	Oil Burning Equipment-Nitrogen Dioxide.	11/30/95	11/25/97, 62 FR 50514	
Part 40	Sulfuric Acid Production Units-Sulfur Dioxide, Acid Mist and Visible Emissions.	11/30/95	11/25/97, 62 FR 50514	
Part 41	Nonferrous Smelters-Sulfur	11/30/95	11/25/97, 62 FR 50514	
Part 60	Open Burning	11/30/95	11/25/97, 62 FR 50514	
Part 61	Smoke and Visible Emissions	11/30/95	11/25/97, 62 FR 50514	
Part 70	Operating Permits	11/30/95	11/25/97, 62 FR 50514	
Part 71	Operating Permit Emission Fees	11/30/95	11/25/97, 62 FR 50514	
Part 72	Construction Permits	11/30/95	11/25/97, 62 FR 50514	Subparts I, II, III, and V in SIP.
Part 73	Notice of Intent and Emissions Inventory Requirements.	11/30/95	11/25/97, 62 FR 50514	
Part 74	Prevention of Significant Deterioration	7/20/95	10/15/96, 61 FR 53639	
Part 75	Construction Permit Fees	11/30/95	11/25/97, 62 FR 50514	
Part 79	Permits-Nonattainment Areas	11/30/95	11/25/97, 62 FR 50514	
Part 80	Stack Heights	11/30/95	11/25/97, 62 FR 50514	

EPA Approved Albuquerque/Bernalillo County, NM Regulations

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
Regulation No.	Albuquerque/Bernalillo County, Air Quality Control Regulations			
1	Resolutions	01/12/79	04/10/80, 45 FR 24468	

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS—Continued

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
2	Definitions	03/16/89	12/21/93, 58 FR 67333	
3	Open Burning	01/12/79	04/10/80, 45 FR 24468	
4	Incinerators	01/12/79	04/10/80, 45 FR 24468	
5	Visible Air Contaminants	01/12/79	04/10/80, 45 FR 24468	
6	Orchard Heaters	01/12/79	04/10/80, 45 FR 24468	
7	Motor Vehicle Air Pollution Control Devices.	01/12/79	04/10/80, 45 FR 24468	
8	Airborne Particulate Matter	03/17/83	02/23/93, 58 FR 10972	
9	Process Equipment	01/12/79	04/10/80, 45 FR 24468	
10	Kraft Mills	01/12/79	04/10/80, 45 FR 24468	
11	Organic Fluids	01/12/79	04/10/80, 45 FR 24468	
12	Coal Burning Equipment—Nitrogen Dioxide Emission Limits.	01/12/79	04/10/80, 45 FR 24468	
13	Coal Burning Equipment—Sulfur Dioxide Emission Limits.	01/12/79	04/10/80, 45 FR 24468	
14	Coal Burning Equipment—Particulate Emission Limits.	01/12/79	04/10/80, 45 FR 24468	
15	Oil Burning Equipment—Nitrogen Dioxide Emission Limits.	01/12/79	04/10/80, 45 FR 24468	
16	Oil Burning Equipment—Particulate Emission Limits.	01/12/79	04/10/80, 45 FR 24468	
17	Oil Burning Equipment—Sulfur Dioxide Emission Limits.	01/12/79	04/10/80 45 FR 24468	
18	Gas Burning Equipment—Nitrogen Dioxide Emission Limits.	01/12/79	04/10/80, 45 FR 24468	
19	Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance.	01/12/79	04/10/80, 45 FR 24468	
20	Permits	02/26/93	03/16/94, 59 FR 12172	
21	Permit Fees	01/12/79	04/10/80, 45 FR 24468	
22	Registration of Air Contaminant Sources.	01/12/79	04/10/80, 45 FR 24468	
23	Source Surveillance	01/12/79	04/10/80, 45 FR 24468.	
24	Variance Procedure	01/12/79	04/10/80, 45 FR 24468	
25	Administration and Enforcement	01/12/79	04/10/80, 45 FR 24468	
26	Interpretation	01/12/79	04/10/80, 45 FR 24468	
27	Emergency Action Plan	01/12/79	04/10/80, 45 FR 24468	
28	Motor Vehicle Inspection	07/01/95	06/13/96, 61 FR 29970	
29	Prevention Of Significant Deterioration.	03/26/93	12/21/93, 58 FR 67333	
30—31	NSPS/NESHAPS			REGS NOT IN SIP. See Notice of Delegation published 10/06/95, 60 FR 52329.
32	Construction Permits—Nonattainment Areas.	02/26/93	12/21/93, 58 FR 67329	
33	Stack Height Requirements	03/16/89	03/05/91, 56 FR 09175	
34	Wooodburning	11/27/91	11/23/93, 58 FR 62539	
35	Alternative Fuels	11/10/93	05/05/94, 59 FR 23168	
42	Transportation Conformity	11/09/94	11/08/95, 60 FR 56244	42.11 not approved by EPA.
43	General Conformity	11/09/94	09/13/96, 61 FR 48407	

(d) [Reserved]

(e) EPA approved nonregulatory provisions.

EPA APPROVED NEW MEXICO STATUTES IN THE CURRENT NEW MEXICO SIP

State citation	Title/subject	State Approval/effective date	EPA approval date	Comments
NMSA 1978—New Mexico Statutes in the Current New Mexico SIP				
74–2–1	Short Title	08/11/83	11/02/84, 49 FR 44101	
74–2–2	Definitions	08/11/83	11/02/84, 49 FR 44101	
74–2–3	State Air Pollution Control Agency	08/11/83	11/02/84, 49 FR 44101	
74–2–4	Municipal or County Air Quality Control Board.	08/11/83	11/02/84, 49 FR 44101	
74–2–5	Duties and Powers of Board	08/11/83	11/02/84, 49 FR 44101	

EPA APPROVED NEW MEXICO STATUTES IN THE CURRENT NEW MEXICO SIP—Continued

State citation	Title/subject	State Approval/ effective date	EPA approval date	Comments
74–2–6	Adoption of Regulations Notice and Hearings.	08/11/83	11/02/84, 49 FR 44101	
74–2–7	Permits	08/11/83	11/02/84, 49 FR 44101	
74–2–8	Variances	08/11/83	11/02/84, 49 FR 44101	
74–2–9	Variances—Judicial Review	08/11/83	11/02/84, 49 FR 44101	
74–2–10	Emergency Procedure	08/11/83	11/02/84, 49 FR 44101	
74–2–11	Confidential Information	08/11/83	11/02/84, 49 FR 44101	
74–2–11.1	Limitations on Regulations	08/11/83	11/02/84, 49 FR 44101	
74–2–12	Enforcement	08/11/83	11/02/84, 49 FR 44101	
74–2–13	Inspection	08/11/83	11/02/84, 49 FR 44101	
74–2–14	Penalties	08/11/83	11/02/84, 49 FR 44101	
74–2–15	Additional Means of Enforcement	08/11/83	11/02/84, 49 FR 44101	
74–2–15.1	Primary Nonferrous Smelter Orders	08/11/83	11/02/84, 49 FR 44101	
74–2–16	Declaratory Judgement of Regulation	08/11/83	11/02/84, 49 FR 44101	
74–2–17	Continuing Effect of Present Laws, Rules, and Regulations.	08/11/83	11/02/84, 49 FR 44101	

[FR Doc. 98–17975 Filed 7–10–98; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, 483, and 489

[HCFA–1913–N]

RIN 0938–AI47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for interim final rule.

SUMMARY: This document extends the comment period for an interim final rule with comment period that was published in the **Federal Register** on May 12, 1998 (63 FR 26252). That interim final rule implements provisions in section 4432 of the Balanced Budget Act of 1997 related to Medicare payment for skilled nursing facility services. Those include the implementation of a Medicare prospective payment system for skilled nursing facilities, consolidated billing, and a number of related changes. The comment period is extended for 60 days.

DATES: The comment period is extended to 5 p.m. on September 11, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1913–IFC, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, ashington, DC 20201, or Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1913–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Laurence Wilson, (410) 786–4603 (for general information). John Davis, (410) 786–0008 (for information related to the Federal rates). Dana Burley, (410) 786–4547 (for information related to the case-mix classification methodology). Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition payment rates). Bill Ullman, (410) 786–5667 (for information related to consolidated billing and related provisions).

SUPPLEMENTARY INFORMATION: On May 12, 1998, we issued an interim final rule with comment period in the **Federal Register** (63 FR 26252) that implements provisions in section 4432 of the Balanced Budget Act of 1997 related to Medicare payment for skilled nursing facility services. Those include the implementation of a Medicare prospective payment system for skilled nursing facilities, consolidated billing, and a number of related changes. We indicated that comments would be considered if we received them by July 13, 1998.

Because of the complexity and scope of the interim final rule and because numerous members of the industry and professional associations have requested more time to analyze the potential consequences of the rule, we have decided to extend the comment period for an additional 60 days. This document announces the extension of the public comment period to September 11, 1998.

Authority: Secs. 1102 and 1871 of the Social Security Act.

(42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 30, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: July 9, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–18746 Filed 7–10–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 63

[FCC 98–127]

Notification of Common Carriers of Service Disruptions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Order* amends the Commission's rules that require carriers to send final reports of certain telephone network service outages to the Chief of the Common Carrier Bureau. This order amends the rules so that carriers required to provide the Commission with final reports of those outages will be directed to send them to the Chief of the Office of Engineering and Technology instead of the Chief of the Common Carrier Bureau.

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Kimball, Office of Engineering and Technology, (202) 418–2339.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 98–127, adopted June 19, 1998, and released June 25, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of Order

The Commission's rules require wireline common carriers to send final reports of certain telephone network service outages to the Chief of the Common Carrier Bureau. The Order summarized here amends the rule so that carriers required to provide the Commission with final reports of those outages will be directed to send them to the Chief of the Office of Engineering and Technology instead.

Since February 18, 1996, the Office of Engineering and Technology has coordinated the meetings and other activities of the Network Reliability Council, now called the Network Reliability and Interoperability Council. Previously this coordinating function was carried out by the Common Carrier Bureau. The receipt and tabulation of outage reports, however, continues to be carried out by the staff of the Common Carrier Bureau. Since these outage reports are relied upon by the Council in the conduct of its research and since tabulation and any analysis that may be required is best conducted by those most familiar with the best practice recommendations of the Council, the Council coordination function and the receipt and tabulation function should be consolidated in the same office.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply to this proceeding because the Commission is adopting this rule without notice and comment. See 5 U.S.C. 603(a) and 604(a). Notice and comment are not required because the Commission is modifying a "rule of agency organization, procedure, or practice." See 5 U.S.C. 553(b)(A). Moreover, the Commission has found that notice and comment are unnecessary here. See 5 U.S.C. 553(b)(B).

List of Subjects

47 CFR Part 0

Organization and functions (government agencies).

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, Parts 0 and 63 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.31 is amended by revising paragraph (j) to read as follows:

§ 0.31 Functions of the Office.

* * * * *

(j) To perform all engineering and management functions of the Commission with respect to formulating rules and regulations, technical standards, and general policies for parts 15, 18 and section 63.100 of this chapter, and for type approval and acceptance, and certification of radio equipment for compliance with the Rules.

* * * * *

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

3. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403 and 533, unless otherwise noted.

4. Section 63.100, paragraphs (b), (c), (d), and (h) are amended by revising the last sentence of each paragraph and paragraph (e) introductory text, is amended by revising the ninth sentence to read as follows:

§ 63.100 Notification of service outage.

* * * * *

(b) * * * Not later than thirty days after the outage, the carrier shall file with the Chief, Office of Engineering and Technology, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate or ameliorate outages of the reported type.

(c) * * * Not later than thirty days after the outage, the carrier shall file with the Chief, Office of Engineering and Technology, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate

or ameliorate outages of the reported type.

(d) * * * Not later than thirty days after the outage, the carrier shall file with the Chief, Office of Engineering and Technology, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate or ameliorate outages of the reported type.

(e) * * * Not later than thirty days after the outage, the carrier shall file with the Chief, Office of Engineering and Technology, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate or ameliorate outages of the reported type.

* * * * *

(h) * * * Not later than thirty days after the outage, the carrier shall file with the Chief, Office of Engineering and Technology, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate or ameliorate outages of the reported type.

* * * * *

[FR Doc. 98–18562 Filed 7–10–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR PARTS 191, 192, 193, 194, 195

[Docket PS–153; Amdt. 191–14; 192–85; 193–16; 194–3; 195–63.]

RIN 2137–AC98

Metric Equivalents

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the pipeline safety regulations to provide metric equivalents. The metric equivalents are being provided for informational purposes only. Operators would continue to use the English measures for purposes of compliance and enforcement. No changeover to the metric system of measurement is being contemplated at this time. This may be reconsidered in the future.

DATES: Effective July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, or by e-mail at marvin.fell@rspa.dot.gov regarding the subject matter of this final rule or regarding copies of this final rule and other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12770, titled "Metric Usage in the Federal Government" (July 25, 1991), requires Federal agencies to use metric measures in their business-related activities as a means to implement the metric system of measures as the preferred system of weights and measures for the United States.[1] In order to explore its responsibilities under this Executive Order, RSPA published an Advance Notice of Proposed Rulemaking (ANPRM) on October 23, 1996 (61 FR 55069). RSPA also held a public meeting on January 10, 1997 in Dallas, Texas. On March 11, 1997, RSPA published an additional notice seeking further comment on the metrication issue, particularly on the publication of metric equivalents for all numerical measures in the pipeline safety regulations. After considering the public comments to the notice and the opinions expressed at the public meeting, RSPA published a Notice of Proposed Rulemaking (NPRM) on December 29, 1997 (62 FR 67602–67607).

In its October 23, 1996, Notice of Public Meeting, RSPA requested comments on seven questions. These questions concerned the best method for providing metric conversion and the cost impact of conversion on the pipeline industry, including the impact on small entities. The majority of respondents were pipeline operators who opposed metric-only regulations. As an alternative, they favored providing metric equivalents. They cited the increased costs that could result from metric conversion with no increase in safety. Some operators contended that metric-only regulations might adversely impact small entities by imposing training and administrative costs that would not contribute to pipeline safety. A few commenters were in favor of metric only regulations.

RSPA received 13 comments to its NPRM, including two from individuals involved in metrication issues, three trade associations representing propane transporters and natural gas distribution and transmission operators, and eight hazardous liquid and gas pipeline operators. There was near unanimous agreement with RSPA's proposal to provide metric equivalents while maintaining English as the measure to be used for compliance. Several operators stated that requiring a metric only rulemaking would significantly add to compliance costs without adding any safety benefits. However, two commenters suggested that operators be able to choose whether to comply with metric or English measures. RSPA believes that these two commenters have a good point. RSPA would like to hear from any operator who would like to comply in metric rather than English. RSPA believes that this should add little to the government compliance costs.

The NPRM proposed displaying the metric measurement first, followed by the English equivalent in parenthesis.

The comment cited most frequently by commenters is that since English will remain the measure for compliance purposes it would be appropriate to present the English measure first with the metric in parentheses. RSPA concurs with this comment. Therefore, RSPA will present all English measures with metric measures following in parentheses.

Several commenters noted that RSPA in its NPRM was not consistent in its use of significant figures and that RSPA use the American Society for Testing and Material (ASTM) Standard for

[1] Section 2(a) of Executive Order 12770 states that "[t]he head of each executive department and agency shall use * * * the metric system of measurement in Federal Government procurements, grants and other business-related activities. Other business-related activities include all use of measurement units in agency programs and functions related to trade, industry, and commerce."

Metric Practice. RSPA concurs with this suggestion in its final rule. A few commenters noted where RSPA had either overlooked a conversion or made errors in the conversion. RSPA has made the appropriate corrections. Two comments were received that a conversion was made on regulations that have expired. RSPA will remove these regulations next time it updates its regulations.

By providing English measures and metric equivalents in its pipeline safety regulations, RSPA provides the benefit of increasing public understanding of the metric system, the goal of Executive Order 12770. Providing metric equivalents also meets the requirement that "metric usage shall not be required to the extent that such use is impractical or cause significant inefficiencies or loss of markets to United States firms." (Executive Order 12770 of July 25, 1991).

A complete conversion to the metric system would prove extremely costly to pipeline operators because most pipelines were designed using English measures. Converting these pipelines to metric-only measures would be a very time-consuming process involving considerable expenditure, including educating pipeline employees in use of the metric system.

One pipeline operator noted in its comments that the metrication process in pipeline safety dates to 1978 when sections 192.121 and 192.123 were amended to include both English and metric measures. No changeover to the metric system of measurement is being contemplated at this time. This may be reconsidered in the future.

On May 4, 1998 at its joint meeting of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC), the two Congressionally mandated advisory committees, OPS presented details concerning its metric equivalents NPRM and the summary of the comments received. These two committees voted overwhelming approval for OPS's metric equivalency proposal with one recommended change. This was that the metric equivalent be placed in parentheses after the English measure. There was one dissenting vote. The dissenter wanting the English measure in parentheses.

II. Regulatory Analyses and Notices

A. The Department of Transportation (DOT) does not consider this action to be a significant regulatory action under section 3(f)of Executive Order 12866 (58 FR 51735; October 4, 1994) and does not consider this action significant under DOT's regulatory policies and procedures (44 FR 1103; February 26, 1979). Therefore, this rulemaking was not reviewed by the Office of Management and Budget.

Because this proposed change to the regulations providing metric equivalents for all English measures is for informational and educational purposes only, and imposes no new requirements on pipeline operators, it will have no economic impact. Therefore, no regulatory evaluation is necessary.

B. Regulatory Flexibility Act

As discussed above this rule has no economic impact. Therefore, I certify pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12612

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA has determined that the action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Paperwork Reduction Act

This rule change has no impact on the amount of paperwork required by these regulations.

E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State or local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 191

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Natural gas, Pipeline safety.

49 CFR Part 193

Liquefied natural gas (LNG), Pipeline safety.

49 CFR Part 194

Oil pollution, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety.

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 191–195 as follows:

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, 60124, and 49 CFR 1.53.

2. In part 191, in the following section remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

Section No.	Remove	Add
191.23(b)(3)	220 yards	220 yards (200 meters)

3. Amend section 191.27 by revising paragraph (a)(4) to read as follows:

§ 191.27 Filing offshore pipeline condition reports.

(a) * * *

(4) Total length of pipeline inspected.

* * * * *

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118, and 49 CFR 1.53.

2. In part 192, for the following sections, remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

Section	Remove	Add
192.3 Definitions:		
Exposed pipeline	15 feet	15 feet (4.6 meters).
Gulf of Mexico and its inlets ...	15 feet	15 feet (4.6 meters).
Hazard to navigation	12 inches	12 inches (305 millimeters).
	15 feet	15 feet (4.6 meters).

Section	Remove	Add
Petroleum gas	1434 kPa (208 psig) at 38° C (100° F).	208 psi (1434 kPa) gage at 100° F (38° C).
192.5(a)(1)	220 yards	220 yards (200 meters).
	1-mile	1-mile (1.6 kilometers).
192.5(b)(3)(ii)	100 yards	100 yards (91 meters).
192.5(c)(1)	220 yards	220 yards (200 meters).
192.5(c)(2)	220 yards	220 yards (200 meters).
192.55(c)	6,000 p.s.i	6,000 p.s.i. (41 MPa).
192.105(a)	Pounds per square inch gauge	Pounds per square inch (kPa) gage.
	Pounds per square inch	Pounds per square inch (kPa).
	Inches	Inches (millimeters).
192.107(b)(2)	24,000 p.s.i	24,000 p.s.i.(165 MPa).
192.109(b)	20 inches (twice)	20 inches (508 millimeters).
192.113	4 inches (twice)	4 inches (102 millimeters).
192.115 table	Fahrenheit	Fahrenheit (Celsius).
	250	250 °F (121 °C).
	300	300 °F (149 °C).
	350	350 °F (177 °C).
	400	400 °F (204 °C).
	450	450 °F (232 °C).
192.121	23 °C (73 °F)	73 °F (23 °C).
	38 °C (100 °F)	100 °F (38 °C).
	49 °C (120 °F)	120 °F (49 °C).
	60 °C (140 °F)	140 °F (60 °C).
	75,842 kPa (11,000 psi)	11,000 psi (75,842 kPa).
192.123(b)(1)	−29 °C (−20 °F) twice	−20 °F (−20 °C).
	−40 °C (−40 °F)	−40 °F (−40 °C).
192.123(b)(2)(i)	23 °C (73 °F)	73 °F (23 °C).
	38 °C (100 °F)	100 °F (38 °C).
192.123(b)(2)(ii)	66 °C (150 °F)	150 °F (66 °C).
192.123(c)	1.57 millimeters (0.062 in)	0.062 inches (1.57 millimeters).
192.123(d) table	Inches	Inches (millimeters).
	Millimeters (inches)	Inches (millimeters).
	2	2 (51).
	1.52(0.060) twice	0.060 (1.52).
	3	3 (76).
	4	4 (102).
	1.78 (0.070)	0.070 (1.78).
	6	6 (152).
	2.54 (0.100)	0.100 (2.54).
192.125(a)	0.065 inches	0.065 inches (1.65 millimeters).
192.125(b)	inch (3 times)	Inch (millimeter).
	½	½ (13).
	⅝	⅝ (16).
	¾	¾ (19).
	1	1 (25).
	1¼	1¼ (32).
	1½	1½ (38).
	.625	.625 (16).
	.750	.750 (19).
	.875	.875 (22).
	1.125	1.125 (29).
	1.375	1.375 (35).
	1.625	1.625 (41).
	.040	.040 (1.06).
	.042	.042 (1.07).
	.045	.045 (1.14).
	.050	.050 (1.27).
	.055	.055 (1.40).
	.060	.060 (1.52).
	.0035 (twice)	.0035 (.0889).
	.004 (twice)	.004 (.102).
	.0045 (twice)	.0045 (.1143).
192.125(c)	100 p.s.i.g	100 p.s.i (689 kPa) gage.
192.125(d)	0.3 grains per 100 standard cubic feet.	0.3 grains/100 ft^3 (6.9/m^3) under standard conditions. Standard conditions refers to 60 °F and 14.7 psia (15.6° C and one atmosphere).
192.145(d)(1)	1,000 p.s.i.g	1,000 p.s.i. (7 MPa) gage.
192.150(b)(7)	10 inches	10 inches (254 millimeters).
192.151(c)(2)	1¼ inch	1¼ inch (32 millimeters).
	4-inch	4-inch (102 millimeters).
	6-inch	6-inch (152 millimeters).
192.153(d)	100 p.s.i.g	100 p.s.i. (689 kPa) gage.
	3 inches	3 inches (76 millimeters).
192.163(b)(1)	2 inches	2 inches (51 millimeters).

Section	Remove	Add
192.163(d)	200 feet	200 feet (61 meters).
192.167(a) introductory text	1,000 horsepower	1,000 horsepower (746 kilowatts).
192.167(a)(4)(iii)	500 feet	500 feet (153 meters).
192.175(b)	C=(3DxPxF/1,000)	C=(DxPxF/48.33) (C=(3DxPxF/1,000)).
	Inches (twice)	Inches (millimeters).
	p.s.i.g	p.s.i. (kPa) gage.
192.177(a)(1)	1,000 p.s.i.g. (twice)	1,000 p.s.i. (7 MPa) gage.
	(feet)	feet (meters).
	25	25 (7.6).
	100	100 (31).
192.179(a)(1)	2½ miles	2½ miles (4 kilometers).
192.179(a)(2)	4 miles	4 miles (6.4 kilometers).
192.179(a)(3)	7½ miles	7½ miles (12 kilometers).
192.179(a)(4)	10 miles	10 miles (16 kilometers).
192.183(c)	10 inch	10 inch (254 millimeters).
192.187(a) introductory text	200 cubic feet	200 cubic feet (5.7 cubic meters).
192.187(a)(1)	4 inches	4 inches (102 millimeters).
192.187(b) introductory text	75 cubic feet	75 cubic feet (2.1 cubic meters).
	200 cubic feet	200 cubic feet (5.7 cubic meters).
192.197(a) introductory text	60 p.s.i.g	60 p.s.i. (414 kPa) gage.
192.197 (a)(4)	2 inches	2 inches (51 millimeters).
192.197(b)	60 p.s.i.g	60 p.s.i. (414 kPa) gage.
192.197(c) introductory text	60 p.s.i.g	60 p.s.i. (414 kPa) gage.
192.197(c)(1)	60 p.s.i.g. (3 times)	60 p.s.i. (414 kPa) gage.
192.197(c)(3)	125 p.s.i.g	125 p.s.i. (862 kPa) gage.
192.201(a)(2)(i)	60 p.s.i.g	60 p.s.i. (414 kPa) gage.
192.201(a)(2)(ii)	12 p.s.i.g	12 p.s.i. (83 kPa) gage.
	60 p.s.i.g	60 p.s.i. (414 kPa) gage.
	6 p.s.i.g	6 p.s.i. (41 kPa) gage.
192.201(a)(2)(iii)	12 p.s.i.g	12 p.s.i. (83 kPa) gage.
192.203(b)(3)	400° F	400° F (204° C).
192.229(d)(2)(ii)	2 inches	2 inches (51 millimeters).
192.241(b)(1)	6 inches	6 inches (152 millimeters).
192.283(b)(3)	5.0 mm (0.20 in)	0.20 in (5.0 mm).
192.283(b)(4)	102 mm (4 in)	4 inches (102 mm).
192.283(b)(5)	102 mm (4 in)	4 inches (102 mm).
	38° C (100° F)	100° F (38° C).
192.309(b)(3)(i)	one-quarter inch	¼ inch (6.4 millimeters).
	12¾ inches	12¾ inches (324 millimeters).
192.309(b)(3)(ii)	12¾ inches	12¾ inches (324 millimeters).
192.313(a)(3)(ii)	12 inches	12 inches (305 millimeters).
192.313(c)	2 inches	2 inches (51 millimeters).
	1 inch	1 inch (25 millimeters).
192.315(b)(3)	16 inches	16 inches (406 millimeters).
192.319(c)	12 feet	12 feet (3.7 meters).
	200 feet	200 feet (61 meters).
	15 feet (twice)	15 feet (4.6 meters).
	36 inches	36 inches (914 millimeters).
	18 inches	18 inches (457 millimeters).
192.321(d)	0.090 inch	0.090 inch (2.29 millimeters).
	0.875 inch	0.875 inch (22.3 millimeters).
	0.062 inch	0.062 inch (1.58 millimeters).
192.325(a)	12 inches	12 inches (305 millimeters).
192.327(a) table	Inches	Inches (Millimeters).
	30	30 (762).
	18	18 (457).
	36 (twice)	36 (914).
	24 (twice)	24 (610).
192.327(b)	24 inches	24 inches (610 millimeters).
192.327(d) introductory text	24 inches	24 inches (610 millimeters).
192.327(d)(1)	24 inches	24 inches (610 millimeters).
192.327(e)	48 inches	48 inches (1219 millimeters).
	24 inches	24 inches (610 millimeters).
192.327(f) introductory text	200 feet	200 feet (60 meters).
192.327(f)(1)	12 feet	12 feet (3.66 meters).
	36 inches	36 inches (914 millimeters).
	18 inches	18 inches (457 millimeters).
192.327(f)(2)	12 feet	12 feet (3.66 meters).
192.353 (c)	3 feet	3 feet (914 millimeters).
192.359(b)	10 p.s.i.g	10 p.s.i. (69 kPa) gage.
192.361 (a)	12 inches	12 inches (305 millimeters).
	18 inches	18 inches (457 millimeters).
192.371	100 p.s.i.g. (twice)	100 p.s.i. (689 kPa) gage.
192.373(a)	6 inches	6 inches (152 millimeters).

Section	Remove	Add
192.381(a) introductory text	10 psig	10 p.s.i. (69 kPa) gage.
192.381(a)(3) introductory text	10 psig	10 p.s.i. (69 kPa) gage.
192.381(a)(3)(ii)(A)	20 cubic feet per hour	20 cubic feet per hour (0.57 cubic meters per hour).
192.381(a)(3)(ii)(B)	0.4 cubic feet per hour	0.4 cubic feet per hour (.01 cubic meters per hour).
192.455(b)	20 feet	20 feet (6 meters).
192.465(a)	100 feet	100 feet (30 meters).
192.475(c)	0.25 grain of hydrogen sulfide per 100 standard cubic feet.	0.25 grain of hydrogen sulfide per 100 cubic feet (5.8 milligrams/m^3) at standard conditions.
192.505(a)	300 feet (twice)	300 feet (91 meters).
	600 feet (twice)	600 feet (183 meters).
192.507 (heading)	100 p.s.i.g	100 p.s.i. (689 kPa) gage.
192.507 introductory text	100 p.s.i.g	100 p.s.i. (689 kPa) gage.
192.507(b)(1)	100 p.s.i.g	100 p.s.i. (689 kPa) gage.
192.509 heading and introductory text.	100 p.s.i.g. (twice)	100 p.s.i. (689 kPa) gage.
192.509(b)	1 p.s.i.g (twice)	1 p.s.i. (6.9 kPa) gage.
	10 p.s.i.g.	10 p.s.i. (69 kPa) gage.
	90 p.s.i.g.	90 p.s.i. (621 kPa) gage.
192.511(b)	1 p.s.i.g.	1 p.s.i. (6.9 kPa) gage.
	40 p.s.i.g.	40 p.s.i. (276 kPa) gage.
	50 p.s.i.g.	50 p.s.i. (345 kPa) gage.
192.511(c)	40 p.s.i.g.	40 p.s.i. (276 kPa) gage.
	90 p.s.i.g.	90 p.s.i. (621 kPa) gage.
192.513(c)	50 psig	50 p.s.i. (345 kPa) gage.
192.513(d)	38 °C (100 °F)	100 °F (38 °C).
192.557(c)	10 p.s.i.g.	10 p.s.i. (69 kPa) gage.
192.557(d)(3)	(inches) (twice)	inches (millimeters).
	3 to 8	3 to 8 (76 to 203).
	10 to 12	10 to 12 (254 to 305).
	14 to 24	14 to 24 (356 to 610).
	30 to 42	30 to 42 (762 to 1067).
	48	48 (1219).
	54 to 60	54 to 60 (1372 to 1524).
	0.075 (3 times)	0.075 (1.91).
	0.08 (4 times)	0.08 (2.03).
	0.09 (5 times)	0.09 (2.29).
	0.065 (twice)	0.065 (1.65).
	0.07 (twice)	0.07 (1.78).
192.557(d)(4)	11,000 p.s.i.	11,000 p.s.i. (76 MPa) gage.
	31,000 p.s.i.	31,000 p.s.i. (214 MPa) gage.
192.612(b)(2)	500 yards	500 yards (457 meters).
	200 yards	200 yards (183 meters).
192.612(b)(3)	36 inches	36 inches (914 millimeters).
	18 inches	18 inches (457 millimeters).
192.619(a)(1)(ii)	324 mm (12¾ inches)	12¾ inches (324 mm).
	1379 kPa (200 psig)	200 p.s.i. (1379 kPa).
192.619(a)(2)(ii)	100 p.s.i.g	100 p.s.i. (689 kPa) gage.
192.621(a)(2)	60 p.s.i.g (twice)	60 p.s.i. (414 kPa) gage.
192.621(a)(3)	25 p.s.i.g	25 p.s.i. (172 kPa) gage.
192.707(d)(1)	one inch	1 inch (25 millimeters).
	one-quarter inch	¼ inch (6.4 millimeters).
192.715(b)(3)	⅛-inch	⅛ inch (3.2 millimeters).
192.717(a)(3)	40,000 psi	40,000 p.s.i. (276 MPa) gage.
192.736(a)(2)	1,000 horsepower	1,000 horsepower (746 kW).
192.749(a)	200 cubic feet	200 cubic feet (5.66 cubic meters).
192.753(a) introductory text	25 p.s.i.g	25 p.s.i. (172 kPa) gage.
192.753(b)	25 p.s.i.g	25 p.s.i. (172 kPa) gage.
Appendix B (II)(A)	2 inches (twice)	2 inches (51 millimeters).
Appendix B (II)(B)	4 inches (twice)	4 inches (102 millimeters).
Appendix B (II)(D)	24,000 p.s.i	24,000 p.s.i. (165 MPa).
Appendix C (I)	12 inches	12 inches (305 millimeters).
	⅛-inch	⅛-inch (3.2 millimeters).
Appendix C (III)	8 inches	8 inches (203 millimeters).
Appendix C (III)(1)	2 inches	2 inches (51 millimeters).

PART 193—[AMENDED]

1. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. In part 193 for the following sections remove the numbers and words in the middle column and add the numbers and words in the third column in their place as follows:

Section	Remove	Add
193.2057 (d)	Btu/ft.² hour	Btu/ft² hour (watts/m²).
	1,600	1,600 (5047).
	4,000 (twice)	4,000 (12600).
	6,700 (twice)	6,700 (21100).
	10,000	10,000 (31500).
193.2059(c)(2)	4.5 miles per hour	4.5 miles/hour (7.2 km/hour).
193.2061(a)	70,000 gallons	70,000 gallons (265,000 liters).
193.2061(b)(1)	70,000 gallons	70,000 gallons (265,000 liters).
	2 feet	2 feet (610 millimeters).
193.2061 (e)(1)	100 miles	100 miles (161 kilometers).
193.2061 (e)(3)	10 miles	10 miles (16 kilometers).
193.2061(f)(2)	30 inches	30 inches (762 millimeters).
193.2061 (f)(3)	one mile	1 mile (1.6 kilometers).
	60 inches	60 inches (1.5 meters).
193.2067 (b)(1)	70,000 gallons	70,000 gallons (265,000 liters).
193.2067 (b)(2)(i)	200 miles	200 miles (322 kilometers).
193.2133(b)	1 cubic foot	1 cubic foot (.035 cubic meters).
	Per square foot	Per square foot (per square meter).
193.2153(a)	24 inches	24 inches (610 millimeters).
193.2191	5,000 barrels	5,000 barrels (795 cubic meters).
193.2195(d)	70,000 gallons	70,000 gallons (265,000 liters).
193.2209(a)	70,000 gallons	70,000 gallons (265,000 liters).
193.2209(b)	70,000 gallons	70,000 gallons (265,000 liters).
193.2211(a)	15 psig	15 psi (103 kPa) gage.
193.2211(b)	15 psig	15 psi(103 kPa) gage.
193.2233(b)	50 feet	50 feet (15 meters).
193.2321(a)	2 inches (twice)	2 inches (51 millimeters).
193.2321(d)	15 psig	15 psi (103 kPa) gage.
193.2321(e)	15 psig	15 psi (103 kPa) gage.
193.2327(a)	15 psig	15 psi (103 kPa) gage.
193.2327(b)	15 psig	15 psi (103 kPa) gage.
193.2519(b)	70,000 gallons	70,000 gallons (265,000 liters).

PART 194—[AMENDED]

1. The authority citation for part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321 (j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

2. In part 194, for the following sections remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

Section	Remove	Add
194.5 Definitions, Barrel	42 United States gallons	42 United States gallons (159 liters).
	60 degrees Fahrenheit	60 °Fahrenheit (15.6 °Celsius).
High volume area	20 inches	20 inches (508 millimeters).
194.101 (b)(1)	6⅝ inches	6⅝ inches (168 millimeters).
	10 miles	10 miles (16 kilometers).
194.101(b)(1)(i)	1,000 barrels	1,000 barrels (159 cubic meters).
194.101(b)(2)(ii)	6⅝ inches	6⅝ inches (168 millimeters).
	10 miles	10 miles (16 kilometers).
194.103(c) introductory text	6⅝ inches	6⅝ inches (168 millimeters).
	10 miles	10 miles (16 kilometers).
194.103(c)(1)	1,000 barrels	1,000 barrels (159 cubic meters).
194.103(c)(4)	five-mile	5 mile (8 kilometer).
194.103(c)(5)	one-mile	1 mile (1.6 kilometer).
194.105(b) introductory text	barrels	barrels (cubic meters).
194.105(b)(1)	barrels	barrels (cubic meters)
194.105(b)(2)	barrels	barrels (cubic meters).
194.105(b)(3)	barrels	barrels (cubic meters).
Appendix A, Section 9 (h)(2)(i)	five miles	5 miles (8 kilometers)
Appendix A, Section 9 (h)(2)(ii)	one mile	1 mile (1.6 kilometer).

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. In part 195, for the following sections, remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

Section	Remove	Add
195.2 Definitions:		
Exposed pipeline	15 feet	15 feet (4.6 meters).
Gulf of Mexico and its inlets	15 feet	15 feet (4.6 meters).
Hazard to navigation	12 inches	12 inches (305 millimeters).
	15 feet	15 feet (4.6 meters).
Specified minimum yield strength.	Pounds per square inch	p.s.i. (kPa) gage.
195.50(b)	50 or more barrels	50 or more barrels (8 or more cubic meters).
195.50(c)	Five barrels	5 barrels (0.8 cubic meters).
195.55(b)(1)	220 yards	220 yards (200 meters).
195.57(a)(4)	Miles	miles (kilometers).
195.106(a)	Pounds per square inch gage	p.s.i. (kPa) gage.
	Pounds per square inch	pounds per square inch (kPa).
	Inches (twice)	inches (millimeters).
195.106(b)(1)(i)	168.3 mm (6⅝ in)	6⅝ in (168 mm).
	168.3 mm through 323.8 mm (6⅝ through 12¾ in).	6⅝ in through 12¾ in (168 mm through 324 mm).
	323.8 mm (12¾ in)	12¾ in (324 mm).
195.106(b)(1)(ii)	165,474 kPa (24.000 psi)	24,000 p.s.i. (165,474 kPa).
195.106 (b)(1)(ii)(B)(2)	165,474 kPa (24,000 psi)	24,000 p.s.i. (165,474 kPa).
195.106(c)	508 mm (20 in) twice	20 inches (508 mm).
195.112(c)	114.3 mm (4½ in)	4½ in (114.3 mm).
195.120(b)(6)	10 inches	10 inches (254 millimeters).
195.208	100 p.s.i.g.	100 p.s.i. (689 kPa) gage.
195.210(b)	50 feet	50 feet (15 meters).
	12 inches	12 inches (305 millimeters).
195.212(b)(3)(ii)	323.8 mm (12¾ in)	12¾ in (324 mm).
195.248(a)	(inches)	inches (millimeters).
	36 (4 times)	36 (914)
	30 (twice)	30 (762)
	48 (twice)	48 (1219)
	18 (3 times)	18 (457)
	24	24 (610)
	100 ft	100 ft (30 mm).
	3.7 m (12 ft)	12 ft (3.7 m)
195.250	12 inches (3 times)	12 inches (305 millimeters).
	2 inches	2 inches (51 millimeters).
195.260(e)	100 feet	100 feet (30 meters).
195.302 (c)(2)(i)(A)	Mileage	Mileage (length).
195.302 (c)(2)(i)(B)	Mileage	Mileage (length)
195.302(c)(2)(ii)	Mileage	Mileage (length)
195.306(b)(2)	300 feet	300 feet (91 meters).
195.306(c)(2)	300 feet	300 feet (91 meters).
195.310(b)(9)	100 feet	100 feet (30 meters).
195.406(a)(1)(ii)	323.8 mm (12¾ in)	12 ¾ inch (324 mm).
	1379 kPa (200 psig)	200 p.s.i. (1379 kPa) gage.
195.410(a)(2)(i)	One inch	1 inch (25 millimeters).
	One-quarter inch	¼-inch (6.4 millimeters).
195.413(a)	114.3 mm (4½ in)	4½ inches (114 mm).
195.413(b)(2)	500 yards	500 yards (457 meters).
	200 yards	200 yards (183 meters).
195.413(b)(3)	36 inches	36 inches (914 millimeters).
	18 inches	18 inches (457 millimeters).
195.424(b)(3)(ii)	50 p.s.i.g	50 p.s.i. (345 kPa) gage.

Issued in Washington, D.C. on July 7, 1998.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 98–18425 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 070698D]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

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

ACTION: Harpoon category closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) Harpoon category annual quota for 1998 will be attained by July 7, 1998. Therefore, the 1998 Harpoon category fishery will be closed effective at 11:30 p.m. on July 7, 1998. This action is being taken to prevent overharvest of the Harpoon category quota.

DATES: Effective 11:30 p.m. local time on July 7, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Pat Scida, 978–281–9260, or Sarah McLaughlin, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Harpoon Category Closure

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of BFT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 53 mt of large medium and giant BFT to be harvested from the regulatory area by vessels permitted in the Harpoon category. Based on reported landings and effort, NMFS projects that this quota will be reached by July 7, 1998. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT by vessels in the Harpoon category must cease at 11:30 p.m. local time July 7, 1998.

The intent of this closure is to prevent overharvest of the quota established for the Harpoon category.

Classification

This action is taken under §§ 285.20(b) and 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: July 7, 1998.

Richard W. Surdi,

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

[FR Doc. 98–18461 Filed 7–7–98; 4:25 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 070798E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 7, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

The 1998 TAC of Pacific ocean perch for the Eastern Aleutian District was established by Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) as 2,840 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for Pacific ocean perch in the Eastern Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,540 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of Pacific ocean perch for the Eastern Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 7, 1998.

Richard W. Surdi,

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

[FR Doc. 98–18462 Filed 7–7–98; 4:18 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 133
Monday, July 13, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes; Model MD–88 Airplanes; and Model MD–90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes; Model MD–88 airplanes; and Model MD–90 airplanes. This proposal would require a one-time inspection of the forward attach pins of the outboard flight spoiler actuators to determine whether the pins are of correct length, and follow-on corrective actions. This proposal is prompted by a report that forward attach pins of incorrect length were found to be installed in the flight spoiler actuators on several in-service and in-production airplanes. The actions specified by the proposed AD are intended to prevent failure of the piston of the flight spoiler actuator and consequent puncturing of the aft spar web, which could result in fuel leakage and reduced structural integrity of the wings.

DATES: Comments must be received by August 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5220; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–147–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that forward attach pins of incorrect length (too short) were found to be installed in the pistons of the outboard flight spoiler actuators on certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–90 airplanes. These pins were manufactured incorrectly by one vendor, and the flight spoiler actuators that incorporate the incorrect pins have been installed on a number of airplanes. If a forward attach pin is too short, the pin and nut could come into contact with the piston lugs, which could cause sustained stresses and consequent stress corrosion. This condition, if not corrected, could result in failure of the piston of the flight spoiler actuator and consequent puncturing of the aft spar web, which could result in fuel leakage and reduced structural integrity of the wings.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletins DC9–27–355 and MD90–27–024, both dated February 24, 1998. These service bulletins describe procedures for a one-time visual inspection of the forward attach pin of the outboard flight spoiler actuator on the left and right sides of the airplane to determine whether the forward attach pin is of correct length, and follow-on corrective actions, which include the following:

—Condition 1. For airplanes on which the length of the pins is correct, the service bulletins describe procedures for modifying the pin by etching a new part number on it and reinstalling it into the flight spoiler actuator.

—Condition 2. For airplanes on which the length of the pins is incorrect, the service bulletins describe procedures for a follow-on visual inspection to detect corrosion of the outer transition radii of the piston lugs of the flight

spoiler actuator, or discrepancies of the cadmium plating on the lugs. If no corrosion or discrepancy is found, follow-on actions include installing a new, improved pin, and a new washer and nut. If any corrosion or discrepancy is found, corrective actions include removing the actuator and attaching parts, performing a high frequency eddy current (HFEC) inspection for cracking of the lugs of the actuator, replacing any cracked piston assembly of the actuator with a new part, reinstalling the actuator and attaching parts, and installing a new, improved pin, and a new washer and nut.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously. The proposed AD also would require that operators report results of inspection findings to the FAA.

Cost Impact

There are approximately 1,700 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,134 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 5 work hours per airplane (including removal and reinstallation of the forward attach pin) to accomplish the proposed one-time visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $340,200, or $300 per airplane.

If the forward attach pin is determined to be of correct length, it would take approximately 1 work hour per airplane to accomplish the necessary modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $60 per airplane.

If the forward attach pin is determined to be of incorrect length, it would take approximately 1 work hour per airplane to accomplish the follow-on visual inspection and replacement of the pin, at an average labor rate of $60 per work hour. New pins would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the follow-on visual inspection and replacement is estimated to be $60 per airplane.

Should an operator be required to accomplish the HFEC inspection, it would take approximately 11 work hours per airplane to accomplish (including removal and reinstallation of the flight spoiler actuator), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the HFEC inspection is estimated to be $660 per airplane.

Should an operator be required to accomplish the replacement of the piston assembly of the flight spoiler actuator, it would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,590 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $2,890 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 98-NM-147-AD.

Applicability: Model DC-9-10, -20, -30, -40, and -50 series airplanes, Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) series airplanes, Model MD-88 airplanes, and C-9 (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC9-27-355, dated February 24, 1998; and Model MD-90 airplanes, as listed in McDonnell Douglas Service Bulletin MD90-27-024, dated February 24, 1998; on which a piston assembly of the flight spoiler actuator having part number (P/N) 4913415-505 or 4913415-507 is installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the piston of the flight spoiler actuator and consequent puncturing of the aft spar web, which could result in fuel leakage and reduced structural integrity of the wings, accomplish the following:

(a) Within 18 months after the effective date of this AD, remove the forward attach pin of the outboard flight spoiler actuator of the left and right wings of the airplane, and perform a one-time visual inspection of the pin to determine whether it is of correct length, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9-27-355 [for Model DC-9-10, -20, -30, -40, -50 series airplanes; Model C-9 (military) series airplanes; Model DC-9-81 (MD-81), -82 (MD-82), -83 (MD-83), and -87 (MD-87) series airplanes; and Model MD-88 airplanes], or MD90-27-024 (for Model MD-90 airplanes), both dated February 24, 1998, as applicable.

(1) Condition 1 (Correct Length). If the forward attach pin is of correct length, prior to further flight, modify the pin by reidentifying it with P/N 4935329–503, in accordance with the applicable service bulletin.

(2) Condition 2 (Incorrect Length). If the forward attach pin is of incorrect length, prior to further flight, perform a follow-on visual inspection of the piston lugs of the flight spoiler actuator for corrosion at the outer transition radii, or discrepancies of the cadmium plating of the lugs, in accordance with the applicable service bulletin.

(i) If no corrosion or discrepancy of the cadmium plating of the lugs is detected, prior to further flight, install a new, improved forward attach pin, P/N 4935329–503, and a new washer and nut, in accordance with the applicable service bulletin.

(ii) If any corrosion or discrepancy of the cadmium plating of the lugs is detected, prior to further flight, remove the actuator and attaching parts, and perform a high frequency eddy current inspection for cracking of the lugs of the actuator, in accordance with the applicable service bulletin.

(A) If no cracking of the lugs is detected, prior to further flight, reinstall the flight spoiler actuator and attaching parts, and install a new, improved forward attach pin, P/N 4935329–503, and a new washer and nut, in accordance with the applicable service bulletin.

(B) If any cracking of the lugs is detected, prior to further flight, replace the existing piston assembly of the flight spoiler actuator with a new piston assembly having the same P/N; reinstall the flight spoiler actuator and attaching parts; and install a new, improved forward attach pin, P/N 4935329–503, and a new washer and nut; in accordance with the applicable service bulletin.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) As of the effective date of this AD, no person shall install a forward attach pin of the flight spoiler actuator, P/N 4935329–1 or 4935329–501, on any airplane.

(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, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on July 6, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18471 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–3]

Proposed Modification of Class E Airspace; Fortuna, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Fortuna, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 29 at Rohnerville Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 29 SIAP to Rohnerville Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Rohnerville Airport, Fortuna, CA.

DATES: Comments must be received on or before July 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–3, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interseted parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 92061. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is consisting an amendment to 14 CFR part 71 by modifying the Class E airspace area at Fortuna, CA. The establishment of a GPS RWY 29 SIAP at Rohnerville Airport has made

this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach and departure procedures at Rohnerville Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 29 SIAP at Rohnerville Airport, Fortuna, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designation and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AWP CA E5 Fortuna, CA [Revised]

Fortuna VORTAC
(Lat. 40°40′17″N, long. 124°14′04″W)
Rohnerville Airport, CA
(Lat. 40°33′14″N, long. 124°07′57″W)

That airspace extending upward from 700 feet above the surface and within a 6.5-mile radius of the Rohnerville Airport and within 1.8 miles each side of the Fortuna VORTAC 326° radial, extending from the VORTAC to 2 miles northwest of the VORTAC and within 1.8 miles northeast and 3.9 miles southwest of the Fortuna VORTAC 147° radial, extending from the Fortuna VORTAC to 3 miles southeast of the Fortuna VORTAC and within 2.2 miles southwest and 3 miles northeast of the 129° and 309° bearings from the Rohnerville Airport, extending from 6.5 miles northwest to 2.6 miles southeast of the Airport and within 1.8 miles each side of the Fortuna VORTAC 034° radial, extending from VORTAC to 9.6 miles northeast of the Fortuna VORTAC. That airspace extending upward from 1200 feet above the surface within 3.9 miles southeast and 8.7 miles northwest of the Fortuna VORTAC 229° radial, extending from the Fortuna VORTAC to 16.1 miles southwest of the Fortuna VORTAC and that airspace bounded by a line beginning at lat. 40°44′00″N, long. 124°33′00″W; at lat. 40°49′00″N, long. 124°30′00″W; to lat. 40°44′00″N, long. 124°30′00″W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on June 29, 1998.

Alton D. Scott,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–18554 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–13–M

Notices

Federal Register
Vol. 63, No. 133
Monday, July 13, 1998

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

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Serial No. 09/053,261–601 filed March 6, 1998, entitled "Modified Live Edwardsiella ictaluri Against Enteric Septicemia in Channel Catfish" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Intervet, Inc., of Millsboro, Delaware, an exclusive license to Serial No. 09/053,261–601.

DATES: Comments must be received on or before October 13, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Intervet, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 98–18592 Filed 7–10–98; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Satake USA Inc., of Modesto, California, an exclusive license to S.N. 07/550,310–601, "Machine Vision Apparatus and Method for Sorting Objects" filed October 30, 1995, Patent No. 5,703,784 issued on December 30, 1997. Notice of Availability was published in the **Federal Register** on July 18, 1996.

DATES: Comments must be received on or before September 11, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Satake USA Inc., submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 98–18593 Filed 7–10–98; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–035N]

Salmonella Enteritidis Risk Assessment: Shell Eggs and Egg Products; Availability of Document

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In December 1996, the Food Safety and Inspection Service (FSIS) began a comprehensive risk assessment of *Salmonella enterica* serotype Enteritidis (*Salmonella* Enteritidis (SE)) in response to an increasing number of human illnesses associated with the consumption of shell eggs and egg products. The final report on risk assessment is now available on the FSIS website and in the FSIS Docket Room. This document summarizes the risk assessment process from the development of a conceptual framework through the incorporation of available data into a comprehensive quantitative model, which characterizes the public health effects associated with the consumption of SE-infected shell eggs and egg products.

ADDRESSES: The document is available electronically on the FSIS website at http://www.fsis.usda.gov/ophs/risk/index.htm. Hard copies of the executive summary are available in the FSIS Docket Room, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Dr. Ruth A. Etzel, Director, Epidemiology and Risk Assessment Division, Office of Public Health and Science, by telephone at (202) 501–7472 or by FAX at (202) 501–6982.

SUPPLEMENTARY INFORMATION: The risk assessment model consists of five modules. The Egg Production Module estimates the number of eggs produced that are infected (or internally contaminated) with SE. The Shell Module, the Egg Products Module, and

the Preparation and Consumption Module estimate the increase or decrease in the numbers of SE organisms in eggs or egg products during storage, transportation, processing, and preparation. The Public Health Module then calculates the incidences of illness and four clinical outcomes (recovery without treatment, recovery after treatment by a physician, hospitalization, and mortality) and cases of reactive arthritis associated with consuming SE positive eggs.

The baseline model for shell eggs presented in the executive summary simulates an average production of 46.8 billion shell eggs per year, 2.3 million of them contaminated with SE. The model predicts that consumption of these eggs would result in a mean of 661,633 cases of human illnesses per year within a range of 126,374 to 1.7 million cases annually. It is estimated that about 94 percent of these cases recover without medical care, 5 percent consult a physician, 0.5 percent are hospitalized, and 0.05 percent of the cases result in death.

The risk assessment model can be continually refined and updated for use in future risk assessments for shell eggs and egg products. FSIS plans to use the risk assessment data to conduct cost-effectiveness studies and cost-benefit analyses.

Done, at Washington, DC, on July 5, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–18466 Filed 7–10–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–036N]

National Advisory Committee on Meat and Poultry Inspection; Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that the National Advisory Committee on Meat and Poultry Inspection will conduct a public meeting by audio teleconference to consider a proposed public notice on the Agency's protocol for experimentation with the point and frequency of inspection verification of the zero tolerance standard in Hazard Analysis and Critical Control Point (HACCP) establishments that slaughter livestock. FSIS is seeking advice and comment from the Committee.

DATES: The audio teleconference will be held on July 29, 1998, from 1:00 to 3:00 p.m.

ADDRESSES: Members of the public may attend the teleconference in Room 0745 in the South Agriculture Building, 1400 Independence Avenue, SW, Washington DC. People should enter the building at Wing 4 on Independence Avenue. Seating in Room 0745 South is limited, and seating will be available on a first-come, first-served basis beginning at 12:30 p.m. Please send written comments on the discussion topic to the FSIS Docket Clerk, Docket No. 98–036N, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. The comments and official transcript of the teleconference will be kept in the Docket Clerk's office.

TELEPHONE LINES: Teleconference lines are limited. Please call Mr. Michael Micchelli at (202) 720–6269 if you are interested in participating in the call to obtain the dial-in number.

FOR FURTHER INFORMATION CONTACT: Persons planning to attend the teleconference in person will be required to register at the meeting. No pre-registration is required. For further information, contact Mr. Micchelli at the number above, by FAX at (202) 690–1030 or E-mail to Michael.Micchelli@usda.gov. Copies of the draft proposed notice under discussion are available on the FSIS Homepage at http://www.usda.gov/agency/fsis/homepage.htm. The draft proposed notice is also available by FAST FAX, FSIS' automated FAX retrieval system, at 1–800–238–8281 or (202) 690–3754 (the reference number for the FAST FAX system is 4000) or from the FSIS Docket Clerk, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700, between 8:30 a.m. and 4:30 p.m., Monday through Friday, telephone (202) 720–3813.

SUPPLEMENTARY INFORMATION:

On February 12, 1997, the Secretary of Agriculture renewed the charter for the Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendation to the Secretary on Federal and State meat and poultry programs pursuant to sections 7(c), 24, 205, 301(c) of the Federal Meat Inspection Act and sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act. The FSIS Administrator is the Committee Chair. Committee membership is drawn from representatives of consumer groups, producers, processors, and marketers from the meat and poultry industry and State government officials.

The current members of the Committee are:

Dr. Deloran M. Allen, Excel Corporation
Dr. William L. Brown, ABC Research Corporation
Terry Burkhardt, Wisconsin Bureau of Meat Safety and Inspection
Caroline Smith-DeWaal, Center for Science in the Public Interest
Nancy Donley, Safe Tables Our Priority
Michael J. Gregory, Tyson's Foods Inc.
Dr. Cheryl Hall, Zacky Farms, Inc.
Dr. Margaret Hardin, National Pork Producers
Alan Janzen, Circle Five Feedyards, Inc.
Dr. Daniel E. LaFontaine, South Carolina Meat-Poultry Inspection Department
Dr. Dale Morse, New York Office of Public Health
Rosemary Mucklow, National Meat Association
William Rosser, Texas Department of Public Health
J. Myron Stolzfus, Stolzfus Meats
Dr. David M. Theno, Jr., Foodmaker Inc.

The Committee deliberates on specific issues and makes recommendations to the whole Committee and the Secretary of Agriculture. The principal topic that the Committee will consider at the meeting is the point and frequency of inspection verification for the zero tolerance standard in HACCP establishments that slaughter livestock. FSIS plans to publish a notice announcing experimentation that may lead to new procedures for FSIS verification of the zero tolerance standard for visible fecal matter and ingesta on livestock carcasses. Interested persons will have an opportunity to discuss issues relating to the activities of the committee and may file comments as discussed above in **ADDRESSES.**

Done in Washington, DC, on: July 5, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–18464 Filed 7–10–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

RIN 0551–AA26

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this

notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for and revision to a currently approved information collection in support of the FAS/Cooperator Market Development Program based on re-estimates.

DATES: Comments on this notice must be received by September 11, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Kent D. Sisson, Director, Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Title: FAS/Cooperator Market Development Program.

OMB Number: 0551–0026.

Expiration Date of Approval: December 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the Foreign Market Development Program is to develop, maintain and expand long-term export markets for U.S. agricultural products. Created over 40 years ago, the program is a cooperative effort between FAS and non-profit agricultural trade organizations (called "Cooperators"). The FAS currently provides cost share assistance for market development to approximately 30 Cooperators working in more than 100 countries.

Prior to initiating program activities, each Cooperator must submit a detailed application to FAS which includes an assessment of overseas market potential; marketing strategy, goals and market development activities; estimated budgets; and performance measurements. Prior years' plans often dictate the content of current year plans because many activities are continuations of previous activities. Each Cooperator is also responsible for submitting: (1) reimbursement claims for eligible costs incurred, (2) an end-of-year contribution report, (3) travel reports, and (4) progress reports/evaluation studies. Cooperators must maintain records on all information submitted to FAS. The information collection is used by FAS to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 hours per response.

Respondents: Non-profit trade organizations.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 73.

Estimated Total Annual Burden on Respondents: 43,800 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Requests for Comments: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Kent D. Sisson, Director, Marketing Operations Staff, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042. Facsimile submissions may be sent to 202–720–9361 and electronic mail submissions should be addressed to mosadmin@fas.usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C. June 29, 1998.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 98–18460 Filed 7–10–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Tuna Fisheries.

Agency Form Number: None.

OMB Approval Number: 0648–0148.

Type of Request: Extension of a currently approved collection.

Burden: 138 hours.

Number of Respondents: 12 with multiple responses.

Avg. Hours Per Response: .1 hours.

Needs and Uses: The U.S. participation in the Inter-American Tropic Tunas Commission (IATTC) results in certain recordkeeping requirements for U.S. fishermen who fish in the Commission's area of management responsibility. The data are used in research and stock assessments necessary to minimize the risk of overfishing. All U.S. fishers use the logbook form provided by the Inter-American Tropic Commission, although the Federal regulations do not require the specific use of the form.

Affected Public: Businesses or other for-profit organizations.

Frequency: Recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: July 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–18450 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–98]

Foreign-Trade Zone 153-San Diego, California; Application For Foreign-Trade Subzone Status; Hewlett-Packard Company Computer and Related Electronic Products

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Diego, California, grantee of FTZ 153, requesting special-purpose subzone status for the manufacturing and distribution facilities (computers, printers, measurement devices, medical products and related products) of the Hewlett-Packard Company (Hewlett-Packard), located in San Diego, California. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 1, 1998.

The Hewlett-Packard facilities are located at five sites (15 bldgs/1,051,560

square feet/96.15 acres in San Diego (San Diego County), California: *Site 1* (9 bldgs/ 499,757 sq. ft./3.32 acres)—production and warehousing facility located at 16399 W. Bernardo Drive; *Site 2* (1 bldg./52,413 sq. ft./3.32 acres)—administrative facility located at 16262 W. Bernardo Drive; *Site 3* (1 bldg./ 202,408 sq. ft./5.65 acres)—production and warehousing facility located at 16550 W. Bernardo Drive; *Site 4* (2 bldgs/44,982 sq. ft./2.11 acres)—production and warehousing facility located at 15890–15910 Bernardo Center Drive; and *Site 5* (2 bldgs/252,000 sq. ft./17.84 acres)—production and warehousing facility located at 12270 World Trade Drive.

The facilities (2,050 employees) are used for storage, manufacture, and distribution for import and export of computers and related devices, printers, electronic test and measurement devices, electronic medical products, and related electronic products and components. A number of components are purchased from abroad (an estimated 40% of value of manufactured products), including printed circuit boards, silicon wafers, rectifiers, integrated circuits, memory modules, CD–ROM drives, disk drives, scanners, hard drives, keyboards, monitors/ displays (CRT and LCD type), LEDs, speakers, microphones, belts, valves, bearings, plastic materials, industrial chemicals, sensors, filters, resistors, transducers, fuses, plugs, relays, ink cartridges, toner cartridges, switches, fasteners, cards, transformers, DC/ electric motors, magnets, modems, batteries, cabinets, power supplies, cables, copper wire, power cords, optical fiber, casters, cases, labels, and packaging materials (1997 duty range: free-14.2%). (Full zone procedures are not being sought for certain linear motion bearings, display tubes and parts, optical fiber and related parts.)

Zone procedures would exempt Hewlett-Packard from Customs duty payments on foreign components used in export production. On its domestic sales, Hewlett-Packard would be able to choose the lower duty rate that applies to the finished products (free-13.2%, mostly duty-free) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

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

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 11, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 28, 1998.

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

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

U.S. Department of Commerce, Export Assistance Center, 363 Greenwich Drive, Suite 230, San Diego, California 92122.

Dated: July 2, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–18601 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–98]

Foreign-Trade Zone 122—Corpus Christi, Texas; Application for Foreign-Trade Subzone Status; Ultramar Diamond Shamrock Corporation; Oil Refinery

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for the oil refinery and petrochemical complex of Diamond Shamrock Refining Company L.P. (an affiliate of Ultramar Diamond Shamrock Corporation), located in Three Rivers, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 30, 1998.

The refinery and petrochemical complex (463 acres, 300 employees) is located at 301 Leroy Street on the Frio River, Three Rivers (Live Oak County), Texas, some 75 miles northwest of Corpus Christi. The refinery (90,000 BPD) is used to produce fuels and petrochemical feedstocks. Fuel products include gasoline, jet fuel, distillates, residual fuels, naphthas and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include methane, ethane, propane, liquid natural gas, propylene, ethylene, butylene, butane, butadiene, cumene, benzene, toluene, xylene, petroleum coke, asphalt and sulfur. Some 90–95 percent of the crude oil (99 percent of inputs), and some motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil and natural gas condensate in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. Under the FTZ Act, certain merchandise in FTZ status is exempt from ad valorem inventory-type taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 11, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 28, 1998.)

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

U.S. Department of Commerce, export Assistance Center, 222 N. Main, Suite 450, San Antonio, Texas 78212

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: July 2, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–18600 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review

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

ACTION: Notice of Final Results of the Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands.

SUMMARY: On March 9, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (PPD-T aramid) from the Netherlands. The review covers one manufacturer/exporter and the period June 1, 1996 through May 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised the results from those presented in the preliminary results of review.

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–1324 or Eugenia Chu at (202) 482–3964, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 353 (1997).

Background

The Department published in the **Federal Register** the antidumping duty order on PPD–T aramid from the Netherlands on June 24, 1994 (59 FR 32678). On June 11, 1997, we published in the **Federal Register** (62 FR 31786) a notice of opportunity to request an administrative review of the order covering the period June 1, 1996, through May 31, 1997.

In accordance with 19 CFR 353.22(a)(1), Aramid Products V.o.F. and Akzo Nobel Aramid Products, Inc. (collectively "Akzo" or respondent), and petitioner, E.I. DuPont de Nemours and Company (petitioner), requested that we conduct an administrative review for the aforementioned period of review (POR). We published a notice of initiation of this antidumping duty administrative review on August 1, 1997 (62 FR 41339). The Department is conducting this administrative review in accordance with section 751 of the Act.

On March 9, 1998, the Department published the preliminary results of the review. (*See* 63 FR 11408). The Department has now completed the review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are all forms of PPD-T aramid from the Netherlands. These consist of PPD-T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber and floc. Tire cord is excluded from the class or kind of merchandise under review. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The HTS item numbers are provided for convenience and Customs purposes. The Department's written description of the scope remains dispositive.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from respondent and petitioner.

Comment 1: Petitioner contends that the Department should revise Akzo's reported U.S. indirect selling expenses (ISE), arguing that the calculation was improperly based on the consolidated financial statements of Akzo Nobel Inc., and should have instead been based upon the financial statements of Akzo Nobel Aramid Product Inc.'s (ANAPI—the exclusive sales agent of Aramid Products V.o.F. in the United States (Aramid)). Petitioner also asserts that the Department should reject Akzo's use of consolidated financial data in calculating the net interest expenses included in Aramid's cost of production so as to reflect Aramid's actual financing expenses. Petitioner acknowledges that the Department generally uses consolidated financial expense data to calculate financing expenses. However, petitioner asserts that this is not an automatic requirement. Further, petitioner contends that the Department must not use consolidated data where using the consolidated data would distort actual financing expenses. Petitioner asserts that such would be the case in the instant circumstance because Akzo's reported financial interest expense factor is unrelated to the financing requirements of Akzo's PPD-T aramid fiber business in the United States. Moreover, petitioner argues that Akzo justifies its use of consolidated figures on the grounds that the U.S. parent borrows on behalf of its related companies, and then charges the units a share of this cost, without explaining how it allocates the financing expenses. Petitioner argues that Akzo calculated the reported financing expenses based on outstanding loans between the U.S. parent and ANAPI and speculates as to the reasons why ANAPI borrowed money from its parent company to finance its U.S. operations.

Petitioner further argues that the Department and the Court of International Trade (CIT) misapplied binding precedent when affirming the Department's use of Akzo's consolidated data in *E.I. DuPont de Nemours & Co.* v. *United States,* No. 96–11–02509, Slip Op. 98–7, 1998 WL 42598 (CIT Jan. 29, 1998) (*E.I. DuPont*). Moreover, petitioner contends that the Department and the CIT failed to follow the express mandate of the 1994 amendments to the antidumping statute, which directs the Department to capture all actual costs incurred in producing the subject merchandise and to ensure that reported costs constitute a representative measure of the respondent's true costs. Petitioner argues that the CIT incorrectly interpreted the Statement of Administrative Action (SAA), accompanying H.R. 5110, 103rd Cong., at 834–835 (1994), which according to petitioner, requires a change in the Department's practice with respect to the calculation of financing costs.

Akzo argues that the CIT decision in *E.I. DuPont* properly affirmed the Department's use of Akzo's consolidated financial expense in the first administrative review. Akzo urges the Department to follow the same methodology in the final results of the third administrative review. Further, Akzo emphasizes that petitioner did not point to any evidence justifying a deviation from the Department's standard practice of using the parent's consolidated interest expense in cases where the parent's majority ownership

is prima facie evidence of corporate control.

Additionally, Akzo argues that petitioner's claims that the amendments to the antidumping statute set a new standard for calculating interest expense is in error. Contrary to petitioner's argument, Akzo contends that neither the SAA nor the amended section 773(f) of the antidumping statute directs the Department to change its existing practice. Akzo further contends that the cited portion of the SAA suggests only two distinct changes in the law that do not affect Commerce's past practice at issue here, as the CIT explained in *E.I. DuPont* at 7–9.

Akzo further buttresses its argument by pointing to evidence in the administrative record demonstrating that the interest expense of the consolidated company reflects the actual interest expense incurred. Akzo claims that the only loans and corresponding interest expense on the books of ANAPI and Aramid are intercompany loans from the parent companies, Akzo Nobel Inc. and Akzo Nobel N.V. In addition, Akzo argues that the Department verified that the financial statements of the subsidiary companies are consolidated with those of the parent companies. Akzo explains that the only actual interest expense is recorded on the books of the parent companies because it is only these entities that actually borrow money and incur the related interest expense. Akzo asserts that it is only the parent that determines the sources of money, borrows the money, and incurs the actual interest expense and that therefore, petitioner's speculations on how and why companies borrow money and how a parent determines the amount of loans and interest are irrelevant because these are internal decisions that take into account a variety of factors.

Department's Position: We agree with Akzo. In the prior first and second administrative reviews, petitioner similarly urged the Department to rely on Aramid's own financial records to determine its net interest expense, instead of following the Department's normal practice of using the parent company's financing expenses incurred on behalf of the consolidated group of companies. The Department disagreed with petitioner's position, explaining in detail that any departure from the Department's normal practice in this case was not warranted in light of Akzo Nobel N.V.'s majority ownership interest in Aramid, which constituted prima facie evidence of the parent's corporate control. For a detailed explanation of this issue, see *Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review*, 61 FR 51406 (1996); *Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review*, 62 FR 38058 (1997).

On January 29, 1998, the CIT affirmed the Department's determination, ruling that neither the SAA nor the amended statute mandate a change of practice with respect to using a parent company's consolidated statements when calculating the respondent's interest expense ratio, and that this practice is consistent with the principle of allocating costs in a manner that *reasonably reflects the actual costs. E.I. DuPont* at 8–9. (Emphasis added.) Citing *Gulf States Tube Div. of Quanex Corp. v. United States*, Slip Op. 97–124, Consol. Court No. 95–09–01125, at 38–39 (CIT Aug. 29, 1997), the Court noted that the focus of the analysis is on whether the consolidated group's controlling entity has the power to determine the capital structure of each member of the group. The Court concluded that the administrative record in this case supported the Department's finding that Akzo Nobel N.V. was a controlling entity, and that DuPont did not cite evidence which would overcome the presumption of corporate control.

In the instant administrative review, petitioner merely reiterates its position argued in the previous two reviews and does not point to any new evidence in the administrative record, which would demonstrate that the parent, Akzo Nobel N.V., does not exercise corporate control over the respondent company. Thus, consistent with the Department's prior determinations and the CIT's decision in *E.I. DuPont*, we will continue using Akzo Nobel N.V.'s consolidated financial interest expense in computing the respondent's net interest ratio.

Similarly, petitioner's contention that we should revise Akzo's reported U.S. indirect selling expense (ISE) lacks merit. As the Department stated in the prior administrative reviews, the Department bases its calculations on the consolidated financial statements of the parent, not the subsidiary. This method is grounded in a well-established practice. *See Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review*, 61 FR at 51407; *Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review*, 62 FR at 38060. As stated above, the focal point of the analysis is upon the parent company's control over the subsidiary. The record contains sufficient evidence of Akzo Nobel Inc.'s corporate control over ANAPI. More importantly, the petitioner has failed to produce any evidence to rebut the prima facie evidence of Akzo's control over ANAPI. For the reasons stated above, we will continue to adhere to the Department's current practice in this final determination.

Comment 2: Petitioner alleges that ANAPI is being reimbursed for antidumping duty deposits by one of its parent companies and argues that the Department should deduct the deposits from Akzo's U.S. price, or at least include the associated imputed financing expenses in Akzo's U.S. ISE. Petitioner claims that although there are no reimbursement agreements, the summary trial balances of ANAPI and the Annual Reports of Akzo Nobel Inc. support this allegation. Moreover, petitioner cites *Hoogovens Staal BV* v. *AK Steel Corp.*, 1998 WL 118090 (CIT March 13, 1998) (*Hoogovens*), as a case affirming the Department's authority to subtract reimbursed antidumping duty deposits, reasoning that the antidumping duties were intended to cause importers to raise prices to take into account such duties. Petitioner argues that the fact that Akzo has not raised its prices by anywhere close to 66 percent since the antidumping duty order was published further supports its claim that ANAPI is relieved of the responsibility for the antidumping duties and speculates that certain amounts may be reimbursed by either Akzo Nobel Inc. or Akzo Nobel N.V.

Akzo contends that ANAPI is not being reimbursed for antidumping duties and the petitioner's speculation to the contrary should be disregarded. Akzo cites the Department's regulations, 19 CFR 353.26(a), requiring the Department to deduct from U.S. price the amount of any antidumping duty which the producer or reseller paid directly on behalf of the importer or reimbursed to the importer. Akzo notes that this regulation also requires the importer to file a certificate, prior to liquidation, with the U.S. Customs Service, attesting to the absence of any agreement for the payment or reimbursement of any part of the antidumping duties by the manufacturer, producer, seller or exporter. The regulation provides that the Department may presume from an importer's failure to file this certificate that the producer or reseller paid or reimbursed the antidumping duties. Akzo argues that it is in full compliance with the Department's regulations. It

states ANAPI has filed, prior to liquidation, certifications with Customs attesting to the absence of any agreement with the manufacturer, producer, seller or exporter for the payment or reimbursement of antidumping duties that, as required by section 353.26(c). Further, the respondent claims that ANAPI has not entered into such an agreement with Akzo Nobel Inc. or Akzo Nobel N.V. In support of its arguments, Akzo cites the CIT ruling in *The Torrington Corp.* v. *United States*, 881 F. Supp. 622, 632 (1995) (*Torrington*) that "once an importer * * * has indicated on this certificate that it has not been reimbursed for antidumping duties, it is unnecessary for the Department to conduct an additional inquiry absent a sufficient allegation of customs fraud." Akzo claims that, because it has filed the requisite certification, and because petitioner has failed to show any customs fraud, the record establishes that neither Akzo Nobel Inc. nor Akzo Nobel N.V. has reimbursed ANAPI for antidumping duty payments.

Akzo further contends that the CIT has affirmed the Department's longstanding precedent that, absent evidence of reimbursement, the Department has no authority to make the adjustment to U.S. price requested by the petitioner. See Torrington at 632. Akzo states that, according to the CIT, in Torrington, the party who requests the reimbursement investigation must produce some link between the transfer of funds and reimbursement of antidumping duties. Akzo argues that the petitioner has failed to meet this burden by failing to establish any agreement for reimbursement of antidumping duties between either Akzo Nobel Inc. or Akzo Nobel N.V. and ANAPI .

Furthermore, Akzo argues that petitioner's reliance on Hoogovens is misplaced. Akzo states that the Court remanded this decision to the Department to provide a clearer basis for its determination that reimbursement occurred. However, Akzo argues, even if the CIT ultimately agrees that Hoogovens reimbursed its importer of record, the facts of that case are distinguishable from the facts in Akzo's case. In Hoogovens, the Department found that the importer and exporter had entered into a written agreement to reimburse antidumping duties, which triggered the application of section 353.26 of the Department's regulations. *See Certain Cold-Rolled Carbon Steel Plat Products from the Netherlands*, 61 FR 48465 (1996) (*First Cold-Rolled Review*) (the review that led to the Hoogovens' CIT appeal). Akzo insists that there is no such agreement between Akzo Nobel N.V. and its U.S. subsidiaries, or between Aramid and ANAPI and, therefore, the decision in *First Cold-Rolled Review* has no bearing on this case. Thus, the requirements of section 353.26(a) do not apply and the Department should deny the requested adjustment to Akzo's U.S. price.

Akzo further argues that no adjustments to the reported U.S. ISE is warranted as there were no improper exclusions. Akzo claims that petitioner argues without any citations that the Department should artificially inflate Akzo's U.S. ISE to account for the financing expenses incurred in connection with the antidumping duty deposits it has made. Akzo argues that the Department's practice and precedent actually support a downward adjustment of ISE to account for these expenses. *See Antifriction Bearings and Parts Thereof from France* (*AFBs III*), 58 FR 39729 (1993) *opinion after remand, Federal-Mogul Corp.* v. *United States*, Slip Op. 96–193 at 2, 8 (CIT Dec. 12, 1996) (Federal Mogul II). Akzo states that the Department has justified the adjustment as analogous to the payment of legal fees in antidumping proceedings, which are incurred solely because of the antidumping duty order and thus are not selling expenses. Akzo further argues that, in *Tapered Roller Bearings from Japan*, 62 FR 11825, 11829 (1997), the Department cautioned that failure to allow a downward adjustment would risk calculating overstated margins due to failure to take into account the fact that no such expense would have been incurred absent the order. Therefore, Akzo argues that the Department should not make an upward adjustment to Akzo's U.S. ISE because it is not an expense incurred in selling the subject merchandise.

Department's Position: We agree with Akzo. The Department's regulations require the Department to deduct from U.S. price the amount of any antidumping duty which the producer or reseller (i) paid directly on behalf of the importer or (ii) reimbursed to the importer. *See* 19 CFR 353.26 (a)(1996). Absent evidence of reimbursement, the Department has no authority to make the adjustment to U.S. price. *Torrington* at 632, citing *Brass Sheet and Strip From Sweden*, 57 FR 2706, 2708 (1992) and *Brass Sheet and Strip From the Republic of Korea*, 54 FR 33257, 33258 (1989). *See also, Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 4408, 4411 (1996). In the absence of actual reimbursement payments, the Department requires evidence of a concrete link between the financial transaction and the antidumping duty before it may find reimbursement and impose additional duties. *Torrington* at 632, *aff'd* 127 F.3d 1077, 1080–81 (Fed. Cir. 1997) (further, the Court of Appeals for the Federal Circuit upheld the Department's interpretation and application of section 353.26. *Id.*) Finally, section 353.26 (b) of the Department's regulations also requires that the importer file a certificate with the U.S. Customs Service, attesting to the absence of any "agreement or understanding for the payment or for the refunding" of the antidumping duties. *See* 19 CFR 353.26(b).

In the previous second administrative review, the Department concluded that there was no evidence of reimbursement of ANAPI by Akzo for antidumping duties and, therefore, there was no justification for adjusting U.S. ISE for the potentially reimbursed antidumping duty deposits. *See Final Results of Antidumping Duty Administrative Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 62 FR at 38061. During the course of conducting the instant review, the Department provided petitioner with the opportunity to comment upon all the information and data presented by the respondent. However, petitioner did not allege any specific instance or evidence of reimbursement of antidumping duties in either its October 17, 1997, or December 12, 1997, comments. Petitioner's first allegation of reimbursement was presented in its administrative case brief, dated April 8, 1998, after the Department completed verification and issued its preliminary results of the administrative review. In its case brief, the petitioner failed to provide any new, specific evidence supporting its reimbursement allegations. Petitioner's comments on this issue are speculative and do not point to concrete evidence of reimbursement. Mere allegations of reimbursement are insufficient to warrant further action by the Department. Neither section 353.26 nor past precedent provide authority for the Department to undertake further action or make additional adjustments based upon petitioner's thinly supported assertions of reimbursement. Moreover, we carefully reviewed the record and found no evidence on the record suggesting reimbursement of antidumping duties, nor did we find specific evidence of inappropriate financial intermingling between ANAPI and Akzo Nobel Inc. or Akzo Nobel N.V. In reviewing the financial statements and payment records of the U.S.

subsidiary, we verified that ANAPI is responsible for all cash deposits and duties assessed. *See* Verification Report, dated February 24, 1998.

Further, petitioner's reliance on *Hoogovens* is inapposite. In that case, the CIT held that, although the record evidence in *Hoogovens* "suggested" reimbursement of antidumping duties, the Department did not identify which evidence supported its findings of reimbursement. Thus, the CIT remanded this case to the Department for a reasoned articulation of its decision. In the present case, however, we lack any evidence of reimbursement.

Finally, there is evidence on the record that ANAPI filed the required certifications with U.S. Customs Service attesting to the absence of any agreement with the manufacturer, producer, seller, or exporter for the payment or reimbursement of antidumping duties. Based on these facts, the Department presumes the continued existence of the circumstances that gave rise to our findings in the second administrative review and that 19 CFR 353.26 is inapplicable in this case. Therefore, consistent with our findings in the second administrative review, we have not deducted any amount for reimbursed duties from Akzo's U.S. price or included them in Akzo's U.S. ISE.

Comment 3: Petitioner argues that the Department inconsistently filled in missing values for imputed credit expense for home market and U.S. sales. Specifically, for home market sales, the Department filled in the missing payment dates with the date of the preliminary determination, March 2, 1998, and then calculated the missing credit expense value, while for the U.S. sales, the Department calculated the average credit expense for U.S. sales and then applied that average expense to missing credit values. Petitioner claims that this inconsistent application maximized the credit expense deduction for home market sales, thereby reducing normal value, and artificially reduced the credit expense deduction for U.S. sales, thereby increasing the U.S. price. Because Akzo failed to submit a complete questionnaire response, petitioner further argues that the Department should apply adverse inferences and fill in the missing data with the largest value on the record for the U.S. price deduction and with zero for the corresponding home market price deduction, or at least fill in the missing data with values that do not allow Akzo to benefit from its omissions.

Akzo argues that the Department should reject petitioner's request as contrary to current Department practice, which is to use the last day of verification as the payment date for unpaid sales (February 2, 1998). Respondent cites *Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8928 (1998), as precedent.

Department's Position: In accordance with the Department's current practice, the last day of verification will be used as the date of payment for unpaid sales. *See Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12757 (1998) (citing *Static Random Access Memory Semiconductors from Taiwan; Final Results of Less than Fair Value Investigation*, 63 FR 8909, 8928 (1998) and *Brass Sheet and Strip from Sweden; Final Results of Antidumping Administrative Review*, 60 FR 3617, 3621 (1995)). We disagree with petitioner's assertion that the Department should use an adverse inference in calculating the imputed credit expense. In the instant review, respondent has not impeded the review by providing inaccurate or unverifiable data, instead it has provided data which was successfully verified. Therefore, we have used the last day of verification, February 2, 1998, as the date of payment for the transactions in question.

The Department agrees with petitioner that we inconsistently calculated missing credit expenses in the home sales market and U.S. market during the preliminary determination. In the final results of the review, the Department has substituted the missing payment dates with the last day of verification and calculated the missing credit expense value for both home market sales and U.S. sales. *See* Calculation Memorandum, dated July 7, 1998, for a complete discussion of the mathematical calculation.

Comment 4: Petitioner contends that the Department's treatment of Akzo's goodwill expenses in the first and second administrative reviews is not supported by substantial evidence on the record and is contrary to law. Petitioner argues that the Department should amortize these costs over a period that covers the POR to avoid improperly understating the actual cost of producing PPD–T aramid fiber during the POR.

Akzo argues that petitioner's position is unsubstantiated and contrary to law. Akzo notes that the proper treatment of the goodwill was the focus of the first administrative review, and of the recently issued CIT decision. Respondent further notes that the Department spent a significant amount of time gathering and analyzing all aspects of the purchase. *See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, 61 FR 51406. Akso cites the CIT's ruling to affirm the Department's treatment of goodwill as further support for its contentions. Respondent cites specifically to the CIT's approval of the Department's analysis, affirming that it was more appropriate to isolate those components of goodwill that pertained to assets used in the production of subject merchandise. Akzo states that in preparing the questionnaire response for this review, it complied with the Department's determination in the first two administrative reviews. Finally, Respondent contends that no circumstances exist warranting any deviation from the Department's prior approach, as affirmed by the CIT.

Department's Position: The Department agrees with Akzo. As explained at length in the final results of the first and second administrative reviews, and affirmed by the CIT in *E.I. DuPont*, the Department determined to accept Akzo's accounting method for the amortization of goodwill expense as reasonable. *See Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review*, 61 FR at 51406; *Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review*, 62 FR at 38063.

The Department spent a significant amount of time gathering and analyzing all aspects of the facts surrounding the goodwill issue during the first administrative review. Upon completion of its analysis, the Department determined that, for cost calculation purposes, it was appropriate to isolate those components of goodwill that pertained to assets used in the production of subject merchandise. *See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, 61 FR at 51406. The Department verified that Akzo complied with the Department's decision in the first administrative review, and calculated the reported depreciation expenses exclusive of goodwill expenses in preparing its response for the instant review. The methodology used in the instant case is consistent with the final results of the first and second administrative reviews.

Moreover, in *E.I. DuPont*, the CIT rejected petitioner's arguments with respect to goodwill, affirming the Department's treatment of inventory write-downs and residual goodwill

expenses. *See E.I. DuPont* at 15–24. Therefore, for purposes of the instant review, the Department will continue to use Akzo's reported cost of production and constructed value data in calculating the antidumping duty margin.

Comment 5: Akzo claims that the computer program used in calculating the preliminary results contained three errors that must be corrected. First, Akzo argues that the difference in merchandise (DIFMER) adjustment was miscalculated by failing to convert the submitted variable cost of manufacturing of the U.S. product (VCOMU) from kilograms to pounds. Akzo explains that because the U.S. sales are reported on a per pound basis and the analysis is conducted on the same basis, it is necessary to convert the DIFMER adjustment to a per pound amount. Second, Akzo claims that in calculating the net constructed export price (CEP), the Department correctly added U.S. packing costs to normal value but incorrectly included U.S. packing costs as an adjustment to the gross price, thereby understating the net CEP and overstating the margin. Third, Akzo argues that the Department incorrectly deducted the ISE incurred in the home market on U.S. sales from CEP after correctly determining in the preliminary results and LOT analysis memo that these expenses were not related to the economic activity in the U.S. Akzo provided suggested changes to correct the alleged errors.

Petitioner did not rebut any of Akzo's aforementioned suggested corrections.

Department's Position: The Department agrees with Akzo and has revised the final margin program to reflect these changes. First, the Department has converted VCOMU from kilograms to pounds to ensure that the final margin analysis is performed on a comparable basis. Second, the Department has corrected the margin program to ensure that both the CEP and NV are calculated inclusive of packing costs. Finally, the Department's preliminary margin calculation program inadvertently included ISE that were not incurred in connection with economic activity as deductions to the U.S. selling price. The Department's analysis in the Level of Trade Memo, dated March 2, 1998, is correct in stating that only those expenses incurred connection with economic activity in the U.S. will be deducted from CEP in conducting the margin analysis. For purposes of these final results of review, the Department has revised the margin calculation to reflect the conclusion of the Level of Trade Analysis memo. For further explanation, *see* Calculation Memorandum, dated July 7, 1998.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Akzo	6/1/96–5/31/97	6.31
All Other ..	6/1/96–5/31/97	66.92

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service. For assessment purposes, we have calculated importer specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of PPD–T aramid fiber from the Netherlands 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 the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 66.92 percent, the "all others" rate established in the LTFV investigation (59 FR 32678, June 24, 1994). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.305 and 19 CFR 353.306. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This 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 351.221.

Dated: July 7, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18596 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China; Notice of Recission of Antidumping Duty Administrative Review

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

ACTION: Notice of Recission of Antidumping Duty Administrative Review.

SUMMARY: On December 23, 1997, the Department of Commerce published in the **Federal Register** (62 FR 67044) a notice announcing the initiation of an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. This review covered the period from November 1, 1996 through October 31, 1997. The Department of Commerce has now rescinded this review as a result of the absence of reviewable entries and sales into the United States of subject merchandise during the period of review.

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Krawczun or Thomas Schauer, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published in the **Federal Register** on November 7, 1997 (62 FR 60219) a "Notice of Opportunity to Request Administrative Review" of the antidumping duty order on fresh garlic from the People's Republic of China (59 FR 59209, November 16, 1994). On November 18, 1997, Fook Huat Tong Kee Pte. Ltd. (FHTK), the respondent, requested an administrative review of imports of its merchandise into the United States. The Department initiated the review on December 23, 1997 (62 FR 67044).

Documentation we received from the Customs Service subsequent to the initiation of the review demonstrated that, although Customs received importation documentation for the shipment of the subject merchandise, this shipment did not result in a reviewable entry or sale within the period of review. Therefore, we are rescinding the initiation of this review in accordance with 19 CFR 351.213(d)(3). For further information regarding this recission, *see* the decision memorandum entitled "Whether to Rescind the 96/97 Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," from Laurie Parkhill to Richard W. Moreland dated July 6, 1998.

The cash-deposit rate for FHTK will remain at 376.67 percent, the rate established in the most recently completed segment of this proceeding (59 FR 59029, November 16,1994). This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: July 6, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–18595 Filed 7–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814, A–428–825, A–475–824, A–588–845, A–201–822, A–580–834, A–583–831, A–412–818]

Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom

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

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia (France), at (202) 482–2243; Robert James (Germany), at (202) 482–5222; Rick Johnson (Italy, Republic of Korea, and Taiwan) at (202) 482–3818; Dorothy Woster (Japan), at (202) 482–3362; Tom Killiam (Mexico), at (202) 482–2704; Nancy Decker (United Kingdom), at (202) 482–0196, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

The Petition

On June 10, 1998, the Department of Commerce ("the Department") received petitions filed in proper form by Allegheny Ludlum Corporation, Armco, Inc.,[1] J&L Specialty Steel, Inc.,[2] Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL-CIO/CLC, the Butler Armco Independent Union[3] and the Zanesville Armco Independent Organization, Inc.[4] (petitioners). The Department received supplemental information to the petitions on June 15, 16, 17, 19 and 24, 1998.

In accordance with section 732(b) of the Act, petitioners allege that imports of stainless steel sheet and strip in coils (SSSS) from France, Germany, Italy, Japan, Mexico, the Republic of Korea, Taiwan, and the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9) (C) and (D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations they are requesting the Department to initiate (*see Discussion* below).

Scope of Investigations

For purposes of these investigations, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00,

[1] Armco, Inc. is not a petitioner in the Mexico case.

[2] J& L Specialty Steel, Inc. is not a petitioner in the France case.

[3] Butler Armco Independent Union is not a petitioner in the Mexico case.

[4] Zanesville Armco Independent Organization, Inc. is not a petitioner in the Mexico case.

7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire, and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of 9.5 to 23 mm and a thickness of 0.266 mm or less, containing by weight 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. and Note" 1(d).

During our review of the petitions, we discussed scope with petitioners to insure that the scope in the petitions accurately reflect the product for which they are seeking relief. Moreover, as discussed in the preamble to the new regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by July 20, 1998. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[5]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petitions is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions. In this case the Department has determined that the petitions and supplemental information contained adequate evidence of sufficient industry support, and, therefore, polling is unnecessary (*See Attachment to the Initiation Checklist, Re: Industry Support*, June 30, 1998). For France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom, petitioners established industry support representing over 50 percent of total production of the domestic like product.

Additionally, no member of the domestic industry pursuant to section 771(9)(C) (D) or (E) has expressed opposition on the record to the petition. Therefore, to the best of the Department's knowledge, the producers who support the petitions account for 100 percent of the production of the domestic like product produced by the portion of the industry expressing an opinion regarding the petitions. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Nippon Steel Corp. Japan (NSC) submitted a letter claiming that petitioners do not manufacture suspension foil, and thus, do not have standing to file an antidumping petition against such product. However, there is no requirement that petitioners manufacture all merchandise within the like product designation, only that they are producers of the like product. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (1993). Because petitioners produce the domestic like product they are interested parties within the meaning of sections 771(9)(C) (D) and (E). Therefore, in accordance with section 732(b)(1), they have standing to file the petition. Based on the foregoing, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

France

Petitioners identified Ugine, a division of Usinor, S.A. (Usinor), and Imphy, S.A. as possible exporters of SSSS from France. Petitioners further stated that Usinor accounts for nearly all of the production in France. Petitioners based export price (EP) for Usinor on prices at which the merchandise was

[5] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

first sold to unaffiliated purchasers in the United States in December 1997. *See* petitioners' affidavit at Exhibit 6. Because the terms of Usinor's U.S. sales were delivered to the U.S. customer, petitioners calculated a net U.S. price by subtracting estimated costs for shipment from Usinor's factory in France to the port of export. *See* Declaration of (Foreign Market Researcher) Regarding Sales and Production Cost in France of Stainless Steel Sheet and Strip in Coils, Exhibit 1 of petitioners' June 15, 1998 submission. In addition, petitioners subtracted ocean freight and insurance based on official U.S. import statistics, and estimated costs for U.S. import duties and fees based on the 1997 HTSUS schedule. Petitioners also subtracted amounts for U.S. merchandise processing fees and U.S. harbor maintenance fees (19 CFR 24.23 and 24.24, respectively). Finally, petitioners obtained net U.S. prices by subtracting U.S. inland freight costs (for a discussion of the freight cost estimate, *see* petitioners' affidavit at Exhibit 23), and credit expenses.

With respect to normal value (NV), based on foreign market research, petitioners determined that the volume of French home market sales was sufficient to form a basis for NV, pursuant to section 773(a)(1)(B)(i) of the Act. Petitioners obtained from foreign market research gross unit prices for products offered for sale during the second and third quarter of 1997 and first quarter of 1998, to customers in France which are either identical or similar to those sold to the United States. Petitioners adjusted these prices by subtracting estimated average delivery costs and credit expenses, and by adding an amount for alloy surcharge. *See Declaration of (Foreign Market Researcher) Regarding Sales and Production Cost in France of Stainless Steel Sheet and Strip in Coils,* Exhibit 1 of petitioners' June 15, 1998 submission. These net home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that certain of the home market sales of SSSS provided in the petition were made at prices below the cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing ("COM"), selling, general, and administrative expenses ("SG&A"), and packing costs. To calculate COP, petitioners relied on foreign market research and their own production experience, adjusted for known differences between costs incurred to produce SSSS in the United States and in the foreign market. We relied on the cost data contained in the petition except in the following instances: (1) rather than rely on the foreign market research for raw material consumption rates, we recalculated raw material costs using the submitted average domestic industry material costs in the petition adjusted for known differences in raw material input prices between the U.S. and France based on market research (in this regard, we consider it more appropriate to rely on actual raw material usage rates from a producer of the merchandise rather than hypothetical rates derived from foreign market research); (2) we recalculated fixed overhead using Usinor's 1996 audited financial statements; and (3) we recalculated SG&A and financial expenses using Usinor's 1997 consolidated financial statements.

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the cost of production (*see Initiation of Cost Investigations*). For these sales, petitioners based NV on the constructed value ("CV") of the merchandise, pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, packing costs and profit of the merchandise. To calculate the COM, SG&A expenses, and packing costs for CV, petitioners followed the same methodology used to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. Petitioners derived profit for CV based on amounts reported in Usinor's 1997 financial statements.

The estimated dumping margins, based on a comparison between Usinor's U.S. prices and adjusted CV, range from 23.74 to 24.76 percent. Based on a comparison of EP to home market prices, petitioners calculated dumping margins range from 10.02 to 39.20 percent.

Germany

Petitioners identified Krupp Thyssen Nirosta GmbH (Krupp) as a possible exporter of SSSS from Germany. Petitioners further identified Krupp as the only substantial producer of subject merchandise in Germany. Petitioners based EP for Krupp on prices at which the merchandise was first sold to unaffiliated purchasers in the United States (sales were made in the second and third quarters of 1997, and the second quarter of 1998). *See* petitioners' affidavit, submitted as petition Exhibit 21. The terms of Krupp's sales were either delivered or FOB duty-paid U.S. port. Therefore, petitioners calculated FOB prices for these U.S. sales by subtracting amounts for U.S. inland freight, international freight and marine insurance based on official U.S. import statistics, U.S. import duties based on the 1997 HTSUS schedule, and foreign inland freight estimated based on foreign market research (*see Declaration of (Foreign Market Researcher) Regarding Sales and Production Cost in Germany of Stainless Steel Sheet and Strip in Coils,* Exhibit 2 of petitioners' June 15, 1998 submission). Petitioners also subtracted amounts for U.S. merchandise processing fees and U.S. harbor maintenance fees (19 CFR, sections 24.23 and 24.24, respectively). Finally, petitioners obtained net U.S. prices by subtracting credit expenses and adding alloy surcharges to applicable sales from petitioners' affidavit (*see* petition at Exhibit 21, and submission dated June 17, 1998, Exhibit E).

With respect to NV, based on foreign market research, petitioners determined that the volume of German home market sales was sufficient to form a basis for NV, pursuant to section 773(a)(1)(B)(i) of the Act. Petitioners obtained from foreign market research gross unit prices for products offered for sale (sales were made in the second and third quarters of 1997) to customers in Germany which are either identical or similar to those sold to the United States. Petitioners adjusted these prices by subtracting amounts for foreign inland freight (*see Declaration of* {Foreign Market Researcher} *Regarding Sales and Production Cost in Germany of Stainless Steel Sheet and Strip in Coils,* Exhibit 2 of petitioners' June 15, 1998 submission) and imputed credit expenses (based on "International Financial Statistics" of the International Monetary Fund, April 1998) and added an alloy surcharge (*See* petitioners' affidavit, submitted as petition Exhibit 21) for applicable sales. These net home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that the certain of the home market sales of SSSS provided in the petition were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, and

packing costs. To calculate COP, petitioners relied on foreign market research and their own production experience, adjusted for known differences between costs incurred to produce SSSS in the United States and in the foreign market. We relied on the cost data contained in the petition except in the following instances: (1) rather than rely on the foreign market research for raw material consumption rates, we recalculated raw materials costs using the submitted average domestic industry material costs in the petition adjusted for known differences in raw material input prices between the U.S. and Germany based on market research (in this regard, we consider it more appropriate to rely on actual raw material usage rates from a producer of the merchandise rather than hypothetical rates derived from foreign market research); and (2) we recalculated fixed overhead using Krupp's 1997 audited financial statements.

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the cost of production (*see Initiation of Cost Investigations*). For these sales, petitioners based NV on the CV of the merchandise, pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, packing costs and profit of the merchandise. To calculate the COM, SG&A, and packing costs for CV, petitioners followed the same methodology used to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. Petitioners derived profit for Krupp based on amounts reported in Krupp's 1997 financial statements.

The estimated dumping margins, based on a comparison between Krupp's U.S. price and the adjusted CV, range from 32.67 to 41.98 percent. Based on a comparison of EP to home market price, petitioners calculated dumping margins ranging from 11.81 to 17.46 percent.

Italy

Petitioners identified Arinox Srl (Arinox) and Acciai Speciali Terni SpA (AST) as possible exporters and producers of SSSS from Italy. Petitioners relied on price information for AST, which, according to petitioners, accounts for 99 percent of exports of SSSS exported to the United States from Italy. Petitioners based EP on U.S. sales prices obtained by petitioners for sales to an unaffiliated purchaser from June through October 1997. *See* petitioners' affidavit, submitted as petition Exhibit 20. Petitioners calculated a net U.S. price by subtracting amounts for foreign inland freight (*see Declaration of {Foreign Market Researcher} Regarding Sales and Production Cost in Italy of Stainless Steel Sheet and Strip in Coils*, Exhibit 3 of petitioners' June 15, 1998 submission), U.S. inland freight (*see* petitioners' affidavit, submitted as petition Exhibit 20), international freight and insurance based on average import charges reported in the official U.S. import statistics for 1997 for HTSUS categories 7219 and 7220, U.S. merchandise processing fees and U.S. harbor maintenance fees (19 CFR 24.23 and 24.24, respectively), and estimated costs for U.S. import duties based on 1997 and 1998 HTSUS schedules. Imputed credit was also deducted from export price for the price-to-price comparison, using the lending rate as published in "International Financial Statistics" of the International Monetary Fund, April 1998. Petitioners added an alloy surcharge for certain U.S. sales (*see* petitioners' affidavit submitted as Attachment 1 of *Stainless Steel Sheet and Strip in Coils from Italy*, June 19, 1998).

With respect to NV, based on foreign market research, petitioners determined that the volume of Italian home market sales was sufficient to form a basis for NV, pursuant to section 773(a)(1)(B)(i) of the Act. Petitioners obtained from foreign market research gross unit prices for products offered for sale in the second, third and fourth quarters of 1997 to customers in Italy which are either identical or similar to those sold to the United States. Petitioners adjusted these prices by subtracting inland freight (*see Declaration of {Foreign Market Researcher} Regarding Sales and Production Cost in Italy of Stainless Steel Sheet and Strip in Coils*, Exhibit 1 of petitioners' June 15, 1998 submission), and imputed credit expenses based on "International Financial Statistics" of the International Monetary Fund, April 1998. Petitioners added an alloy surcharge for certain home market sales (*see* petitioners' affidavit submitted as Attachment 1 of *Stainless Steel Sheet and Strip in Coils from Italy*, June 19, 1998). Petitioners did not adjust for packing costs because petitioners claim that data for packing for U.S. sales is not available. These net home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that certain of the home market sales of SSSS provided in the petition were made at prices below COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing costs. To calculate COP, petitioners relied on foreign market research and their own production experience, adjusted for known differences between costs incurred to produce SSSS in the United States and in the foreign market. We relied on the cost data contained in the petition except in the following instance. We did not rely on the foreign market research for raw material consumption rates. Instead, we recalculated raw materials costs in the petition using the submitted average domestic industry material costs adjusted for known differences in raw material input prices between the U.S. and Italy based on market research (in this regard, we consider it more appropriate to rely on actual raw material usage rates from a producer of the merchandise rather than hypothetical rates derived from foreign market research).

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the cost of production (*see Initiation of Cost Investigations*). For these sales, petitioners based NV on the CV of the merchandise, pursuant to sections 773(a)(4) and 773(b) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, packing costs and profit for the merchandise. To calculate the COM, SG&A expenses, and packing costs for CV, petitioners followed the same methodology used to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. Petitioners derived profit AST based on amounts reported in AST's financial statements.

The estimated dumping margins, based on a comparison between AST's U.S. price and the adjusted CV, range from 0.15 to 35.54 percent. Based on a comparison of EP to home market price, petitioners calculate dumping margins ranging from 6.02 to 18.77 percent.

Japan

Petitioners identified Kawasaki Steel Corp., Nippon Steel Corporation, Nisshin Steel Co. Ltd., Nippon Yakin Kogyo, Nippon Metal Industries, and Sumitomo Metal Industries as possible exporters of SSSS from Japan. Petitioners further identified Nisshin, Kawasaki, and Nippon Steel as the three largest producers of subject merchandise in Japan. Petitioners based

EP on U.S. sales prices from Sumitomo Metal Industries and Marubeni of America, a Japanese trading company that sells on behalf of Japanese producers in the United States, to unaffiliated trading companies in the United States in the fourth quarter of 1997 and the first quarter of 1998. *See* petitioners' affidavit, submitted as Exhibit 3 of *Stainless Steel Sheet and Strip in Coils from France and Japan,* June 9, 1998. Because the terms of the U.S. sales were delivered to the U.S. customer, petitioners calculated a net U.S. price by subtracting estimated costs for shipment from the Japanese factory to the port of export based on foreign market research. *See Declaration of {Foreign Market Researcher} Regarding Sales in Japan of Stainless Steel Sheet and Strip in Coils,* Exhibit 4 of petitioners' June 15, 1998 submission. In addition, petitioners subtracted ocean freight and insurance based on official U.S. import statistics, and estimated costs for U.S. import duties and fees based on the 1997 and 1998 HTSUS schedules. Petitioners also subtracted amounts for the U.S. merchandise processing fees and U.S. harbor maintenance fees (19 CFR 24.23 and 24.24, respectively). Finally, petitioners obtained net U.S. prices by subtracting costs incurred to transport the merchandise from the U.S. port to the customer's location in the United States (*see* petitioners' affidavit submitted as petition Exhibit 11), and credit expenses.

With respect to NV, based on foreign market research, petitioners determined that volume of Japan home market sales from Kawasaki Steel Corp., Nippon Steel Corporation, and Nisshin Steel Co. Ltd. was sufficient to form a basis for NV, pursuant to section 773(a)(1)(B)(i) of the Act. *See Declaration of {Foreign Market Researcher} Regarding Sales in Japan of Stainless Steel Sheet and Strip in Coils,* Exhibit 4 of petitioners' June 15, 1998 submission. Petitioners obtained gross unit prices from foreign market research for the products offered for sale in the fourth quarter of 1997 and the first quarter of 1998 to customers in Japan which are identical to those sold to the United States. Petitioners adjusted these prices by subtracting estimated average delivery costs and credit expenses based on foreign market research. *See Declaration of {Foreign Market Researcher} Regarding Sales in Japan of Stainless Steel Sheet and Strip in Coils,* Exhibit 4 of petitioners' June 15, 1998 submission. These net home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

The estimated dumping margins in the petition, based on a comparison of EP to home market prices, range from 19.9 to 57.87 percent.

Mexico

Petitioners identified Mexinox, S.A. de C.V. (Mexinox) as the exporter of subject merchandise from Mexico. Petitioners further identified Mexinox as the sole producer of subject merchandise in Mexico.

Petitioners based EP on prices obtained from foreign market researchers for sales by Mexinox of grades 304 and 430 stainless steel in coils to the United States between the third quarter of 1997 and the first quarter of 1998. *See* petitioners' affidavit, submitted as petition Exhibit 13. One sale had an alloy surcharge.

For the delivered sales, petitioners subtracted estimated U.S. inland freight charges, based on the experience of one petitioner. For all the U.S. sales, petitioners subtracted amounts for international freight and insurance, based on "import charges" in IM146 import statistics. Petitioners subtracted amounts for U.S. import duties based on the 1997 import duty rate of 6 percent of dutiable value, or the 1998 rate of 5 percent, as appropriate. Petitioners also subtracted amounts for U.S. merchandise processing fees of 0.19 percent of dutiable value (19 CFR section 24.23). Petitioners did not adjust for the U.S. harbor maintenance fee on the assumption that the exported product would have been shipped overland. Petitioners did not adjust for U.S. handling or packing costs, though these charges were included in the quoted U.S. prices, and did not adjust for imputed credit expenses.

With regard to NV, based on foreign market research, petitioners determined that the volume of Mexican home market sales was sufficient to form a basis for NV, pursuant to section 773(a)(1)(B)(i) of the Act. *See Declaration of {Foreign Market Researcher},* Exhibit 5 of petitioners' June 15, 1998 submission. Petitioners obtained from foreign market research gross unit prices for products offered for sale in the first quarter of 1998 to customers in Mexico which are either identical or similar to those sold in the United States. Petitioners did not subtract credit expenses or make any adjustments to price, other than converting the unit of measure from metric tons to pounds. These net home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that certain of the home market sales of SSSS provided in the petition were made at prices below COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, and packing costs. To calculate COP, petitioners relied on their own production experience, adjusted for known differences between costs incurred to produce SSSS in the United States and the foreign market. For certain costs, petitioners used the financial statement information from Hylsamex, a Mexican steel producer, because they were unable to obtain Mexinox's financial statements. For raw material costs, petitioners used their own operating experience as the only information reasonably available. Petitioner's calculated SG&A, and financial expenses from Hylsamex's 1997 consolidated financial statements.

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the cost of production (*see Initiation of Cost Investigations*). For these sales, petitioners based NV on the CV of the merchandise, pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, packing costs and profit of the merchandise. To calculate the COM, SG&A expenses, and packing costs for CV, petitioners followed the same methodology used to determine COP. Accordingly, we relied on the methodology presented in the June 24, 1998 submission. Petitioners derived profit based on amounts reported in Hylsamex's 1997 consolidated financial statements.

The estimated dumping margins in the petition (as amended), based on a comparison between Mexinox's U.S. prices and CV, range from 30.09 to 41.17 percent. Based on a comparison of EP to home market prices, petitioners' calculated dumping margins range from 37.58 to 51.95 percent.

Republic of Korea

Petitioners identified Pohang Iron and Steel Company (POSCO), Sammi Steel Company (Sammi), and Inchon Iron and Steel Company (Inchon) as producers and possible exporters of SSSS from the Republic of Korea. Petitioners based EP on price quotations obtained by petitioning companies for sales to

unaffiliated U.S. purchasers of SSSS manufactured by POSCO. *See* petitioners' affidavit, submitted as petition Exhibit 24. The quoted prices were for delivered, duty paid SSSS sold during the third quarter of 1997. Petitioners calculated a net U.S. price by subtracting from the reported U.S. price shipment costs from POSCO's factory in Korea to the port of export estimated from foreign market research (*see Declaration of* {Foreign Market Researcher} Regarding Sales in Korea of Stainless Steel Sheet and Strip in Coils, Exhibit 6 of petitioners' June 15, 1998 submission), costs for ocean freight and insurance based on the average import charges reported in official U.S. import statistics for Korea, import duties based on the 1997 HTSUS schedule, merchandise processing and harbor maintenance fees (19 CFR 24.23 and 24.24, respectively) and domestic inland freight (*see* petitioners' affidavit, submitted as petition Exhibit 27).

With regard to NV, based on foreign market research, petitioners determined that the volume of South Korean home market sales in 1997 was sufficient to form a basis for NV, pursuant to section 773(a)(1)(B) (ii)(II) of the Act. *See Declaration of* {Foreign Market Researcher} Regarding Sales in Korea of Stainless Steel Sheet and Strip in Coils, Exhibit 6 of petitioners' June 15, 1998 submission. Petitioners obtained from foreign market research gross unit prices for SSSS manufactured by POSCO and offered for sale to customers in the Republic of Korea which are either identical or similar to those sold to the United States. Petitioners adjusted these prices by subtracting estimated average delivery costs based on foreign market research. *See Declaration of* {Foreign Market Researcher} Regarding Sales in Korea of Stainless Steel Sheet and Strip in Coils, Exhibit 6 of petitioners' June 15, 1998 submission. These net home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that certain of the home market sales of SSSS provided in the petition were made at prices below COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing costs. To calculate COP, petitioners relied on foreign market research and their own production experience, adjusted for known differences between costs incurred to produce SSSS in the United States and in the foreign market. We relied on the cost data contained in the petition except in the following instances: (1) rather than rely on the foreign market research for raw material consumption rates, we recalculated raw materials costs in the petition using the submitted average domestic industry material costs adjusted for known differences in raw material input prices between the U.S. and Korea based on market research (in this regard, we consider it more appropriate to rely on actual raw material usage rates from a producer of the merchandise rather than hypothetical rates derived from foreign market research); and (2) we revised the SG&A and net financing expenses based on POSCO's 1997 audited financial statements.

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the cost of production (*see Initiation of Cost Investigations*). For these sales, petitioners based NV on the CV of the merchandise, pursuant to sections 773(a)(4) and 773. (e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, packing costs and profit of the merchandise. To calculate the COM, SG&A expenses, and packing costs for CV, petitioners followed the same methodology to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. Petitioners derived profit for POSCO based on amounts reported in POSCO's 1997 financial statements.

Based on comparisons of EP to adjusted CV, estimated margins range from 18.40 to 58.79 percent. Based on a comparison of EP to home market price, estimated dumping margins range from 5.58 to 13.05 percent.

Taiwan

Petitioners identified Tang Eng Iron Works, Co., Ltd. (Tang Eng), Tung Mung Development Co. Ltd. (Tung Mung), and Yieh United Steel Corp. (Yieh United) as exporters and producers of SSSS from Taiwan. Petitioners based EP on price quotations made to unaffiliated U.S. purchasers prior to the date of importation. *See* petitioners' affidavit, submitted as petition Exhibit 22. The quoted prices were for delivered and duty paid SSSS produced by Tung Mung, Yieh United and Tang Eng during the third and fourth quarter of 1997 and the first quarter of 1998. Petitioners calculated net U.S. price by subtracting amounts for U.S. inland freight (*see* petitioners' affidavit, submitted as petition Exhibit 22), international freight and marine insurance based on the average import charges reported in the official U.S. import statistics for stainless steel products under the 1997 HTSUS categories 7219 and 7220, U.S. import duties based on the 1997 HTSUS schedule, and foreign inland freight (*see Declaration of* {Foreign Market Researcher} Regarding Sales in Taiwan of Stainless Steel Sheet and Strip in Coils, Exhibit 7 of petitioners' June 15, 1998 submission). Petitioners also subtracted amounts for U.S. merchandise processing fees and U.S. harbor maintenance fees (19 CFR 24.23 and 24.24, respectively). Petitioners calculated imputed credit expenses for these U.S. sales by using 30 days as the term of payment (*see* petitioners' affidavit, submitted as petition Exhibit 22) and the average lending rate of 8.25 percent for the period April 1997 through March 1998, as published in "International Financial Statistics" of the International Monetary Fund, April 1998. Finally, petitioners did not adjust for differences in U.S. and home market packing expenses because those data were not available for U.S. sales.

With respect to NV, based on foreign market research, petitioners determined that the volume of Taiwanese home market sales was sufficient to form a basis for NV, pursuant to section 773(a)(1)(B)(i) of the Act. *See Declaration of* {Foreign Market Researcher} Regarding Sales in Taiwan of Stainless Steel Sheet and Strip in Coils, Exhibit 7 of petitioners' June 15, 1998 submission. Petitioners obtained from foreign market research gross unit prices for sales of SSSS by Tung Mung, Yieh United, and Tang Eng which are either identical or similar to those sold to the United States. To arrive at each net home market price for price-to-price comparison purposes, petitioners adjusted the gross prices by subtracting amounts for foreign inland freight (*see Declaration of* {Foreign Market Researcher} Regarding Sales in Taiwan of Stainless Steel Sheet and Strip in Coils, Exhibit 7 of petitioners' June 15, 1998 submission) and imputed credit expenses. Finally, petitioners converted the home market prices from New Taiwan dollars to U.S. dollars based on the exchange rate published by the Federal Reserve Bank of New York for the month in which each sale took place.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that certain of the home market sales of SSSS provided in the petition were made at prices below COP, within the meaning of section 773(b) of the Act, and requested that the

Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A, and packing costs. To calculate COP, petitioners relied on foreign market research and their own production experience, adjusted for known differences between costs incurred to produce SSSS in the United States and in the foreign market. We relied on the cost data contained in the petition except in the following instances: (1) rather than rely on the foreign market research for raw material consumption rates for Tang Eng and Yieh United, we recalculated raw materials costs in the petition using the submitted average domestic industry material costs adjusted for known differences in raw material input prices between the U.S. and Taiwan based on market research for Tang Eng and Yieh United (in this regard, we consider it more appropriate to rely on actual raw material usage rates from a producer of the merchandise rather than hypothetical usage rates derived from foreign market research); and (2) we have not relied on the costs for Tang Mung because petitioners failed to address market price differences between the U.S. and Taiwan for the type of raw material used by Tang Mung. For amounts where there was no company specific information we used the average of the amounts for companies where there was information available.

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the cost of production (see *Initiation of Cost Investigations*). For these sales, petitioners based NV on the CV of the merchandise, pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, packing costs and profit. To calculate the COM, SG&A expenses, and packing costs for CV, petitioners followed the same methodology used to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. We derived profit for Tang Eng and Yieh United using the company-specific financial statements where the financial statements showed a profit, otherwise we used the average profit from the other companies showing a profit on their financial statements.

Based on comparisons of EP to adjusted CV, estimated margins range from 12.74 to 55.01 percent. The estimated dumping margins in the petition, based on a comparison between U.S. prices and home market price, range from 8.23 to 77.08 percent.

United Kingdom

Petitioners identified two United Kingdom producers and exporters of SSSS: Avesta Sheffield Ltd. (AS) and Lee Steel Strip Ltd. (Lee). Petitioners noted that, to the best of their knowledge, AS accounted for 90 percent of the exports of subject merchandise from the United Kingdom. Petitioners based EP for AS on U.S. sales to unaffiliated U.S. purchasers in the third and fourth quarter of 1997. *See* petitioners' affidavit, submitted as petition Exhibit 15. Because the terms of AS's U.S. sales were delivered to the U.S. customer, petitioners calculated the net U.S. price by adding alloy surcharges (see petitioners' affidavit, submitted as petition Exhibit 15) and subtracting estimated costs of shipment from AS's factory in the United Kingdom to the port of export (*see Declaration of Foreign Market Researcher Regarding Sales in the United Kingdom of Stainless Steel Sheet and Strip in Coils*, Exhibit 8 of petitioners' June 15, 1998 submission). Petitioners also subtracted ocean freight and insurance based on official U.S. import statistics, U.S. import duties based on the 1997 HTSUS schedule, and U.S. merchandise processing fees and U.S. harbor maintenance fees (19 CFR, sections 24.23 and 24.24, respectively). Finally, petitioners calculated net U.S. price for AS by subtracting costs incurred to transport the stainless steel sheet and strip from the U.S. port to the customer's location in the United States (*see* petitioners' affidavit, submitted as petition Exhibit 18).

With respect to NV, based on information available to them, petitioners determined that volume in the United Kingdom in 1997 is sufficient to form a basis for normal value, pursuant to Section 773(a)(1) of the Act. Petitioners obtained from foreign market research gross unit prices for AS for representative grades, thicknesses, finishes, and widths of subject merchandise. Petitioners adjusted these prices by adding an amount for alloy surcharge and subtracting amounts for foreign inland freight and imputed home market credit expenses. *See Declaration of Foreign Market Researcher Regarding Sales in the United Kingdom of Stainless Steel Sheet and Strip in Coils*, Exhibit 8 of petitioners' June 15, 1998 submission. Imputed U.S. credit was added to the net home market price for the price-to-price comparisons. These net home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that certain of the home market sales of SSSS provided in the petition were made at prices below COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing costs. To calculate COP, petitioners relied on foreign market research and their own production experience, adjusted for known differences between costs incurred to produce SSSS in the United States and in the foreign market. We relied on the cost data contained in the petition except in the following instances: (1) we did not rely on the foreign market research for raw material consumption rates. Instead, we recalculated raw materials costs in the petition using the submitted average domestic industry material costs adjusted for known differences in raw material input prices between the U.S. and the United Kingdom based on market research. In this regard, we consider it more appropriate to rely on actual raw material usage rates from a producer of the merchandise rather than hypothetical rates derived from foreign market research; (2) we revised the SG&A expense using British Steel's 1997 audited financial statements; (3) we revised net financing expenses to include an offset for short term interest income.

Based on an analysis, certain of the home market sales reflected in the petition were shown to be made at prices below the cost of production (*see Initiation of Cost Investigations*). For these sales, petitioners based NV on the CV of the merchandise, pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, packing costs, and profit of the merchandise. To calculate COM, SG&A, and packing costs for CV, petitioners followed the same methodology used to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. Petitioners derived profit based on amounts reported in British Steel's 1997 financial statements.

Based on comparisons of EP to adjusted CV, estimated margins range from 5.42 to 14.76 percent. Based on a comparison of EP to home market prices, estimated dumping margins range from 9.99 to 29.37 percent.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of France, Germany, Italy, Mexico, South Korea, Taiwan, and the United Kingdom were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigations in each of these countries. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess., at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition of the representative foreign like products in their respective home markets to their costs of production, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in each of the listed countries were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations (*see* country-specific sections above).

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of SSSS from France, Germany, Italy, Japan, Mexico, the Republic of Korea, Taiwan, and the United Kingdom are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Attachments to Initiation Checklist, Re: Material Injury, June 30, 1998).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on SSSS, as well as our discussion with the authors of the foreign market research reports (See, memoranda to the file, dated June 30, 1998), we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of SSSS from France, Germany, Italy, Japan, Mexico, the Republic of Korea, Taiwan, and the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations by November 17, 1998.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of France, Germany, Italy, Japan, Mexico, the Republic of Korea, Taiwan, and the United Kingdom. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by July 27, 1998, whether there is a reasonable indication that imports of SSSS from France, Germany, Italy, Japan, Mexico, the Republic of Korea, Taiwan, and the United Kingdom are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigations being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777 (i) of the Act.

Dated: June 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18602 Filed 7–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 1996 through July 31, 1997, and thirteen firms: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical Factory; Mancheng Xinyu Chemical Factory, Shijiazhuang; Mancheng Zinyu Chemical Factory, Bejing; Hainan Garden Trading Company; Yude Chemical Company and Shunping Lile. The preliminary results of this review indicate that there were dumping margins for the two responding parties: Yude Chemical Company (Yude) and Zhenxing Chemical Factory (Zhenxing), and for the "PRC enterprise."

We invite interested parties to comment on these preliminary results.

Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Kristen Stevens, Nithya Nagarajan, or Doug Campau Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all ctitations to the Department's regulations are to the current regulations, published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Background

On August 4, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 41925) a notice of "Opportunity to Request Administrative Review" for the August 1, 1996 through July 31, 1997, period of review (POR) of the antidumping duty order on Sulfanilic Acid from the People's Republic of China, 57 FR 37524 (1992). In accordance with 19 CFR 351.213, Zhenxing Chemical Industry Co. (Zhenxing), PHT International and the petitioners, Nation Ford Chemical Company, requested a review for the aforementioned period. On September 25, 1997, the Department published a notice of "Initiation of Antidumping Review." 62 FR 50292. The Department is now conducting a review pursuant to section 751(a) of the Act. On October 14, 1997, Yude Chemical Industry Company (Yude) reported that it had made no sales of subject merchandise to the United States during the POR.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24 of the Hamonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.24 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.79, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers thirteen producers-exporters of Chinese sulfanilic acid. The review period is August 1, 1996 through July 31, 1997.

Verification

As provided in section 782(i) of the Act, we verified information provided by the Respondent using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in verification reports in the official file for this case (public versions of these reports are on file in room B–099 of the Department's main building).

Separate Rates

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity in a nonmarket economy (NME) country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in the law (*de jure*) and in fact (*de facto*), with respect to exports of the subject merchandise. Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to sign contracts and other agreements.

Yude and Zhenxing were the only companies to respond to the Department's request for information. We have found that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to their exports according to the criteria identified in *Sparklers* and *Silicon Carbide* for this period of review, and have assigned to these companies a single separate rate. (*See* "Collapsing" section, below). For further discussion of the Department's preliminary determination that these two companies are entitled to a separate rate, see Decision Memorandum to Joe Spetrini, Assistant Deputy Secretary, DAS III, dated July 6, 1998, and titled "Separate rates in the 1996/1997 administrative review of sulfanilic acid from the People's Republic of China." This memorandum is on file in the Central Record Unit (room B–099 of the Main Commerce Building).

Collapsing

We have determined, after examining the relevant criteria, that Yude and Zhenxing, are affiliated parties within the meaning of section 771(33)(F) of the Act. We have further determined that these affiliated producers should be treated as a single entity (*i.e.*, "collapsed") for purposes of assigning an antidumping margin in this review. Section 351.401(f) of the Department's antidumping regulations provides that the Department "will treat two or more affiliated producers as a single entity where those producers have production

facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production." 62 FR at 27410. In identifying the potential for manipulation of price or production, section 351.401(f)(2) provides that the Department may consider the following factors: level of common ownership; whether managerial employees or board members of one of the affiliated producers sit on the board of directors of the other affiliated person; and whether operations are intertwined, such as through the sharing of facilities or employees, or significant transactions between the affiliated parties. A full discussion of our conclusions, requiring reference to proprietary information, is contained in a Department memorandum in the official file for this case (a public version of this memorandum is on file in room B–099 of the Department's main building). Generally, however, we have found that: Yude and Zhenxing are "affiliated" parties, substantial retooling would not be necessary to restructure manufacturing priorities and there is potential for manipulating price and production between the two producers. As a result we are collapsing Yude and Zhenxing for purposes of conducting the 1996/1997 administrative review.

Use of Facts Otherwise Available

All firms that have not demonstrated that they qualify for a separate rate are deemed to be part of a single enterprise under the common control of the government (the "PRC enterprise"). Therefore, all such entities receive a single margin, the "PRC rate." We preliminarily determine, in accordance with section 776(a) of the Act that resort to the facts otherwise available is appropriate in arriving at the PRC rate because companies deemed to be part of the PRC enterprise for which a review was requested have not responded to the Department's antidumping questionnaire.

Where the Department must resort to the facts otherwise available because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing from the facts available. Section 776(b) also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." *See* H.Doc. 3216, 103rd Cong. 2d Sess. 870 (1996). If the Department relies on secondary information as facts available, section 776(c) provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

In the present case the Department has based the margin on information in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa,* 61 FR 24272 (May 14, 1996). In accordance with section 776(c) of the Act, we corroborated the data contained in the petition, as adjusted for initiation purposes, to the extent possible. The petition data on major material inputs are consistent with Indian import statistics, and also with price quotations obtained by the U.S. Embassies in Pakistan and India. Both of these corroborating sources were placed on the record during the investigation and have been added to the record of this review. In addition, we note that the petition used World Bank wage rates which we have repeatedly found to be a probative source of data. Based on our ability to corroborate other elements of the petition calculation, we preliminarily find that the information contained in the petition has probative value. However, we will continue to evaluate this information on the basis of more current data.

Accordingly, we have relied upon the information contained in the petition. We have assigned to all exporters other than Yude and Zhenxing a margin of 85.20 percent, the margin in the petition, as adjusted by the Department for initiation purposes.

As a result of the home market verification of Zhenxing, we have relied on facts available in determining the quantities of the factor inputs for coal, electricity, and labor. The number of kilowatt hours of electricity recorded in company records did not reconcile to the actual factory electric bills. Therefore, as facts available, we have used the kilowatt hours reported on the actual electric bills. Because the bill for August 1996 was missing, as facts available we have substituted the highest monthly amount recorded on the available electric bills. Because we were unable to reconcile the coal factor value to company usage and inventory records, as facts available, we have calculated the coal usage factor using the coal amounts in the raw materials usage ledger increased by the amount of purchased coal which could not be reconciled to the raw materials usage ledger or inventory records. Finally, the reported labor hours did not reconcile to the daily factory attendance sheets. Therefore, as facts available, we have used the number of labor hours reported on the daily attendance sheets.

At the U.S. sales verification, we found that two sales of Zhenxing's sodium sulfanilate, which falls within the scope of subject merchandise, were sold through a trading company. On May 1, 1998, the Department issued a supplemental questionnaire to the trading company involved and to P.H.T. and Zhenxing. The Department received a response from P.H.T. and Zhenxing on May 14, 1998. In this response, P.H.T. and Zhenxing stated that the subject merchandise was never sold to the trading company, and that the trading company acted only as a facilitator for the export of the goods. In addition, as a part of this response, P.H.T. and Zhenxing stated that they are not affiliated with this trading company. As a part of the May 14, 1998 submission, the trading company provided a letter describing the services performed by the trading company, on behalf of Zhenxing. In order to account for costs Zhenxing incurred in connection with these sales, we have deducted from Zhenxing's U.S. price, as facts available, an additional expense for brokerage and handling.

United States Price

For sales made by P.H.T. for Zhenxing, we calculated constructed export price based on FOB prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs duties, U.S. transportation, credit, warehousing, repacking in the United States, indirect selling expenses and constructed export price profit, as appropriate, in accordance with section 772(d)(3) of the Act.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall

determine NV using a factors of production methodology if (1) the merchandise is exported from an NME country, and (2) the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i), and determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to the proceeding. has contested such treatment in this review. Accordingly, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production as set forth in section 773(c)(3) of the Act in a comparable market economy country which is a significant producer of comparable merchandise. Pursuant to section 773(c)(4) of the Act, we determine that India is comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor, and that India is a significant producer of comparable merchandise. For further discussion of the Department's selection of India as the primary surrogate country, see Memorandum from Jeff May, Director, Office of Policy, to Steve Presing, dated April 22, 1998, "Sulfanilic Acid from the PRC: Nonmarket Economy Status and Surrogate Country Selection," and File Memorandum, dated May 8, 1998, "India as a significant producer of comparable merchandise in the 1996/1997 administrative review of sulfanilic acid from the People's Republic of China," which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

For purposes of calculating NV, we valued PRC factors of production as follows, in accordance with section 773(c)(1) of the Act:

To value aniline used in the production of sulfanilic acid, we used the rupee per kilogram value of imports into India during April 1996–December 1996, obtained from the December 1996, *Monthly Statistics of the Foreign Trade of India*, Volume II-Imports (*Indian Import Statistics*.) Using the Indian rupee wholesale price indices (WPI) obtained from the International Financial Statistics, published by the International Monetary Fund (IMF), we adjusted this value to reflect inflation in India through the period of review. We made adjustments to include costs incurred for freight between the Chinese aniline suppliers and Zhenxing's factory using the minimum of (1) the distance from the factory to the supplier or (2) the distance from the factory to the port. The surrogate freight rates were based on truck freight rates from *The Times of India* April 20, 1994, and rail freight rates from the December 22, 1989 embassy cable for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, February 1, 1991) and used in *Lock Washers*. These rates were inflated to be concurrent with the period of review and have been placed on the record of this review.

To value sulfuric acid used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India during the period of review as reported in *Chemical Weekly*. We have adjusted this value to exclude the Central Excise Tariff of India and the Bombay Sales Tax. We made additional adjustments to include costs incurred for freight between the Chinese sulfuric acid supplier and Zhenxing's factory in the PRC.

Consistent with our final determination in the 1995/96 administrative review, we have used the public price quotes, in this case those submitted by Zhenxing on December 17, 1997, which are specific to the type and grade of activated carbon reported in the Chinese sulfanilic acid producer's factors of production. We made adjustments to include cost incurred for inland freight between the Chinese activated carbon supplier and Zhenxing's factory in the PRC.

The Department's regulations (19 CFR 351.408(c)(3)) state that "[f]or labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public." To value the factor inputs for labor, we used the wage rates calculated for the PRC in the Department's "Expected Wages of Selected NME Countries" as revised on June 2, 1997.

For factory overhead, we used information reported in the April 1995 *Reserve Bank of India Bulletin*. From this information, we were able to determine factory overhead as a percentage of total cost of manufacture.

For selling, general and administrative (SG&A) expenses, we used information obtained from the April 1995 Reserve Bank of India Bulletin. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture.

To calculate a profit rate, we used information obtained from the April 1995 *Reserve Bank of India Bulletin*. We calculated a profit rate by dividing the before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A.

To value the inner and outer bags used as packing materials, we used import statistics for India obtained from *Indian Import Statistics*. Using the Indian rupee WPI data obtained from *International Financial Statistics*, we adjusted these values to reflect inflation through the period of review. We adjusted these values to include freight costs incurred between the Chinese plastic bag suppliers and Zhenxing's factory in the PRC.

To value coal, we used the price of steam coal of industry reported in *Energy, Prices, and Taxes, Second Quarter 1997* published by the International Energy Agency.

To value electricity, we used the price of electricity reported in *Energy, Prices, and Taxes, Second Quarter 1997* published by the International Energy Agency.

To value truck freight, we used the rate reported in *The Times of India*, April 20, 1994. We adjusted the truck freight rates to reflect inflation through the period of review using WPI data published by the IMF.

To value rail freight, we used the price reported in a December 1989 cable from the U.S. Embassy in India submitted for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, February 1, 1991) and added to the record of this review. We adjusted the rail freight rates to reflect inflation through the period of review using WPI data published by the IMF.

To value brokerage and handling, we used the brokerage and handling rate used in the *Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (1994). See April 1997 Memorandum to All Reviewers from Richard W. Moreland, Acting Deputy Assistant Secretary "Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China." We adjusted the value for brokerage and handling to reflect inflation through the POR using WPI data published by the IMF.

To value marine insurance, we used information from a publicly summarized version of a questionnaire

response in *Investigation of Sales at Less than Fair Value: Sulphur Vat Dyes from India* (62 FR 42758). See April 1997 Memorandum to All Reviewers from Richard W. Moreland, Acting Deputy Assistant Secretary "Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China." We adjusted the value for marine insurance to reflect inflation through the POR using the Indian rupee WPI data published by the IMF.

To value ocean freight, we used a value for ocean freight provided by the Federal Maritime Commission used in the *Final Determination of the Antidumping Administrative Review of Sebacic Acid from the PRC*, 62 FR 65674 (1974). We adjusted the value for ocean freight to reflect inflation through the POR using WPI data published by the IMF.

Preliminary Results of the Review

We preliminarily determine the dumping margin for Yude and Zhenxing for the period August 1, 1996–July 31, 1997 to be 0.89 percent. The rate for all other firms which have not demonstrated that they are entitled to a separate rate is 85.20 percent. This rate will be applied to all firms other than Yude and Zhenxing, including all firms which did not respond to our questionnaire requests: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinchem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Mancheng Zinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Bejing; Hainan Garden Trading Company; and Shunping Lile.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the arguments. The Department will publish a notice of final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the United States prices and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective with respect to all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for reviewed companies listed below will be the rates for those firms established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the China-wide rate of 85.20 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Manufacturer/producer/exporter	Margin percentage
Yude Chemical Industry, Co./Zhenxing Chemical Industry, Co.	0.89
PRC Rate	85.20

Notification of Interested Parties

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1674(a)(1)) and section 351.213 of the Department's regulations.

Dated: July 6, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18597 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–406]

Certain Agricultural Tillage Tools From Brazil; Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of Countervailing Duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil for the period January 1, 1996 through December 31, 1996. For information on the net subsidy for Marchesan Implementos Agricolas, S.A. ("Marchesan"), the reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service ("Customs") to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from

Marchesan, as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1985, the Department published in the **Federal Register** (50 FR 42743) the countervailing duty order on certain agricultural tillage tools from Brazil. On October 2, 1997 the Department published a notice of "Opportunity to Request Administrative Review" (62 FR 51628) of this countervailing duty order. On October 31, 1997, Marchesan requested an administrative review and partial revocation of the countervailing duty order pursuant to 19 CFR 351.222. We initiated the review, covering the period January 1, 1996 through December 31, 1996, on November 26, 1997 (62 FR 63069). In accordance with 19 CFR 351.213(b), this review covers Marchesan, the only producer/exporter of the subject merchandise for which a review was requested. This review also covers five programs.

The Department considered Marchesan's revocation request and determined that the company did not meet the requirements to be considered for revocation from the countervailing duty order. (*See* Letter to Marchesan from Barbara E. Tillman dated June 11, 1998, a public document on file in the Central Records Unit, Room B–099 of the Main Commerce Building). Accordingly, pursuant to 19 CFR 351.222(f)(2)(iii), we conclude that there is no reasonable basis to believe the requirements for revocation are met.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351, et al. *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296; May 19, 1997, unless otherwise indicated.

Scope of the Review

Imports covered by this review are shipments of certain round shaped agricultural tillage tools (discs) with plain or notched edge, such as colters and furrow-opener blades. During the review period, such merchandise was classifiable under item numbers 8432.21.00, 8432.29.00 8432.80.00 and 8432.90.00 of the *Harmonized Tariff Schedule* ("HTS"). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

I. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. Accelerated Depreciation for Brazilian-Made Capital Goods;

B. Preferential Financing for Industrial Enterprises by Banco do Brasil (FST and EGF loans);

C. SUDENE Corporate Income Tax Reduction for Companies Located in the Northeast of Brasil;

D. Preferential Financing under PROEX (formerly under Resolution 68 and 509 through FINEX);

E. Preferential Financing under FINEP.

Preliminary Results of Review

For the period January 1, 1996 through December 31, 1996, we preliminarily determine the net subsidy for Marchesan to be zero percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of the subject merchandise from Marchesan exported on or after January 1, 1996, and on or before December 31, 1996.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties of zero percent *ad valorem*, as provided for by section 751(a)(1) of the Act, on all shipments of this merchandise from Marchesan, entered or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Agricultural Tillage Tools from Brazil: Final Results of Countervailing Duty Administrative Review*, 60 FR 48692 (September 20, 1995). These rates shall apply until a review of companies assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309,

interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: July 6, 1998.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–18599 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings from India: Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain iron-metal castings from India. The period covered by this administrative review is January 1, 1996 through December 31, 1996. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Christopher Cassel, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1980, the Department of Commerce ("the Department") published in the **Federal Register** (45 FR 50739) the countervailing duty order on certain iron-metal castings from India. On October 2, 1997, the Department published a notice of "Opportunity to Request Administrative Review" (62 FR 51628) of this countervailing duty order. We received timely requests for review, and we initiated a review covering the period January 1, 1996 through December 31, 1996, on November 26, 1997 (62 FR 63069).

In accordance with 19 C.F.R. 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The producers/exporters of the subject merchandise for which the review was requested are:

Calcutta Ferrous Ltd.,
Carnation Industries Ltd.,
Commex Corporation,
Crescent Foundry Co. Pvt. Ltd.,
Delta Enterprises,
Dinesh Brothers (P) Ltd.,
Kajaria Iron Castings Pvt. Ltd.,
Kejriwal Iron & Steel Works Pvt. Ltd.,
Metflow Corporation,
Nandikeshwari Iron Foundry Pvt. Ltd.,
Orissa Metal Industries,
Overseas Iron Foundry,
R.B. Agarwalla & Company,
R.B. Agarwalla & Co. Pvt. Ltd.,
RSI Limited,
Seramapore Industries Pvt. Ltd.,
Shree Rama Enterprise,
Shree Uma Foundries,
Siko Exports,
SSL Exports,
Super Iron Foundry,
Uma Iron & Steel, and
Victory Castings Ltd.

Delta Enterprises, Metflow Corporation, Orissa Metal Industries, R.B. Agarwalla & Co. Pvt. Ltd., Shree Uma Foundries, Siko Exports, and SSL Exports did not export the subject merchandise to the United States during the period of review ("POR"). Therefore, these companies have not been assigned an individual company rate for this administrative review. This review covers 19 programs.

On November 14, 1997, the Department issued a questionnaire to the Government of India ("GOI") and producers/exporters of the subject merchandise. The Department received questionnaire responses from the GOI and the producers/exporters of the subject merchandise on January 13, 1998. The Department issued supplemental questionnaires to the GOI and certain producers/exporters of the subject merchandise on March 16 and 25, 1998, April 30, 1998, and May 14, 1998. The supplemental questionnaire responses were received on April 9, 1998, and May 11, 15, and 21, 1998.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 C.F.R. Part 351, 62 FR 27296 (May 19, 1997), unless otherwise indicated.

Scope of the Review

Imports covered by this administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* ("HTS") item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for

convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the Government of India and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and conducting an examination of all relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

I. Programs Conferring Subsidies

A. Pre-Shipment Export Financing

The Reserve Bank of India ("RBI"), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials and for packing, warehousing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks, based upon a company's creditworthiness and past export performance. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period. In general, packing credits are granted for a period of up to 180 days.

Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates determined by the RBI. During the POR, the rate of interest charged on pre-shipment export loans was 13.0 percent. For packing credits not repaid within 180 days, banks charged interest at 15.0 percent for the number of days the loan was overdue. Exporters would lose the concessional interest rate if the loan was not repaid within 270 days. If that occurred, banks were able to charge a non-concessional interest rate above 15.0 percent. If the pre-shipment loan was outstanding beyond 360 days, banks then charged the cash credit rate from the first day of advance of the loan until the exports were realized.

Interest charged under this program must be liquidated with export proceeds. If the interest is paid with sources other than foreign currency export proceeds, the interest element of the loan is not treated as export credit, and is charged at rates applicable to domestic credit. During the POR, if a company's exports did not materialize, banks charged the cash credit rate plus a penal interest rate of two (2.0) percent from the first day of advance of the loan.

The Department found this program to be an export subsidy, and thus countervailable, in prior administrative reviews of this order, because receipt of pre-shipment export financing was contingent upon export performance, and the interest rates were preferential. *See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 56 FR 41658 (August 22, 1991); *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 56 FR 52515 (October 21, 1991); and *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 61 FR 64676 (December 6, 1996) ("*1987, 1988, and 1993 Indian Castings Final Results*"). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with § 771(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy.

To determine the benefit conferred under this program, we compared the interest rate charged under the pre-shipment financing program to a benchmark interest rate. In conducting this administrative review, we learned that of the twelve respondents that received pre-shipment financing on which interest was paid during the POR, four had received, and paid interest on, commercial short-term working capital loans, which were not provided under a GOI program. These companies are: Calcutta Ferrous Ltd. ("Calcutta Ferrous"), Crescent Foundry Co. Pvt. Ltd. ("Crescent Foundry"), Dinesh Brothers (P) Ltd. ("Dinesh"), and Nandikeshwari Iron Foundry Pvt. Ltd. ("Nandikeshwari"). For these companies, we used a company-specific benchmark interest rate to measure the benefit each company received under the pre-shipment export financing scheme.

For all other respondents, we used as our benchmark the cash credit rate. In the 1994 administrative review of this order, the Department determined that, in the absence of a company-specific benchmark, the most "comparable" short-term benchmark to measure the benefit under the pre-shipment export financing scheme is the cash credit interest rate. *See, Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 62 FR 32297 (June 13, 1997) ("*1994 Indian Castings Final Results*"). The cash credit interest rate is for domestic working capital finance, and thus comparable to pre-and post-shipment export working capital finance. During the POR, this rate was 18.44 percent, as reported by the GOI in its April 9, 1998 questionnaire response.

We compared either the company-specific benchmark rates or the cash credit benchmark rate, as appropriate, to the interest rates charged on pre-shipment rupee loans and found that for loans granted under this program, the interest rates charged were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POR because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

To calculate the benefit from the pre-shipment loans, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable benchmark interest rate. Where the benchmark rates exceeded the program rates, the difference between those amounts is the benefit.

If the pre-shipment financing loans were provided solely to finance exports of subject merchandise to the United States, we divided the benefit derived from those loans by exports of subject merchandise to the United States. For all other pre-shipment financing loans, we divided the benefit by total exports to all destinations. On this basis, we preliminarily determine the net subsidy from this program for the producers/exporters of the subject merchandise to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.20
Commex Corporation	0.13
Crescent Foundry Co. Pvt. Ltd	0.08
Dinesh Brothers Pvt. Ltd	3.05
Kajaria Iron Castings Pvt. Ltd	0.33
Nandikeshwari Iron Foundry Pvt. Ltd	0.22
R.B. Agarwalla & Company	0.34
RSI Limited	0.37
Seramapore Industries Pvt. Ltd	0.53
Super Iron Foundry	1.11
Uma Iron & Steel	0.34

Net subsidies—producer/exporter	Net subsidy rate—percent
Victory Castings Ltd	0.30

B. Post-Shipment Export Financing

Post-shipment export financing consists of loans in the form of trade bill discounting or advances by commercial banks. The credit covers the period from the date of shipment of the goods, to the date of realization of export proceeds from the overseas customer. Post-shipment finance, therefore, is a working capital finance or sales finance against receivables. The interest amount owed is deducted from the total amount of the bill at the time of discounting by the bank. The exporter's account is then credited for the rupee equivalent of the net amount.

In general, post-shipment loans are granted for a period of up to 90 days. The interest rate charged on these loans was 13.0 percent during the POR. For loans not repaid within the negotiated number of days (90 days maximum), banks assessed interest at 15.0 percent for the number of days the loan was overdue, up to six months from the date of shipment. Between February 8, 1996 and October 20, 1996, the RBI "freed" the interest rate charged on loans not repaid within 90 days, and allowed banks to charge commercial interest rates on such credit. On October 21, 1996, the RBI restored the 15.0 percent interest rate for loans due beyond 90 days. For loans not repaid within 180 days, exporters would lose the concessional interest rate on this financing, and interest would be charged at a commercial rate determined by the banks.

In prior administrative reviews, the Department found this program to be an export subsidy because receipt of the post-shipment financing was contingent upon export performance, and the interest rates were preferential. *See, e.g., 1987, 1988, and 1993 Indian Castings Final Results.* No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy. During the POR, thirteen of the sixteen respondent companies made payments on post-shipment loans for exports of subject castings to the United States.

To determine the benefit conferred under this program, we compared the interest rate charged under the post-shipment financing program to a benchmark interest rate. For Calcutta Ferrous, Crescent Foundry, Dinesh, and Nandikeshwari, we used as our benchmark, the company-specific interest rates, discussed above, to measure the benefit each company received under the post-shipment export financing scheme. Because the loans under this program are discounted, and the effective rate paid by the exporters on these post-shipment loans is a discounted rate, we derived discounted benchmark rates from each company's respective benchmark interest rate.

In regard to those respondents for which we did not have a company-specific benchmark rate, we used as our benchmark, the cash credit rate discussed above in the pre-shipment financing section. From the cash credit benchmark, we derived a discounted rate of 15.57 percent for measuring the benefits conferred by this program.

We compared either the discounted company-specific benchmark rates or the discounted cash credit benchmark rate to the interest rates charged on post-shipment loans and found that for loans granted under this program, the interest rates charged were lower than the benchmarks. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POR where the interest rates charged on the loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

To calculate the benefit from these loans, we followed the same short-term loan methodology discussed above for pre-shipment financing. We divided the benefit by either total exports or exports of the subject merchandise to the United States, depending on whether the company was able to segregate its post-shipment financing by merchandise and destination. For RSI Limited, however, we used as our denominator, total exports of subject castings and non-subject castings to the United States. On this basis, we preliminarily determine the net subsidy from this program for the producers/exporters of the subject merchandise to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.78
Carnation Industries Ltd	0.03
Commex Corporation	0.35
Crescent Foundry Co. Pvt. Ltd	0.31
Dinesh Brothers Pvt. Ltd	0.67
Kajaria Iron Castings Pvt. Ltd	0.42
Nandikeshwari Iron Foundry Pvt. Ltd	0.27
R.B. Agarwalla & Company	0.35
RSI Limited	0.20
Seramapore Industries Pvt. Ltd	0.05
Super Iron Foundry	0.12
Uma Iron & Steel	0.53
Victory Castings Ltd	0.40

C. Post-Shipment Export Credit in Foreign Currency ("PSCFC")

On January 1, 1992, the GOI introduced a modified post-shipment financing scheme, *i.e.*, Post-Shipment Export Credit in Foreign Currency. (The GOI terminated the PSCFC scheme effective February 8, 1996.) This modified scheme enabled exporters to discount foreign currency export bills at foreign currency interest rates linked to the London Interbank Offering Interest Rate ("LIBOR"). Loans under this financing scheme were not provided to the exporter in the foreign currency, but the post-shipment credit liability of the exporter was denominated in the foreign currency, which was then liquidated with export proceeds in foreign currency. During the POR, PSCFC loans were granted for a period of up to 90 days with an interest rate fixed by the RBI. The interest amount, calculated at the applicable foreign currency interest rate, was deducted from the total amount of the bill at the time of discounting by the bank. The exporter's account was then credited for the rupee equivalent of the net foreign currency amount. During the POR, the interest rate charged on PSCFC loans ranged from 7.5 percent to 9.5 percent for the negotiated term of the loan (90 days maximum). Interest on overdue loans was charged at 9.5 percent until January 15, 1996. Thereafter, banks were free to charge commercial interest rates on PSCFC loans not repaid within 90 days.

If the overseas customer defaulted and the export bill could not be liquidated with export proceeds, the PSCFC loan was converted into rupee credit at the selling foreign exchange rate prevailing on the day of liquidation. The exporter was responsible for paying the rupee equivalent of the bill at the exchange rate prevailing on the day of liquidation by the bank. The interest recovered on the liquidated loan was charged at a commercial rate determined by the bank.

Under the PSCFC program, companies had the option of converting their export bills into rupees using either the spot rate of exchange or the forward rate of exchange. During the POR, all respondent companies, which used the PSCFC program, elected to convert their export bills into rupees at the spot rate of exchange. If the bank holding the

export bill, converted at the spot rate, realized an exchange rate gain due to exchange rate movements up to the date the bill came due, the bank was required, by law, to transfer the gain to the exporter. However, if the bank suffered an exchange rate loss, the exporter, by law, was obligated to cover that loss. Thus, the bank, in effect, faced an exchange rate that was fixed over the "life of the bill." Under such circumstances, where the rupee value of the bill—from the bank's standpoint—is, in fact, fixed at the time of discount, the rate of discount measured in either dollars or rupees is the same. Therefore, the PSCFC discount rate can be viewed equivalently as either a dollar-denominated rate or a rupee-denominated rate. If viewed as a dollar-denominated rate, no exchange rate adjustment to the rupee-denominated benchmark is warranted, because the banks face no exchange rate risk in holding the bills. Thus, no matter how the PSCFC discount rate is viewed, a rupee-benchmark is appropriate for benefit calculation purposes where the exporter opts to convert the exports bills using the spot rate of exchange.

In the *1993 Indian Castings Final Results*, the Department found this program to be an export subsidy, and thus countervailable, because receipt of PSCFC loans was contingent upon export performance, and the interest rates were preferential. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with § 771(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy. During the POR, five of the sixteen respondent companies made payments on PSCFC loans for shipments of subject castings to the United States.

To determine the benefit conferred under this program, we compared the interest rate charged under the PSCFC to a benchmark interest rate. For Calcutta Ferrous, Dinesh, and Nandikeshwari, we used as our benchmark, the company-specific interest rates, discussed above, to measure the benefit each company received under the PSCFC. Because the loans under this program are discounted, and the effective rate paid by the exporters on the PSCFC loans is a discounted rate, we derived discounted benchmark rates from each company's respective company-specific benchmark interest rate.

In regard to those respondents for which we did not have a company-specific benchmark rate, we used as our benchmark, the cash credit rate discussed above in the pre-shipment financing section. From the cash credit benchmark, we derived a discounted rate of 15.57 percent for measuring the benefits conferred by this program.

We compared either the company-specific benchmark discounted rates or the discounted cash credit benchmark rate to the interest rates charged on the PSCFC loans and found that the interest rates charged were lower than the benchmarks. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POR because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

To calculate the benefit from these loans, we followed the same short-term loan methodology discussed above for pre-shipment financing. We divided the benefit by either total exports or exports of the subject merchandise to the United States, depending on whether the company was able to segregate its PSCFC financing by merchandise and destination. For RSI Limited, however, we used as our denominator, total exports of subject castings and non-subject castings to the United States. On this basis, we preliminarily determine the net subsidy from this program to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.06
Dinesh Brothers Pvt. Ltd	0.15
Nandikeshwari Iron Foundry Pvt. Ltd	0.08
R.B. Agarwalla & Company	0.11
RSI Limited	0.08

As noted above, the GOI terminated the PSCFC scheme effective February 8, 1996. All PSCFC loans received by the five above listed companies were repaid in their entirety (principal and interest) during the POR. We verified that no residual benefits have been provided or received, and there is no evidence that a substitute program has been established. Therefore, in determining the cash deposit rates for these five castings producers/exporters, we will not include the subsidy conferred by this program during the POR.

D. Income Tax Deductions Under Section 80HHC

Under section 80HHC of the Income Tax Act, the GOI allows exporters to deduct profits derived from the export of merchandise from taxable income. In prior administrative reviews of this order, the Department found this program to be an export subsidy, and thus countervailable, because receipt of benefits was contingent upon export performance. *See, e.g., 1993 Indian Castings Final Results.* No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with section771(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy, and that the financial contribution in the form of tax revenue not collected, constitutes the benefit.

To calculate the benefit to each company, we subtracted the total amount of income tax the company actually paid during the review period from the amount of tax the company otherwise would have paid during the review period had it not claimed any deductions under section 80HHC. We then divided this difference by the value of the company's total exports. On this basis, we preliminarily determine the net subsidy from this program to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd.	2.91
Carnation Industries Ltd.	2.92
Commex Corporation	4.79
Crescent Foundry Co. Pvt. Ltd.	4.53
Dinesh Brothers Pvt. Ltd.	5.31
Kajaria Iron Castings Pvt. Ltd.	0.00
Kejriwal Iron & Steel Works Pvt. Ltd.	11.76
Nandikeshwari Iron Foundry Pvt. Ltd.	3.71
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company	2.73
RSI Limited	2.73
Seramapore Industries Pvt. Ltd.	4.16
Shree Rama Enterprise	10.85
Super Iron Foundry	1.93
Uma Iron & Steel	0.40
Victory Castings Ltd. 2.91	2.17

E. Import Mechanisms (Sale of Licenses)

The GOI allows companies to transfer certain types of import licenses to other companies in India. In prior administrative reviews of this order, the Department found the sale of these licenses to be an export subsidy, and thus countervailable, because companies received these licenses based on their status as exporters. *See, e.g., 1993 Indian Castings Final Results.* No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to

find that this program constitutes an export subsidy, and the financial contribution in the form of the revenue received on the sale of licenses, constitutes the benefit.

During the POR, five of the sixteen respondent companies sold Special Import Licenses. Because the sale of the Special Import Licenses were not tied to specific shipments, we calculated the subsidies by dividing the total amount of proceeds a company received from the sale of these licenses by the total value of its exports of all products to all markets. We preliminarily determine the net subsidy from the sale of the Special Import Licenses for these five companies to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Carnation Industries Ltd.	0.24
Kajaria Iron Castings Pvt. Ltd.	0.68
Kejriwal Iron & Steel Works	1.00
RSI Limited	0.03
Seramapore Industries Pvt. Ltd.	0.73

F. Exemption of Export Credit from Interest Taxes

Indian commercial banks are required to pay a tax on all interest accrued from borrowers. The banks pass along this tax to borrowers in its entirety. As of April 1, 1993, the GOI exempted from the interest tax all interest accruing to a commercial bank on export-related loans. In the 1993 administrative review, we determined that this tax exemption is an export subsidy and thus countervailable, because only interest accruing on loans and advances made to exporters in the form of export credit is exempt from the interest tax. *See, 1993 Indian Castings Final Results.* No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with § 771(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy, and that the financial contribution in the form of tax revenue not collected, constitutes the benefit.

During the POR, thirteen of the sixteen respondent companies made interest payments on export-related loans, through the pre- and post-shipment financing schemes, and thus, were exempt from the interest tax under this program. To calculate the benefit to each company, we first determined the total amount of interest paid by each producer/exporter of subject castings during the POR by adding the interest payments made on all pre- and post-shipment export loans. Next, we multiplied this amount by three (3.0) percent, the tax rate that the interest would have been subject to without the exemption during the POR. We then divided the benefit by the value of the company's total exports or exports of subject merchandise to the United States, depending on whether the export financing was tied to total exports or only exports of subject castings to the United States. For RSI Limited, however, to determine the benefit conferred from the exemption of interest on the company's post-shipment financing, we used as our denominator, total exports of subject castings and non-subject castings to the United States. On this basis, we preliminarily determine the net subsidy from this program to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd.	0.14
Carnation Industries Ltd.	0.13
Commex Corporation	0.06
Crescent Foundry Co. Pvt. Ltd.	0.06
Dinesh Brothers Pvt. Ltd.	0.39
Kajaria Iron Castings Pvt. Ltd.	0.26
Nandikeshwari Iron Foundry Pvt. Ltd.	0.13
R.B. Agarwalla & Company	0.11
RSI Limited	0.22
Seramapore Industries Pvt. Ltd.	0.07
Super Iron Foundry	0.16
Uma Iron & Steel	0.11
Victory Castings Ltd.0.14	0.18

II. Programs Preliminarily Found To Be Not Used

We examined the following programs and preliminarily find that the producers/exporters of the subject merchandise did not apply for or receive benefits under these programs during the POR:

1. Market Development Assistance (MDA)
2. Rediscounting of Export Bills Abroad (EBR)
3. International Price Reimbursement Scheme (IPRS)
4. Cash Compensatory Support Program (CCS)
5. Programs Operated by the Small Industries Development Bank of India (SIDBI)
6. Export Promotion Replenishment Scheme (EPRS) (IPRS Replacement)
7. Export Promotion Capital Goods Scheme
8. Benefits for Export Oriented Units and Export Processing Zones
9. Special Imprest Licenses
10. Special Benefits
11. Duty Drawback on Excise Taxes
12. Payment of Premium Against Advance Licenses
13. Pre-Shipment Export Financing in Foreign Currency (PCFC).

Preliminary Results of Review

In accordance with 19 C.F.R. § 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1996 through December 31, 1996, we preliminarily determine the net subsidy for the reviewed companies to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	4.09
Carnation Industries Ltd	3.32
Commex Corporation	5.33
Crescent Foundry Co. Pvt. Ltd	4.98
Dinesh Brothers Pvt. Ltd	9.57
Kajaria Iron Castings Pvt. Ltd	1.69
Kejriwal Iron & Steel Works Pvt. Ltd	12.76
Nandikeshwari Iron Foundry Pvt. Ltd	4.41
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company Pvt. Ltd	3.64
RSI Limited	3.63
Seramapore Industries Pvt. Ltd	5.54
Shree Rama Enterprise	10.85
Super Iron Foundry	3.32
Uma Iron & Steel	1.38
Victory Castings Ltd	3.05

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated below, of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. Because the Post-Shipment Export Credit in Foreign Currency program was terminated effective February 8, 1996, we are not including the subsidy conferred by this program during the review period, in determining the cash deposits to be collected by Customs. We preliminarily determine the cash deposit rates for the reviewed companies to be as follows:

Net Subsidies—Producer/Exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	4.03

Net Subsidies—Producer/Exporter	Net subsidy rate—percent
Carnation Industries Ltd	3.32
Commex Corporation	5.33
Crescent Foundry Co. Pvt. Ltd	4.98
Dinesh Brothers Pvt. Ltd	9.42
Kajaria Iron Castings Pvt. Ltd	1.69
Kejriwal Iron & Steel Works Pvt. Ltd	12.76
Nandikeshwari Iron Foundry Pvt. Ltd	4.33
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company Pvt. Ltd	3.53
RSI Limited	3.55
Seramapore Industries Pvt. Ltd	5.54
Shree Rama Enterprise	10.85
Super Iron Foundry	3.32
Uma Iron & Steel	1.38
Victory Castings Ltd	3.05

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 C.F.R. 351.213(b). Pursuant to 19 C.F.R. 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See, Federal-Mogul Corporation and the Torrington Company* v. *United States, 822 F.Supp. 782 (CIT 1993) and Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 C.F.R. 353.22(e) (now 19 C.F.R. 351.212(c)), the antidumping regulation on automatic assessment, which is identical to 19 C.F.R. 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See, 1994 Indian Castings Final Results.* If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See, 1993 Indian Castings Final Results.* These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 C.F.R. 351.224(b), the Department will disclose to the parties of this proceeding within five days after the date of publication of this notice, the calculations performed in this review. Interested parties may request a hearing not later than 30 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 five days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held two 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 C.F.R. 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 C.F.R. 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 19 C.F.R. 351.213.

Dated: July 6, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18598 Filed 7–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815, C–475–825, and C–580–835]

Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea

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

EFFECTIVE DATE: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Marian Wells (France), at (202) 482–6309; Vince Kane (Italy), at (202) 482–2815; and Robert Copyak (Korea), at (202) 482–2209, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351, 62 FR 27296, May 19, 1997.

The Petition

On June 10, 1998, the Department of Commerce (the Department) received petitions filed in proper form by or on behalf of Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (the petitioners). J&L Specialty Steel, Inc. is not a petitioner for the countervailing duty investigation involving France. Supplements to the petitions were filed on June 19, 22, 24, and 26, 1998.

In accordance with section 702(b)(1) of the Act, petitioners allege that manufacturers, producers, or exporters of the subject merchandise in France, Italy, and Korea receive countervailable subsidies within the meaning of section 701 of the Act.

The petitioners state that they have standing to file the petition because they are interested parties, as defined under sections 771(9)(c) and (d) of the Act.

Scope of the Investigations

For purposes of these investigations, the products covered are certain

stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire, and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of 9.5 to 23 mm and a thickness of 0.266 mm or less, containing by weight 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. and Note" 1(d).

During our review of the petitions, we discussed scope with the petitioners to insure that the scope in the petitions accurately reflect the product for which they are seeking relief. Moreover, as discussed in the preamble to the new regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by July 20, 1998. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the relevant foreign governments for consultations with respect to the petitions filed. On June 23, 1998, the Department held consultations with representatives of the Government of France (GOF). On June 26, 1998, consultations were held with representatives of the Government of Italy (GOI) and the European Commission (EC). On June 25, 1998, the GOF, and on June 29, 1998, the GOI and the EC filed submissions regarding the issues raised during the consultations. *See* the June 23, 1998 and June 30, 1998, memoranda to the file regarding the consultations with the GOF and the GOI, respectively (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition of domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law. [1]

Section 771(10) of the Act defines domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petitions is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petitions' definition of the domestic like product to be inaccurate. The Department therefore, has adopted the domestic like product definition set forth in the petitions. In this case the Department has determined that the petitions and supplemental information contained adequate evidence of sufficient industry support, and, therefore, polling is unnecessary (*see* Memorandum to the File, regarding Industry Support, dated June 30, 1998). For France, Italy, and Korea, petitioners established industry support representing over 50 percent of total production of the domestic like product.

[1] *See Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Additionally, no person who would qualify as an interested party pursuant to section 771(A)(C)(D)(E) or (F) has expressed opposition on the record to the petition. Therefore, to the best of the Department's knowledge, the producers who support this petition account for 100 percent of the production of the domestic like product produced by the portion of the industry expressing an opinion regarding the petitions. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because France, Italy, and Korea are "Subsidies Agreement Countries" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from these countries materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the subsidized individual and cumulated imports of the subject merchandise from France, Italy, and Korea. Petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see* Attachment 1 to Initiation Checklists dated June 30, 1998, entitled Analysis of Allegations and Evidence of Material Injury and Causation).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigations

The Department has examined the petitions on stainless steel sheet and strip in coils (sheet and strip) from France, Italy, and Korea and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of sheet and strip from these countries receive subsidies. *See* the June 30, 1998, memoranda to the file regarding the initiation of these investigations (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

A. France

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers and exporters of the subject merchandise in France:

Government of France Programs

1. *Purchase of Power Plant*
2. *Forgiveness of Shareholders' Loans in 1994 and 1995*
3. *Provision of Export Financing Under Natexis Banque Programs*
4. *Related Party Grants Received from 1992–95*
5. *Related Party Loans*
6. *DATAR Programs*
   a. *Regional Development Grants (PATs)*
   b. *Work/Training Contracts and Internships*
   c. *DATAR 50 Percent Taxing Scheme*
   d. *Tax Exemption for Industrial Expansion*
   e. *Tax Credit for Companies Located in Special Investment Zone*
   f. *Tax Credits for Research*
7. *GOF Guarantees*
8. *Long-Term Loans from CFDI*
9. *Steel Intervention Fund (FIS)*
10. *Loans with Special Characteristics (PACS): Equity Infusion*
11. *Shareholders' Advances*
12. *Investment/Operating Subsidies*
13. *Ugine 1991 Grant*

European Commission Programs

1. *Myosotis*
2. *Electric Arc Furnaces*
3. *Resider II Program*
4. *Youthstart*
5. *ECSC Article 54 Loans*
6. *ECSC Article 56(2)(b) Redeployment Aid*
7. *European Social Fund Grants (ESF)*
8. European Regional Development Fund Grants (ERDF)

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in France:

1. Upstream Subsidies From Sollac

Petitioners allege that the production of stainless steel sheet and strip in coils received upstream subsidies within the meaning of section 771A of the Act through the provision of subsidies to a related company, Sollac, which supplied hot-rolling services for Ugine during the period 1983–1997. Sollac is 95 percent owned by Usinor. Referring to section 355.45 of the *Countervailing Duties; Notice of Proposed Rulemaking*, 54 FR 23368 (May 31, 1989) (*"1989 Proposed Regulations"*), petitioners state that an investigation of an upstream subsidy allegation is warranted because there is a reasonable basis to believe or suspect that: (1) Domestic subsidies have been provided with respect to the input product; (2) a competitive benefit has been bestowed; and (3) the subsidies have a significant effect on the cost of producing the subject merchandise. In particular, in support of its allegation that domestic subsidies have been provided with respect to the input product, petitioners assert that all untied, countervailable subsidies bestowed on Usinor in 1983 or later that were found countervailable in *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 ((July 9, 1993)) *(Certain Steel from France (1993))*, along with the additional untied post-1991 subsidies alleged in this case, continue to benefit Sollac during the POI.

The Department's methodology with respect to calculating the subsidy rate for untied, domestic subsidies is to divide the total amount of the benefit by the total sales of the recipient company (*i.e.*, Usinor). Therefore, the resulting rate captures the full level of subsidization on the subject merchandise, including any countervailable subsidies bestowed upon any inputs or processes supplied by Usinor companies to the production of the subject merchandise. To consider the same benefit as both an upstream subsidy and as a subsidy to the manufacturer of the finished product would result in double-counting the benefit. On this basis, we find that the initiation of an upstream subsidy investigation is not warranted in this case.

2. Long-Term Loans From FDES

The Law of July 13, 1978 created participative loans that were issued by Fonds de Developpement Economique et Social (FDES). In 1990, FDES loans obtained by Usinor and Sacilor were consolidated into multiple long-term loans which the Department treated as new loans in *Certain Steel from France (1993)* and *Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) *((Lead and Bismuth))*. Using the private bond interest rate reported in the OECD Financial Statistics as the benchmark in *Lead and Bismuth*, the Department found these loans to be countervailable to the extent that the interest rates were more favorable than the benchmark. In *Certain Steel from France (1993)*, however, a different benchmark was used, and the same loans were found not countervailable because there was no benefit. Despite the determination of *Certain Steel from France (1993)*, petitioners allege that the contradictory stance taken by the Department in *Lead and Bismuth* gives reason to investigate the loans to determine the extent to which these loans continued to bestow countervailable benefits on the production of the subject merchandise during the POI of this case.

Given that *Certain Steel from France (1993)* is the Department's most recent determination with respect to the long-term loans provided by the FDES, we find that there is no reason to revisit our decision that the FDES loans are not countervailable. Petitioners have provided no new evidence to indicate that Usinor has obtained any new loans or to prompt a reexamination of the loans and the benchmark used in our previous investigation. Accordingly, we are not including this program in our investigation.

3. Placement of Usinor Shares With "Stable Shareholders"

As part of its privatization plan in 1995, the GOF placed 14.79 percent of Usinor's capital with "Stable Shareholders." The "Stable Shareholders," who consisted of both government-owned entities and private companies, purchased their shares at a premium and were required to adhere to the Protocole. The Protocole imposed restrictions on the resale of shares held by the "Stable Shareholders" thereby preventing a takeover of the privatized company. Petitioners allege that by placing these illiquid shares with the "Stable Shareholders" the GOF created a built-in defense against takeovers and other instability, thereby providing a secure investment environment for private investors purchasing the remaining shares. Petitioners assert that without the implicit guarantee represented by these "Stable Shareholders," no private investment would have taken place. Therefore, petitioners allege that the GOF's placement of shares with "Stable Shareholders" provided a benefit in the form of a "potential direct transfer of funds" to Usinor which should be measured by the total amount of the private investment.

We are not including this alleged subsidy in our investigation because we do not accept petitioners' argument that the placement of Usinor's shares with "Stable Shareholders" amounts to an implicit guarantee. Instead, the placement of the shares was simply part of the GOF's privatization plan for Usinor. As petitioners point out, the placement of shares with "Stable Shareholders" was designed to prevent a takeover of the company. Thus, the GOF was seeking to prevent certain purchases of Usinor's shares, not to ensure the sale of those shares.

4. Credit Lyonnais 1991 Investment

In 1991, Credit Lyonnais purchased a 20 percent share of Usinor Sacilor. In *Certain Steel from France (1993)* and *Lead and Bismuth from France*, the Department determined that Usinor Sacilor was equityworthy in 1991 and found the investment not countervailable. Petitioners allege that they have uncovered new evidence which establishes that the GOF's equity investment bestowed a countervailable benefit and constitutes additional factual evidence sufficient to prompt a reexamination of the investment.

Petitioners assert that the new evidence, presented in the 1995 French Audit Office Report ("Audit Report"), indicates that the shares purchased by the bank were immobile and non-remunerative. As such, petitioners allege that the Credit Lyonnais investment lacked the defining characteristics of an equity investment (*i.e.*, a claim on the company's earnings and based on an expectation of a reasonable return) and, thus, constituted a grant rather than equity. *See General Issues Appendix*, appended to *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37239 (July 9, 1993). Other evidence that petitioners present include the 1994 French Parliamentary investigation and report ("French Parliamentary Report") which state that Credit Lyonnais "took the place of the government" to recapitalize and support Usinor. The Audit Report also criticizes the investment as inappropriate and ultimately very costly to Credit Lyonnais.

A close examination of the Audit Report reveals otherwise. First, we find that the Audit Report's conclusion that the investment in companies such as Usinor were not "mobilizable" was drawn from the policy implications, rather than actual restrictions on the shares themselves. The Audit Report states: "Securities of national enterprises were involved. To sell them * * * would have led to denationalization." In other words, Credit Lyonnais could not sell the shares without the GOF's explicit policy decision to privatize the company. The mere existence of a government policy to retain the control of a state-owned company, however, does not transform the investment into a grant.

With respect to the alleged "unremunerative" nature of the shares, we note that the Audit Report merely states that the stocks did not "*quickly* produce any dividend." (Emphasis supplied). There is no indication that there were actual restrictions on the shares or that there were no returns on the investment.

Finally, given that both the Audit Report and the French Parliamentary Report were issued ex post facto, we do not consider the statements regarding the ultimate cost of the investment to be relevant. As we stated in the *General Issues Appendix*, "neither the benefit nor the equityworthiness determination should be reexamined post hoc since such information could not have been known to the investor at the time of the investment." 58 FR at 37239.

Accordingly, we find that the evidence presented by petitioners is not sufficient for us to reinvestigate the 1991 investment by Credit Lyonnais. On this basis, we are not including this program in our investigation.

B. Italy

In the course of preparing its CVD questionnaire response in the concurrent investigation of *Stainless Steel Plate in Coils from Italy*, the GOI has ascertained that AST has not applied for or received assistance under the following programs: Law 706/85 Grants for Capacity Reduction, Law 46/82 Assistance for Capacity Reduction, Law 193/84 Early Retirement Assistance and Interest Grants, Law 394/81 Export Marketing Grants and Loans, Law 341/95 and Circolare 50175/95, European Regional Development Fund, Resider II Program (and Successor Programs), and Law 181 Worker Adjustment/Redevelopment Assistance. We are

including these programs in this investigation pending verification of the GOI's claim of non-use.

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers and exporters of the subject merchandise in Italy:

Government of Italy Programs

1. *Law 796/76: Exchange Rate Guarantee Program*
1. *Benefits Associated with the 1988–1990 Restructuring*
2. *Pre-Privatization Employment Benefits*
3. *Law 120/89 Recovery Plan for the Steel Industry*
4. *Law 181/89 Worker Adjustment/ Redevelopment Assistance*
5. *Law 706/85 Grants for Capacity Reduction*
6. *Law 488/92 Aid to Depressed Areas*
7. *Law 46/82 Assistance for Capacity Reduction*
8. *Working Capital Grants to ILVA, S.p.A. (ILVA)*
9. *ILVA Restructuring and Liquidation Grant*
10. *1994 Debt Payment Assistance by the Instituto per la Riscostruzione Industriale (IRI)*
11. *Loan to KAI for purchase of Acciai Speciali Terni S.p.A. (AST)*
12. *Debt Forgiveness: 1981 Restructuring Plan*
13. *Debt Forgiveness: Finsider-to-ILVA Restructuring*
14. *Debt Forgiveness: ILVA-to-AST Restructuring*
15. *Law 675/77*
    a. Mortgage Loans
    b. Interest Contributions on IRI Loans
    c. Personnel Retraining Aid
    d. VAT Reductions
    e. Grants to Pay Interest on Bank Loans
17. Law 193/84
    a. Interest Payments
    b. Closure Assistance
    c. Early Retirement Benefits
18. *Law 394/81 Export Marketing Grants and Loans*
19. *Equity Infusions from 1983 through 1992*
20. *Uncreditworthiness for 1983 through 1997*

Petitioners have additionally alleged that AST was uncreditworthy in the years when it allegedly received non-recurring subsidies. This allegation was supported by financial ratios for AST and its predecessor companies. Thus, for those years we will investigate the creditworthiness of AST and its predecessor companies.

21. *Law 341/95 and Circolare 50175/95*
22. *Export Financing Under Law 227/77 and Remission of Taxes*

European Commission Programs

1. *EU Subsidy to AST to Construct a Mill*
2. *ECSC Article 54 Loans & Interest Rebates*
3. *ECSC Article 56 Conversion Loans, Interest Rebates & Redeployment Aid*
4. *European Social Fund*
5. *European Regional Development Fund*
6. *Resider II Program (and successor programs)*
7. *1993 EU Funds*

C. Korea

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers and exporters of the subject merchandise in Korea:

Government of Korea Programs

1. *Pre-1992 Government of Korea Direction of Credit*
2. *Post-1991 Government of Korea Direction of Credit*
3. *1992 "Emergency Loans" to Sammi Steel Company*
4. *Financial Assistance in Conjunction with the 1997 Sammi Steel Company Bankruptcy*
5. *Tax Incentives for Highly-Advanced Technology Businesses*
6. *"National Subsidy" to Inchon*
7. *POSCO Purchase of Sammi Specialty Steel Division for More Than Adequate Remuneration*
8. *Provision of Electricity for Less Than Adequate Remuneration*
9. *Reserve for Investment*
10. *Kwangyang Bay Project*
11. *Export Facility Loans*
12. *Reserve for Export Loss Under the Tax Exemption and Reduction Control Act (TERCL)*
13. *Reserve for Overseas Market Development Under the Tax Exemption and Reduction Control Act (TERCL)*
14. *Unlimited Deduction of Overseas Entertainment Expenses*
15. *Short-Term Export Financing*
16. *Korean Export-Import Bank (EXIMBANK) Loans*
17. *Special Depreciation of Assets on Foreign Exchange Earnings*
18. *Export Insurance Rates Provided by the Korean Export Insurance Corporation*
19. *Excessive Duty Drawback*
20. *Uncreditworthiness for 1990 through 1997*

Petitioners have alleged that two Korean producers of the subject merchandise, Sammi Steel Company (Sammi) and Inchon Iron & Steel Company (Inchon), were uncreditworthy during the period 1990 through 1997 and 1991 through 1997, respectively. For those respective years, petitioners have provided financial ratios for the two companies which indicate that the companies may be uncreditworthy for those respective periods. Thus, for those respective years, we will investigate whether the companies were uncreditworthy during the years in which petitioners have alleged non-recurring countervailable subsidies.

Petitioners have also alleged that Sammi and Inchon were uncreditworthy from 1983 through 1997. We are not investigating creditworthiness in the years 1983 through 1989 for Sammi and for the years 1983 through 1990 for Inchon. Petitioners did not provide any information to indicate that the companies were uncreditworthy for those respective years.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of France, Italy, and Korea. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by July 27, 1998, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of stainless steel sheet and strip from France, Italy, and Korea. A negative ITC determination will, for any country, result in the investigation being terminated with respect to that country; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated June 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18603 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070698B]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder, Scup, Black Sea Bass, and Bluefish Monitoring Committees will hold a public meeting.

DATES: The meeting will be held on Tuesday, July 28, 1998, the Black Sea Bass Monitoring Committee will meet from 10:00 a.m. until 1:00 p.m. and the Scup Monitoring Committee will meet from 2:00–4:00 p.m. On Wednesday, July 29, 1998, the Summer Flounder Monitoring Committee will meet from 8:00 a.m. until noon, and the Bluefish Monitoring Committee will meet from 1:00–3:00 p.m.

ADDRESSES: These meetings will be held at the Westin Suites, 4101 Island Avenue, Philadelphia, PA; telephone: 215–365–6600.

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

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council, telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 1999 commercial management measures, commercial quotas, and recreational harvest limits for summer flounder, scup, and black sea bass. The Bluefish Monitoring Committee will meet to recommend commercial management measures, recreational management measures, and a commercial quota for bluefish for 1999.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

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

Dated: July 7, 1998.

Richard W. Surdi,

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

[FR Doc. 98–18613 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070298I]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of committee meeting.

SUMMARY: A joint committee of members of the North Pacific Fishery Management Council (Council) and Alaska Board of Fisheries (Board) will meet in Anchorage, AK.

DATES: The meetings will be held on Wednesday and Thursday, July 29–30, 1998 beginning at 9:00 a.m. on Wednesday, July 29.

ADDRESSES: The meetings will be held at the Clarion Suites Hotel, 325 West 8th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The committee will receive reports and discuss the following issues:

1. Halibut: Local area management plans for halibut; proposed moratorium on entry into the halibut charterboat fishery, and the charterboat logbook program.

2. Groundfish: Status report on State fisheries and recent Council and Board action with regard to salmon bycatch in groundfish fisheries, improved utilization and retention, fisheries closures, and proposals received for changes in regulations.

3. Habitat: Recent essential fish habitat amendments and regulatory actions taken.

4. Scallops: A change in the overfishing definition and a report on the proposed limited entry program.

5. Crab: A change in definitions of maximum sustainable yield, optimum yield, and overfishing, and a progress report on a vessel buyback program.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: July 7, 1998.

Richard W. Surdi,

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

[FR Doc. 98–18614 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070298H]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold joint meetings of its Shrimp Committee and Rock Shrimp Advisory Panel and its Calico Scallop Committee and Advisory Panel.

DATES: The meetings will be held from July 28-30, 1998. See **SUPPLEMENTARY INFORMATION.** The meeting will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (843) 571-1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (843) 571-4366; fax:

(843) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

July 28, 1998, 1:00 p.m. to 5:00 p.m. & July 29, 1998, 8:30 a.m. to 12:00 noon

The Shrimp Committee and Rock Shrimp Advisory Panel will review and provide comments on the Comprehensive Habitat Amendment and the Sustainable Fisheries Act Amendment, provide detailed input on rock shrimp catch by area for use in determining impacts, and hear a presentation on vessel monitoring systems before discussing any other business.

July 29, 1998, 1:00 p.m. to 5:00 p.m. & July 30, 1998, 8:30 a.m. to 12:00 noon

The Calico Scallop Committee and Calico Scallop Advisory Panel will hear a presentation on vessel monitoring systems, review and provide comments on the Comprehensive Habitat Amendment and the Sustainable Fisheries Act Amendment and on the Calico Scallop Fishery Management Plan, and provide detailed input on calico scallop catch by area for use in determining impacts before discussing any other business.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see ADDRESSES) by July 20, 1998.

Dated: July 8, 1998.

Richard W. Surdi,

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

[FR Doc. 98–18611 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070198C]

Marine Mammals; File No. P79H

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 887, issued to Institute of Marine Sciences, LML, University of California, Santa Cruz, CA 95060 (Principal Investigator: Ronald J. Schusterman, Ph.D.), was amended to extend the expiration date to December 31, 1998.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: July 7, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–18610 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062998B]

Marine Mammals; File No. 782–1455

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Douglas P. DeMaster, Ph.D., Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, has been issued a permit to take northern fur seals (*Callorhinus ursinus*), Steller sea lions (*Eumetopias jubatus*), and California sea lions (*Zalophus californianus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 13, 1998, notice was published in the **Federal Register** (63 FR 26574) that a request for a scientific research permit to take northern fur seals, Steller sea lions, and California sea lions, had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 8, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–18612 Filed 7–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: NROTC Applicant Questionnaire; NAVCRUIT Form 1131/6; OMB Number 0703–0028.

Type of Request: Extension.

Number of Respondents: 40,000.

Responses Per Respondent: 1.

Annual Responses: 40,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 10,000.

Needs and Uses: The information collection is used by the Navy Recruiting Command to determine basic eligibility for the Four-Year NROTC Scholarship Program, and is necessary for the initial screening of prospective applicants. Use of this questionnaire is the only accurate and specific method to determine scholarship awards. Each individual who wishes to apply for the scholarship program completes and returns the questionnaire.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 7, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–18541 Filed 7–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment and Finding of No Significant Impact for the Fielding of the "Generator, Mechanical Smoke: For Dual Purpose Unit, M56" and the "Generator Smoke Mechanical: Mechanized Smoke Obscurant System M58"

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announces the availability of the final Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FNSI) for the Fielding of the "Generator, Mechanical Smoke: For Dual Purpose Unit, M56" and the "Generator Smoke Mechanical: Mechanized Smoke Obscurant System M58." The Army published a notice of availability in the **Federal Register** of the drafts for both the PEA and FNSI on April 27, 1998 (63 FR 20615), which initiated a 30-day period for public review and comment. The public review and comment period ended on May 27, 1998.

The Army's proposed action is to field the M56 and M58 to Army installations across the Nation for use in visual and infrared training. The PEA discloses the general types of impacts and effects on all relevant aspects of the human environment (e.g., flora, fauna, air, soil, water and human health) that will likely result from use of the graphite module in training. See PEA, pages 55–65. Receiving installations will be required to prepare site-specific analyses in which they consider the intensity of impacts associated with the emission of graphite particles into the local environment, and, if appropriate, develop mitigation measures.

ADDRESSES: A copy of the final PEA and FNSI may be obtained by writing to Commander, U.S. Army Environmental Center, ATTN:SFIM–AEC–

(Mr. Hankus), Aberdeen Proving Ground, Maryland 21010–5401 or by calling (410) 671–2556.

SUPPLEMENTARY INFORMATION: No public comments were received following the 30-day comment period on the draft PEA and finding. As a result, the Army has finalized the FNSI and will proceed with implementation of the proposed action without further review and comment. Preparation of an Environmental Impact Statement will not be required.

Dated: July 2, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) (OASA (I, L&E)).

[FR Doc. 98–18449 Filed 7–10–98; 8:45 am]

BILLING CODE 3710–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 11, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (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 Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer, 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) Summary

of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 8, 1998.

Donald Rappaport,

Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer.

Office of the Under Secretary

Type of Review: Reinstatement.
Title: Safe and Drug-Free Schools and Communities Act: Request for Clearance of the State Education Agency and Governor's Reporting Forms.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 109.
Burden Hours: 4,360.
Abstract: Section 4117 of the Safe and Drug-Free Schools and Communities Act (SDFSCA) requires state chief executive officers, and state educational agencies (SEAs) to submit to the Secretary on a triennial basis a report on the implementation and outcomes of state, local and Governor's SDFSCA programs. ED must report to the President and Congress on a biennial basis regarding the national impact of SDFSCA programs. The two instruments, one for SEAs and one for Governor's programs, included with this Paperwork Reduction Act submission will be used by states to submit the required data to ED.

Office of Educational Research and Improvement

Type of Review: New.
Title: Early Childhood Longitudinal Study (ECLS) First Grade Fall 1998 Pilot Study, Fall 1999 and Spring 2000 Full Scale.
Frequency: Fall 1998, Fall 1999, and Spring 2000.
Affected Public: Individuals or households; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 600.
Burden Hours: 313.
Abstract: The ECLS begins in Fall 1998–1999 with a kindergarten cohort. This clearance is for follow up activities with this cohort of students one year later, when they are typically in first grade. There will be a pilot of the first grade fall survey in Fall 1998, and the full scale surveys will take place in Fall of 1999 and Spring of 2000. The ECLS looks at the crucial first years of school from the perspective of the students, teachers, parents, and school administrators. There are assessments of the students. The survey is intended to provide information about early childhood preschool learning experiences, from birth to age 8, preparation for formal schools, first school experiences, and progress made over the first years of school.

Office of Postsecondary Education

Type of Review: Revision.
Title: William D. Ford Federal Direct Loan Program Electronic Debit Account Brochure and Authorization Form.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 102,000.
Burden Hours: 3,400.
Abstract: This form will be the means by which a Direct Loan borrower authorizes establishment of an Electronic Debit Account.

Office of the Under Secretary

Type of Review: New.
Title: National Longitudinal Survey of Schools (NLSS).
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 18,800.
Burden Hours: 10,760.
Abstract: This study is being conducted to support the legislative requirement in P.L. 103–382, Section 1501 to assess the implementation of Title I and education reform. It will examine principals' and teachers' understanding and implementation of standards-based reform and the new provisions of Title I. Information on schools serving significant proportions of migrant, limited-English proficient (LEP), or Native American students, and schools that have been identified as in need of improvement will also be gathered.

Office of Postsecondary Education

Type of Review: Extension.
Title: Guaranty Agency Quarterly/Annual Report.
Frequency: Annually.
Affected Public: Businesses or other for-profits, State, local or Tribal Gov't, SEAs or LEAs. Reporting and Recordkeeping Hour Burden:
Responses: 37.
Burden Hours: 9,250.
Abstract: The Guaranty Agency Quarterly/Annual Report is submitted by 37 agencies operating a study loan insurance program under agreement with the Department of Education. These reports are used to evaluate agency operations, make payments to agencies as authorized by law, and to make reports to Congress.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Phase 1.
Frequency: Annually.
Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1.
Burden Hours: 1.
Abstract: OERI was required by its authorizing statute to establish standards for the processes it uses to evaluate applications for grants and cooperative agreements and proposals for contracts. These established standards (34 CFR 700) allow OERI to tailor selection criteria to individual programs by selecting from the menu of selection criteria contained in this regulation. This regulation has also eliminated the need for separate programs within OERI to establish individual program regulations to create evaluation criteria.

[FR Doc. 98–18565 Filed 7–10–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Submission for OMB review; comment request.

SUMMARY: The Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 12, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (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 Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer, 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) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 8, 1998.

Donald Rappaport,

Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: 1998–1999 Field Test for Schools and Staffing Survey (SASS): Local Educational Agency (LEA), Administrator, School, Teacher and Library/Media Center, 1999–2000 Teacher Listing Form, 1999–2000 Full Scale SASS: LEA, Administrator, School, Teacher and Library/Media Center.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 104,341.

Burden Hours: 107,802.

Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures and survey instruments that are planned for the full scale SASS in 1999–2000. Policy makers, researchers and practitioners at the national, state and local events use SASS data. Respondents include public and private school principals, teachers, and school, LEA and library/media center staff persons.

[FR Doc. 98–18566 Filed 7–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–566–001 FERC–566]

Information Collection Submitted for Review and Request for Comments

July 7, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from electric utilities and electric trade associations in response to an earlier **Federal Register** notice of February 5, 1998 (63 FR 5933). The Commission has addressed these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before August 12, 1998.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc. fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–566 "Annual Report of a Utility's Twenty Largest Purchasers"

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* OMB No. 1902–0114. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of Section 211-Interlocking Directorates, which defines monitoring and regulatory operations concerning interlocking directorate positions held by utility personnel and possible conflicts of interest. The information submitted enables the Commission to carry out its responsibilities in implementing the statutory provisions of the Title II, Section 211 of the Public Utility Regulatory Policies Act of 1978.

5. *Respondent Description:* The respondent universe currently comprises on average, 175 companies

subject to the Commission's jurisdiction.

6. *Estiamted Burden:* 1,050 total burden hours, 175 respondents, 1 response annually, 6 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 1,050 hours ÷ 2,088 hours per year × $109,889 per year = $55,260, average cost per respondent = $315.

Statutory Authority: Section 211 of the public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 825d.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18495 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–318–000]

ANR Storage Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 153, to be effective August 1, 1998.

ANRS states that the purpose of the filing is to incorporate Version 1.2 of the GISB standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order No. 587–G, issued April 16, 1998, at Docket No. RM96–1–007.

ANRS states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18507 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–324–000]

Blue Lake Gas Storage Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 153, to be effective August 1, 1998.

Blue Lake states that the purpose of the filing is to incorporate Version 1.2 of the GISB standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order No. 587–G, issued April 16, 1998, at Docket No. RM96–1–007.

Blue Lake states that copies of the filing were served upon the company's jurisdictional customer.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18483 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–338–000]

Cove Point LNG Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 2, 1998, Cove Point LNG Limited Partnership, (Cove Point) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 136, with an effective date of August 1, 1998.

Cove Point states that the tariff sheet is being filed to adopt the business practice and electronic communications standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–G.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18493 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

East Tennessee Natural Gas Company; Notice of Tariff Filing

[Docket No. RP98–328–000]

Take notice that on July 1, 1998, East Tennessee Natural Gas Company (East

Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1998:

Third Revised Sheet No. 155
Second Revised Sheet No. 156
First Revised Sheet No. 230
First Revised Sheet No. 231
Second Revised Sheet No. 232
First Revised Sheet No. 235
Second Revised Sheet No. 236
First Revised Sheet No. 237
Original Sheet No. 305
Original Sheet No. 306

East Tennessee states that it is submitting these revised tariff sheets in order to provide additional flexibility to its customers by allowing agency agreements under each of its rate schedules and allowing for an additional agency agreement for Electronic Data Interchange. East Tennessee also proposes to revise the tariff sheets to correct certain minor misstatements and to update its agency tariff provisions. East Tennessee requests an effective date of August 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18486 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–636–000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

July 7, 1998.

Take notice that on June 26, 1998, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP98–636–000 a request pursuant to Sections 157.205 and 157.212 of Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate as jurisdictional an existing delivery point facility that was constructed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA), under the East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

East Tennessee states that it has recently constructed a delivery point (Rockwood Meter Station) under Section 311(a) of the NGPA for use in the transportation of natural gas under Subpart B of Part 284 of the Commission's regulations. Granting the requested authorization will enable East Tennessee to fully utilize this facility for all transportation services, pursuant to Section 311 of the NGPA and Section 7 of the NGA and will increased the transportation options of customers on East Tennessee's system.

East Tennessee states that delivery volumes through the existing delivery point would not impact its peak day and annual deliveries; that the proposed activity is not prohibited by its existing tariff; and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after 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 therefor, 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18496 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–333–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1998:

Second Revised Sheet No. 9
First Revised Sheet No. 41
First Revised Sheet No. 181
First Revised Sheet No. 199

East Tennessee states that the purpose of the filing is to provide more detail and specificity in East Tennessee's tariff and East Tennessee's pro forma service agreements regarding the types of discounts that may be granted by East Tennessee. East Tennessee states that by including this information in its tariff, East Tennessee hopes to reduce any need for filing individual discount agreements as "material deviations."

East Tennessee proposes to revise two of its rate schedules and the related pro forma service agreements, so as to more clearly reflect the types of discounts that may be given by East Tennessee. First, East Tennessee proposes to revise Section 4.1 of Rate Schedule FT–A and Section 6.1 of the *pro forma* transportation agreement to reflect all of the following types of discounts for FT–A service: (a) point-specific; (b) volume-specific; (c) discounts based on a variable reservation/commodity charge allocation; and (d) authorized overrun.

In addition, to address the release of discounted volumes, East Tennessee proposes to add the following sentence to Section 4.1 and Section 6.1: "In the event Shipper releases capacity at a rate which is higher than Shipper's discounted rate, such difference may be shared in the manner agreed to by Transporter and Shipper." Second, East Tennessee proposes to revise Sections 4.1 of Rate Schedule IT and Section 6.1 of the IT pro forma transportation agreement to provide for point-specific and volume-specific discounts.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18513 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–311–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of August 1, 1998:

Third Revised Sheet No. 202A
Fourth Revised Sheet No. 202B
Second Revised Sheet No. 206

El Paso states that the filing is being made in compliance with Order No. 587–G issued April 16, 1998 at Docket No. RM96–1–007.

El Paso states that the tariff sheets are being filed to implement Version 1.2 of the Gas Industry Standards Board (GISB) Standards accepted by the Commission in Order No. 587–G.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18500 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–78–000]

Gulf States Transmission Corporation; Notice of Filing

July 7, 1998.

Take notice that on July 1, 1998, Gulf States Transmission Corporation (Gulf States), tendered for filing the revised tariff sheets listed in Appendix A to the filing. Gulf States proposes that the foregoing tariff sheets be made effective on August 1, 1998.

Gulf States states this filing is made to reflect ministerial tariff changes resulting from the recent acquisition of Gulf States by El Paso Energy Corporation. Gulf States further states that the instant filing specifically modifies the company's address, telephone numbers and personnel titles and designations from its currently effective tariff to conform with the changes due to the purchase by El Paso Energy. Gulf States further states that the changes effected by this filing are purely ministerial and have no substantive effect on Gulf States' tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18498 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–330–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998:

Third Revised Sheet No. 2400
Third Revised Sheet No. 2401
Third Revised Sheet No. 2402
Fourth Revised Sheet No. 2403
Third Revised Sheet No. 2404
Third Revised Sheet No. 2405
Second Revised Sheet No. 2406
First Revised Sheet No. 4756

Koch states that this filing is in compliance with the Commission's Order No. 587–G, issued April 16, 1998, at Docket No. RM96–1–007. The revised tariff sheets contain modifications reflecting Koch's compliance with the standards promulgated by the Gas Industry Standards Board (GISB), to become effective as of August 1, 1998.

Koch states that copies of the filing have been served upon each person designated on the official service list.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18488 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP–98–336–000]

Koch Gateway Pipeline Company; Notice of Waiver

July 7, 1998.

Take notice that on July 1, 1998, Koch Gateway Pipeline Company (Koch) filed a request for a waiver from the Commission's requirement to comply with 18 CFR 284.10(c)(3)(iii) regarding an electronic cross-reference table.

Koch states that copies of the filing have been served upon each party designated on the official service list.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18492 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–327–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1998:

First Revised Sheet No. 12
Second Revised Sheet No. 25
First Revised Sheet No. 122
First Revised Sheet No. 131

Midwestern states that the purpose of the filing is to provide more detail and specificity in Midwestern's tariff and Midwestern's pro forma service agreements regarding the types of discounts that may be granted by Midwestern. Midwestern states that by including this information in Midwestern's tariff, Midwestern hopes to greatly reduce any need for filing individual discount agreements as "material deviations."

Midwestern proposes to revise two of its rate schedules and the related pro forma service agreements, rather than make material deviation filings, so as to more clearly reflect the types of discounts that may be given by Midwestern. First, Midwestern proposes to revise Section 4.1 of Rate Schedule FT–A and Section 6.1 of the pro forma transportation agreement to reflect all of the following types of discounts for FT–A service: (a) point-specific; (b) volume-specific; (c) discounts based on a variable reservation/commodity charge allocation; and (d) authorized overrun.

In addition, to address the release of discounted volumes, Midwestern proposes to add the following sentence to Section 4.1 and Section 6.1: "In the event Shipper releases capacity at a rate which is higher than Shipper's discounted rate, such difference may be shared in the manner agreed to by Transporter and Shipper." Second, Midwestern proposes to revise Sections 4.1 of Rate Schedule IT and Section 6.1 of the IT pro forma transportation agreement to provide for point-specific and volume-specific discounts.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18485 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–331–000]

Midwestern Gas Transmission; Notice of Tariff Filing

July 7, 1998.

Take notice that on July 1, 1998, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date August 1, 1998:

Second Revised Sheet No. 104
Third Revised Sheet No. 105
First Revised Sheet No. 173
First Revised Sheet No. 174
First Revised Sheet No. 178
Second Revised Sheet No. 179
First Revised Sheet No. 180
Original Sheet No. 204
Original Sheet No. 205

Midwestern is submitting these revised tariff sheets in order to provide additional flexibility to its customers by allowing agency agreements under each of its rate schedules and allowing for an additional agency agreement for Electronic Data Interchange. Midwestern also proposes to revise the tariff sheets to correct certain minor misstatements and to update its agency tariff provisions. Midwestern requests an effective date of August 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Sheet, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18489 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–337–000]

MIGC, Inc. Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998

Take notice that on July 1, 1998 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 6 with a proposed effective date of August 1, 1998.

MIGC states that the purpose of the filing is to revise and update the fuel retention and loss percentage factors (FL&U factors) set forth in its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the requirement of Section 25 of said tariff.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18512 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–329–000]

Mobile Bay Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Mobile Bay Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998:

Third Revised Sheet No. 184
Third Revised Sheet No. 185
Fourth Revised Sheet No. 186
Second Revised Sheet No. 186A
Second Revised Sheet No. 187
Second Revised Sheet No. 188
First Revised Sheet No. 189
First Revised Sheet No. 366

Mobile Bay states this filing is in compliance with the Commission's Order No. 587–G, issued April 16, 1998, at Docket No. RM96–1–007. The revised tariff sheets contain modifications reflecting Mobile Bay's compliance with the standards promulgated by the Gas Industry Standards Board, to become effective as of August 1, 1998.

Mobile Bay states that copies of the filing have been served upon each person designated on the official service list.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18487 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–335–000]

Mobile Bay Pipeline Company; Notice of Waiver

July 7, 1998.

Take notice that on July 1, 1998, Mobile Bay Pipeline Company (Mobile Bay) filed a request for a waiver from the Commission's requirement to comply with 18 CFR 284.10(c)(3)(iii) regarding an electronic cross-reference table.

Mobile Bay states that copies of this filing have been served upon each party designated on the official service list.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18511 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–313–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1998:

First Revised Sheet No. 202
First Revised Sheet No. 203
First Revised Sheet No. 211

Mojave states that the filing is being made in compliance with Order No. 587–G issued April 16, 1998 at Docket No. RM96–1–007.

Mojave states that the tariff sheets are being filed to implement Version 1.2 of the Gas Industry Standards Board (GISB) Standards accepted by the Commission in Order No. 587–G.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18502 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2597–000]

Nashua Hydro Associates; Notice of Filing

July 2, 1998.

Take notice that on June 5, 1998, Nashua Hydro Associates tendered for filing a Notice of Withdrawal in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 13, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18550 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–321–000]

Paiute Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective August 1, 1998:

First Revised Sheet No. 56C
Third Revised Sheet No. 58B
Third Revised Sheet No. 63C
Second Revised Sheet No. 98A
Third Revised Sheet No. 114

Paiute indicates that the purpose of the instant filing is (1) to comply with the directives or Order No. 587–G, issued by the Commission on April 16, 1998 in Docket No. RM96–1–007; and (2) to effectuate changes to the General Terms and Conditions of Paiute's tariff which are necessary to implement the Gas Industry Standards Board standards which were adopted by the Commission in Order No. 587–G.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18510 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–315–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective August 1, 1998:

Fourth Revised Sheet No. 339

Panhandle states that the purpose of this filing is to comply with the Commission's Order No. 587–G, issued April 16, 1998, at Docket No. RM96–1–007. The revised tariff sheet included herewith reflects Version 1.2 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations. Specifically, in addition to upgrading the version of previously adopted standards, newly adopted Standards 1.4.6, 2.4.6, 4.3.5, 4.3.16 and 5.3.30 are incorporated by reference and Standard 4.3.4 has been deleted.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18505 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–323–000]

Petal Gas Storage Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998

Take notice that on July 1, Petal Gas Storage Company (Petal) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet Nos. 100 and 129, and Original Sheet No. 130, with a proposed effective date of August 1, 1998.

Petal states that the filing is made in compliance with the Commission's Order No. 587–G, issued on April 16, 1998, in Docket No. RM96–1–007, requiring interstate pipelines to update to the most recent version (Version 1.2) of the standards promulgated by the Gas Industry Standards Board (GISB), and

also to comply with the non-GISB standards in Order No. 587–G pertaining to pipeline communication protocols, 18 CFR 284.10(c)(ii)–(v).

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18482 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–319–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, with an effective August 1, 1998:

Seventh Revised Sheet No. 52
Fourth Revised Sheet No. 61
Second Revised Sheet No. 61A
Sixth Revised Sheet No. 62
Fourth Revised Sheet No. 81A
Second Revised Sheet No. 81A.01
Second Revised Sheet No. 81A.02
Third Revised Sheet No. 81A.03
Second Revised Sheet No. 81A.04
Second Revised Sheet No. 81A.05
Third Revised Sheet No. 81A.06
Fifth Revised Sheet No. 91
Fourth Revised Sheet No. 92
Third Revised Sheet No. 95
Third Revised Sheet No. 100
Fourth Revised Sheet No. 105
Fourth Revised Sheet No. 107
Third Revised Sheet No. 110
Fourth Revised Sheet No. 144

PG&E GT–NW asserts the purpose of this filing is to comply with Order No. 587–G, issued April 16, 1998 in Docket RM96–1–007, requiring pipelines to incorporate Version 1.2 of the Gas Industry Standards Board's Business Practice Standards within their tariffs. PG&E GT–NW states the filing conforms its FERC Gas Tariff, First Revised Volume No. 1–A to the requirements of Order No. 587–G.

PG&E GT–NW further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18508 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–326–000]

Steuben Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 154, to be effective August 1, 1998.

Steuben states that the purpose of the filing is to incorporate Version 1.2 of the GISB standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order No. 587–G, issued April 16, 1998, at Docket No. RM96–1–007.

Steuben states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18484 Filed 7–10–98; 8:45]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–332–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing, FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1998:

Fourth Revised Sheet No. 98
First Revised Sheet No. 108A
Third Revised Sheet No. 153
First Revised Sheet No. 159A
Third Revised Sheet No. 526
First Revised Sheet No. 532
First Revised Sheet No. 555
First Revised Sheet No. 580

Tennessee states that the purpose of the filing is to provide more detail and specificity in Tennessee's tariff and Tennessee's pro forma service agreements regarding the types of discounts that may be granted by Tennessee. Tennessee states that by including this information in Tennessee's tariff, Tennessee hopes to reduce any need for filing individual discount agreements as material deviations.

Tennessee proposes to revise four of its rate schedules, FT–A, IT, IS and FS. Tennessee proposes to revise Section 5.1 of Rate Schedule FT–A, which currently reflects only point-specific discounts, and Section 6.1 of the pro forma FT–A transportation agreement to reflect all of the following types of

discounts: (a) point-specific; (b) volume-specific; (c) discounts based on a variable reservation/commodity charge allocation; (d) authorized overrun; and (e) Extended Deliveries Service. In addition, to address the release of discounted volumes, Tennessee proposes to add the following sentence to Section 5.1 and Section 6.1: "In the event Shipper releases capacity at a rate which is higher than Shipper's discounted rate, such difference may be shared in the manner agreed to by Transporter and Shipper." Tennessee also proposes to revise Section 5.1 of Rate Schedule IT to more specifically state the point-specific and volume-specific discounts already reflected in currently effective Section 5.1 of Rate Schedule IT. Tennessee proposes to revise Section 8.2 of Rate Schedule IS and Section 3.1 of the IS pro forma agreement to reflect volume-specific and storage field-specific discounts. Lastly, Tennessee proposes to revise Section 5.2 of Rate Schedule FT and Section 3.1 of the FS pro forma storage agreement to reflect: (a) volume-specific; (b) storage field-specific and (c) authorized overrun discounts. Tennessee requests an effective date of August 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18490 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–334–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 304A with an effective date of August 1, 1998.

Tennessee states that the purpose of the filing is to correct an inadvertent error in the description of Tennessee's Market Area Pooling Areas in Tennessee's Tariff. Specifically, Tennessee states that the current description unintentionally omits a description of the Market Area Pooling Area located on Tennessee's 300 Leg, Zone 4.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18491 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–314–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, to become effective August 1, 1998:

Fourth Revised Sheet No. 681

Texas Eastern asserts that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Order No. 587–G, Standards for Business Practices of Interstate Natural Gas Pipelines issued on April 16, 1998 in Docket No. RM96–1–007, 83 FERC ¶ 61,029 (1998). Texas Eastern states that the revised tariff sheet included herewith reflects Version 1.2 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Texas Eastern states that copies of the filing were served on all affected customers, interested state commissions and all parties to the proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18503 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–320–000]

TransColorado Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the

following tariff sheets, with an effective date of August 1, 1998:

Fourth Revised Sheet No. 203
First Revised Sheet No. 203.01
Second Revised Sheet No. 240

TransColorado states that the filing is being made in compliance with Order No. 587–G issued April 16, 1998 at Docket No. RM96–1–007.

TransColorado states that the tariff sheets are being filed to implement Version 1.2 of the Gas Industry Standards Board (GISB) Standards accepted by the Commission in Order No. 587–G.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18509 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–317–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1998.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedules X–289 and X–302 and to convert such services to service provided under Rate Schedule FT effective November 1, 1998. Upon conversion of SEP service under Rate Schedules X–289 and X–302, all SEP services will have been converted from Section 7(c) service to Part 284 Service.

The charges applicable to SEP firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to annual firm transportation service under Transco's blanket certificate and Part 284 of the Commission's regulations are set forth on Sheet No. 40F of Transco's Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to the converting SEP shippers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18506 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–322–000]

Trunkline Gas Company; Notice of Proposed Changes In FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective August 1, 1998:

Third Revised Sheet No. 242A

Trunkline states that the purpose of this filing is to comply with the Commission's Order No. 587–G, issued April 16, 1998, at Docket No. RM96–1–007. The revised tariff sheet included herewith reflects Version 1.2 standards promulgated by the Gas Industry standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations. Specifically, in addition to upgrading the version of previously adopted standards 1.4.6, 2.4.6, 4.3.5, 4.3.16 and 5.3.30 are incorporated by reference and Standard 4.3.4 has been deleted.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18481 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–646–000]

Williams Gas Pipelines Central, Inc.; Notice of Request under Blanket Authorization

July 7, 1998.

Take notice that on June 30, 1998, Williams Gas Pipelines Central, Inc. (Williams Gas), Post Office Box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP98–646–000, pursuant to Sections 157.205, 157.212 and 157.216(b) of the Commission's Regulations under the Natural Gas (NGA) for authorization to replace the City of Iola, Kansas power plant meter settings and appurtenant facilities with multiple-run meter settings, in the same location, in Allen County, Kansas authorized in blanket certificate issued in Docket No. CP82–

479–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams Gas proposes to abandon by reclaim a positive meter setting (used for peaking) and an orifice meter setting and appurtenant facilities serving the Iola power plant and replace them with a multiple run meter settings and appurtenant facilities at the same location in Section 27, Township 24 South, Range 18 East, Allen County, Kansas. The power plant has installed new power generation equipment which requires that Williams replace the existing meters with meters capable of handling the increased volume.

Williams states that the cost to replace the two settings is estimated to be approximately $152,455 and the cost to reclaim the old facilities would be approximately $1,500. Williams further states that the peak day volume is not expected to increase; however, the non-coincidental peak day volume could increase to 5,100 Dth/day due to the installation of new power generation equipment.

Williams reports that the exchange is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18497 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–316–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of August 1, 1998:

First Revised Sheet No. 297

Williams states that on April 16, 1998, the Commission issued Order No. 587–G (Order). The Order incorporated by reference, in Section 284.10(b), the most recent version (Version 1.2) of standards promulgated by the Gas Industry Standards Board (GISB). These business practices standards supplement standards adopted by the Commission in Order Nos. 587, 587–B, and 587–C. Pipelines were required to comply with regulations by August 1, 1998. Williams states that the purpose of this filing is to revise the tariff in compliance with the Order.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18504 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–3–49–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

July 7, 1998.

Take notice that on July 1, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, with an effective date of August 1, 1998:

Second Revised Volume No. 1,
Thirtieth Revised Sheet No. 15
Twelfth Revised Sheet No. 15A
Thirty-third Revised Sheet No. 16
Twelfth Revised Sheet No. 16A
Twenty-ninth Revised Sheet No. 18
Twelfth Revised Sheet No. 18A
Twelfth Revised Sheet No. 19
Twelfth Revised Sheet No. 20
Twenty-sixth Revised Sheet No. 21
Original Volume No. 2
Seventy-fourth Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rule and Regulations. All such motions or protests must be filed on or before July 14, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18494 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–312–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1998.

Take notice that on July 1, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 1998:

Second Revised Volume No. 1
Fourth Revised Sheet No. 371
Second Revised Sheet No. 372

Williston Basin states that the tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Order No. 587–G issued April 16, 1998, in Docket No. RM96–1–007. The tariff sheets reflect the Gas Industry Standards Board (GISB) Version 1.2 standards adopted by the Commission in such Order.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18501 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2170–008]

Chugach Electric Association, Inc.; Notice of Availability of Draft Environmental Assessment

July 7, 1998.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the license for the Cooper lake Hydroelectric Project. The application is to increase the spillway capacity to allow passage of the Probable Maximum Flood by lowering the spillway crest to 1,206 feet mean sea level and installing 4.5-foot-high steel sheet parapet wall along the crest of the dam. The EA finds that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment. The project is located on Cooper Lake, Cooper Creek and Kenai Lake in the municipality of Anchorage, Alaska.

Copies of the EA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2170–008 to all comments. For further information, please contact John K. Novak, Environmental Assessment Coordinator, at (202) 219–2828.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18499 Filed 1–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 8, 1998.

The following notice of meeting is published pursuant to section 3(A) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 15, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro; 702nd Meeting—July 15, 1998; Regular Meeting (10:00 a.m.)

CAH–1.
OMITTED
CAH–2.
OMITTED
CAH–3.
OMITTED
CAH–4.
DOCKET# P–2555, 006, KENNEBEC WATER DISTRICT
OTHER#S P–2556, 011, CENTRAL MAINE POWER COMPANY
P–2557, 008, CENTRAL MAINE POWER COMPANY
P–2559, 009, CENTRAL MAINE POWER COMPANY
UL96–7, 003, KENNEBEC WATER DISTRICT
UL96–8, 003, CENTRAL MAINE POWER COMPANY
UL96–9, 003, CENTRAL MAINE POWER COMPANY
UL96–10, 003, CENTRAL MAINE POWER COMPANY
CAH–5.
DOCKET# P–2640, 016, FRASER PAPER, INC.
OTHER#S P–2390, 021, NORTHERN STATES POWER COMPANY (WISCONSIN)
P–2395, 009, FRASER PAPER, INC.
P–2421, 009, FRASER PAPER, INC.
P–2473, 008, FRASER PAPER, INC.
P–2475, 025, NORTHERN STATES POWER COMPANY (WISCONSIN)
CAH–6 .
DOCKET# P–2016, 022, CITY OF TACOMA, WASHINGTON
CAH–7.
DOCKET# P–7463, 000, GENTRY RESOURCES CORPORATION
OTHER#S P–7824, 000, GENTRY RESOURCES CORPORATION
P–7825, 000, GENTRY RESOURCES CORPORATION
P–7826, 000, GENTRY RESOURCES CORPORATION

Consent Agenda—Electric

CAE–1.
DOCKET# ER98–3026, 000 DTE EDISON AMERICA, INC.
CAE–2.
DOCKET# EC96–19, 026, CALIFORNIA POWER EXCHANGE CORPORATION

OTHER #S ER96–1663, 027, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–3.
DOCKET# ER98–3061, 000, AMEREN SERVICES COMPANY
CAE–4.
DOCKET# ER98–3051, 000, COMMONWEALTH EDISON COMPANY
CAE–5.
DOCKET# ER98–3096, 000, PEPCO SERVICES, INC.
CAE–6.
DOCKET# EF98–5181, 000, UNITED STATES DEPARTMENT OF ENERGY—WESTERN AREA POWER ADMINISTRATION (LOVELAND AREA PROJECT)
CAE–7.
DOCKET# EF98–5171, 000, UNITED STATES DEPARTMENT OF ENERGY—WESTERN AREA POWER ADMINISTRATION (SALT LAKE CITY AREA INTEGRATED PROJECTS)
CAE–8.
DOCKET# ER97–3189, 011, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
OTHER#S ER97–3189, 012, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
CAE–9.
DOCKET# NJ97–3, 002, UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION
CAE–10.
DOCKET#ER94–1409, 000, CAMBRIDGE ELECTRIC LIGHT COMPANY
OTHER#S EL94–88, 000, CAMBRIDGE ELECTRIC LIGHT COMPANY
CAE–11.
DOCKET# EC98–36, 000, CENTRAL MAINE POWER COMPANY
CAE–12.
DOCKET# ER97–1386, 000, CONSUMERS ENERGY COMPANY
CAE–13.
OMITTED
CAE–14.
DOCKET# NJ97–13, 001, ORLANDO UTILITIES COMMISSION
CAE–15.
OMITTED
CAE–16.
DOCKET# EL97–58, 001, COALITION AGAINST PRIVATE TARIFFS
OTHER#S ER98–900, 001, WESTERN RESOURCES, INC.
CAE–17.
DOCKET# ER95–1141, 002, CENTRAL POWER AND LIGHT COMPANY
CAE–18.
DOCKET# EL95–46, 001, LAIDLAW GAS RECOVERY SYSTEMS, INC.
OTHER#S QF88–389, 002, COYOTE CANYON LANDFILL GAS POWER PLANT
CAE–19.
DOCKET# EL97–19, 001, VILLAGE OF BALMONT, CITY OF JUNEAU, CITY OF PLYMOUTH AND CITY OF REEDSBURG, ET AL. V. WISCONSIN POWER & LIGHT COMPANY
OTHER#S SC97–3, 001, VILLAGE OF BALMONT, CITY OF JUNEAU, CITY OF PLYMOUTH AND CITY OF REEDSBURG, ET AL. V. WISCONSIN POWER & LIGHT COMPANY
CAE–20.
DOCKET# OA96–13, 001, PECO ENERGY COMPANY
CAE–21.
DOCKET# TX96–7, 001, CITY OF PALM SPRINGS, CALIFORNIA
CAG–22.
DOCKET# ER98–1033, 001, AUTOMATED POWER EXCHANGE, INC.
OTHER#Σ ER98–210, 005, AUTOMATED POWER EXCHANGE, INC.
ER98–211, 003, AUTOMATED POWER EXCHANGE, INC.
ER98–1033, 002, AUTOMATED POWER EXCHANGE, INC.
ER98–1729, 004, AUTOMATED POWER EXCHANGE, INC.
CAE–23.
OMITTED
CAE–24.
DOCKET# ER98–1163, 002, SOUTHWEST POWER POOL, INC.

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# PR98–8, 000, ARKANSAS WESTERN GAS COMPANY
CAG–2.
DOCKET# PR98–7, 000, CRANBERRY PIPELINE CORPORATION
CAG–3.
DOCKET# RP98–175, 002, ANR PIPELINE COMPANY
CAG–4.
DOCKET# RP97–344, 008, TEXAS GAS TRANSMISSION CORPORATION
CAG–5.
DOCKET# MT98–9, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S MT98–9, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–6.
DOCKET# RP97–20, 015, EL PASO NATURAL GAS COMPANY
CAG–7.
DOCKET# RP98–189, 000, UTILICORP UNITED INC.
CAG–8.
DOCKET# RP98–202, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–9.
DOCKET# RP98–164, 003, WYOMING INTERSTATE COMPANY, LTD.
CAG–10.
DOCKET# PR94–3, 012, KANSOK PARTNERSHIP
OTHER#S PR94–3, 009, KANSOK PARTNERSHIP
CAG–11.
DOCKET# RP98–85, 002, NORAM GAS TRANSMISSION COMPANY
CAG–12.
DOCKET# GP97–7, 001, PLAINS PETROLEUM COMPANY AND PLAINS PETROLEUM OPERATION COMPANY
CAG–13.
DOCKET# RP98–166, 000, KANSAS MUNICIPAL GAS AGENCY V. WILLIAMS GAS PIPELINES CENTRAL, INC. (FORMERLY WILLIAMS NATURAL GAS COMPANY)
CAG–14.
DOCKET# RM96–1, 008, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
CAG–15.
DOCKET# RP98–40, 003, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S GP98–6, 0O, ANADARKO PETROLEUM CORPORATION
GP98–7, 000, OXY USA, INC.
GP98–9, 000, AMOCO PRODUCTION COMPANY
CAG–16.
DOCKET# RP98–54, 003, COLORADO INTERSTATE GAS COMPANY
OTHER#S GP98–1, 000, UNION PACIFIC RESOURCES CORPORATION
GP98–10, 000, AMOCO PRODUCTION COMPANY
GP98–11, 000, OXY USA, INC.
GP98–17, 000, ANADARKO PETROLEUM CORPORATION
RP98–54, 004, COLORADO INTERSTATE GAS COMPANY
CAG–17.
DOCKET# IS98–216, 000, DIXIE PIPELINE COMPANY
CAG–18.
DOCKET# MG98–6, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–19.
DOCKET# MG98–8, 000, TUSCARORA GAS TRANSMISSION COMPANY
CAG–20.
DOCKET# CP94–29, 003, PAIUTE PIPELINE COMPANY
CAG–21.
DOCKET# CP94–183, 006, EL PASO NATURAL GAS COMPANY
CAG–22.
DOCKET# CP98–214, 000, EASTERN SHORE NATURAL GAS COMPANY
CAG–23.
DOCKET# CP98–327, 000, WYOMING INTERSTATE COMPANY, LTD. AND COLORADO INTERSTATE GAS COMPANY
CAG–24.

DOCKET# CP98–357, 000, EL PASO NATURAL GAS COMPANY
CAG–25.
DOCKET# CP98–13, 000, TRANSWESTERN PIPELINE COMPANY
OTHER#S CP98–14, 000, NORTHERN NATURAL GAS COMPANY
CP98–43, 000, PG&E-TEX, L.P.
CAG–26.
DOCKET# CP98–125, 000, MIGC, INC.
OTHER#S CP98–125, 001, MIGC, INC.
CAG–27.
DOCKET# CP27–330, 000, QUESTAR PIPELINE COMPANY
CAG–28.
DOCKET# CP97–678, 000, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S CP98–168, 000, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–29.
DOCKET# CP98–49, 000, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
OTHER#S CP98–49, 001, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–30.
OMITTED
CAG–31.
DOCKET# CP98–97, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–32.
DOCKET# CP98–336, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–33.
DOCKET# CP98–159, 000, PHELPS DODGE CORPORATION V. EL PASO NATURAL GAS COMPANY
CAG–34.
DOCKET# CP98–545, 000, COLORADO ENGINEERING EXPERIMENT STATION, INC.
CAG–35.
DOCKET# CP98–128, 000, WYOMING INTERSTATE COMPANY, LTD. AND COLORADO INTERSTATE GAS COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1A.
OMITTED
PR–1B.
OMITTED
PR–2A.
OMITTED
PR–2B.
OMITTED
PR–3A.
DOCKET# IS90–21 ET AL., 000, WILLIAMS PIPE LINE COMPANY
OTHER#S IS90–39 ET AL., 000, ENRON LIQUIDS PIPELINE COMPANY
ORDER ON INITIAL DECISION
PR–3B.
DOCKET# IS91–34, 000, WILLIAMS PIPE LINE COMPANY
OTHER#S IS92–23, 000, WILLIAMS PIPE LINE COMPANY
IS92–26, 000, WILLIAMS PIPE LINE COMPANY
IS92–37, 000, WILLIAMS PIPE LINE COMPANY
IS93–1, 000, AMOCO PIPELINE COMPANY
IS93–2, 000, WILLIAMS PIPE LINE COMPANY
IS93–5, 000, WILLIAMS PIPE LINE COMPANY
IS93–23, 000, WILLIAMS PIPE LINE COMPANY
IS93–25, 000, WILLIAMS PIPE LINE COMPANY
IS93–26, 000, WILLIAMS PIPE LINE COMPANY
IS93–30, 000, WILLIAMS PIPE LINE COMPANY
IS94–5, 000, WILLIAMS PIPE LINE COMPANY
IS94–6, 000, WILLIAMS PIPE LINE COMPANY
IS94–7, 000, WILLIAMS PIPE LINE COMPANY
IS94–8, 000, WILLIAMS PIPE LINE COMPANY
IS94–19, 000, WILLIAMS PIPE LINE COMPANY
IS94–28, 000, WILLIAMS PIPE LINE COMPANY
IS94–40, 000, WILLIAMS PIPE LINE COMPANY
IS95–2, 000, WILLIAMS PIPE LINE COMPANY
IS95–7, 000, WILLIAMS PIPE LINE COMPANY
IS95–10, 000, WILLIAMS PIPE LINE COMPANY
IS95–20, 000, WILLIAMS PIPE LINE COMPANY
IS95–23, 000, WILLIAMS PIPE LINE COMPANY
IS95–28, 000, WILLIAMS PIPE LINE COMPANY
IS95–30, 000, WILLIAMS PIPE LINE COMPANY
ORDER CONSOLIDATING PROCEEDINGS AND DIRECTING FURTHER PROCEEDINGS
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18678 Filed 7–9–98; 10:58 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of May 11 Through May 15, 1998

During the Week of May 11 through May 15, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: July 6, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 11 Through May 15, 1998]

Date	Name and Location of Applicant	Case No.	Type of Submission
5/12/98	Personnel Security Hearing	VSO–0206	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
5/13/98	Personnel Security Hearing	VSO–0207	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
5/14/98	Personnel Security Hearing	VSO–0208	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.

[FR Doc. 98–18573 Filed 7–10–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 11 Through May 15, 1998

During the week of May 11 through May 15, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, DC, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: July 6, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 85; Week of May 11 Through May 15, 1998

Appeal

Cincinnati Gas & Electric Co., 5/11/98, VEA–0008

The Office of Hearings and Appeals considered an Appeal filed by Cincinnati Gas & Electric Company (CG&E) from a determination issued on December 8, 1997, by the Office of Energy Efficiency and Renewable Energy (EE) of the Department of Energy (DOE), under provisions of 10 CFR Part 490 (Alternative Fuel Transportation Program). In its determination, EE partially granted a request by CG&E to receive credits under the Part 490 program for certain 1997 Model Year vehicles which the firm converted to alternative fuel vehicles (AFVs), but not within four months after acquisition as required under 10 CFR 490.305(c). EE granted relief for such vehicles converted by CG&E on or before August 31, 1997. However, in its Appeal, CG&E sought additional credits for such vehicles (30) converted by the firm during the period September through December 1997. After considering evidence presented by CG&E concerning delays encountered by the firm in acquiring AFV conversion equipment, the DOE determined that CG&E's Appeal should be granted in part. Accordingly, the DOE granted CG&E credits under the Part 490 program for 17 of the 30 converted AFVs subject to its Appeal.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Arlington Oil Co. et al	RF304–4889	5/11/98
Arlington Oil Co	RF304–4872	
Enron Corporation/Chemplex Co	RF340–182	5/13/98
Enron Corp./Heritage Propane	RR340–00005	5/12/98
Midwest Haulers, Inc et al	RK272–02843	5/12/98
Schlumberger Technology Corp	RC272–00390	5/12/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Personnel Security Hearing	VSO–0191
Personnel Security Hearing	VSO–0195
Toombs County Commissioners	RF272–98961

[FR Doc. 98–18570 Filed 7–10–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 18 Through May 22, 1998

During the week of May 18 through May 22, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, DC, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: July 6, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 86; Week of May 18 Through May 22, 1998

Appeals

James E. Minter, 5/18/98, VFA–0406

James E. Minter filed an Appeal from a determination issued to him by the Albuquerque Operations of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). Mr. Minter's request sought records of overtime payments to a DOE employee who, as allegedly part of his job requirements, may have engaged in

physical fitness training while on official travel. The Albuquerque Operations Office identified a trip report and a time-card as responsive to the request, but withheld the information on personal grounds under FOIA Exemption 6. In considering the Appeal, the DOE determined that absent special circumstances or information that reveals something personal or private about the individual, Federal Government employees generally have no privacy interest either in their official work performed as a government employee either at or away from their usual duty stations or in their aggregate amount of hours spent working for the government even if this includes overtime. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Albuquerque Operations Office to either release the withheld information or to issue a new determination offering another justification for withholding the information.

Kramer, Rayson, Leake, Rodgers & Morgan, 5/18/98, VFA–0402

The DOE's Office of Hearings and Appeals (OHA) issued a decision denying a Freedom of Information Act (FOIA) Appeal filed by Kramer, Rayson, Leake, Rodgers & Morgan (Kramer). In response to Kramer's FOIA request for information about a third party, the DOE Office of Inspector General (OIG) stated that it could neither confirm nor deny the existence of responsive material (a Glomar response). In its decision, OHA found that OIG properly used Exception 7(C) and the Glomar response to protect the identified privacy rights of the individual, which were found to outweigh any public interest in the information. Accordingly, the Appeal was denied.

Whistleblower Hearing

Thomas T. Tiller, 5/21/98, VWA–0018

A Hearing Officer issued an Initial Agency Decision concerning a whistleblower complaint. The Hearing Officer determined that Thomas T. Tiller (Tiller) made one protected disclosure and proved by a preponderance of the evidence that the protected disclosure was a contributing factor to his demotion and reassignment. The Hearing Officer determined, however, that Wackenhut Services, Incorporated (Wackenhut), a DOE contractor, provided clear and convincing evidence to demonstrate that it would have demoted and reassigned Tiller even if he had not made his protected disclosure. The Hearing Officer also determined that Tiller participated in a protected activity when he filed his Part 708 Complaint in August 1994. She further determined that Tiller's 1994 complaint filing contributed to the pattern of alleged discriminatory acts set forth in his 1996 Whistleblower Complaint. The Hearing Officer determined, however, that Wackenhut proved by clear and convincing evidence that it would have taken the actions enumerated in Tiller's 1996 Whistleblower Complaint even if Tiller had not filed his 1994 Whistleblower Complaint. Therefore, the Hearing Officer found that Tiller failed to establish the existence of any violations of the DOE's Contractor Employee Protection Program for which relief is warranted under 10 CFR § 708.10.

Refund Applications

Better Materials Inc., 5/21/98, RF272–94734

The DOE denied an Application for Refund filed in the Subpart V Crude Oil proceeding because the applicant's wholly owned subsidiary had received a refund from the Surface Transporters Escrow.

Gulf Oil Corp./U.S. Reduction, 5/18/98, RR300–00293

The DOE granted a motion for reconsideration filed by in connection with *Gulf Oil Corp./U.S. Reduction*, Case No. RF300–20907 (June 6, 1994). The DOE determined that the applicant, The Travelers Group, Inc., was entitled to an additional refund of $1,796.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Annco Partnership et al	RK272–01898	5/21/98
Betz Laboratories, Inc	RF272–98945	5/21/98
Leatham Brothers, Inc. et al	RF272–95231	5/19/98
Masterson Company, Inc. et al	RF272–94589	5/19/98
S.A.D. #22 et al	RF272–95369	5/21/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Burlin McKinney	VFA–0418
Liberty Cash Grocers, Inc.	RK272–04779

[FR Doc. 98–18571 Filed 7–10–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 25 Through May 29, 1998

During the week of May 25 through May 29, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, DC 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: July 6, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 87; Week of May 25 Through May 29, 1998

Appeal

Andrew Lee Fuller, 5/26/98, VFA–0412

Andrew Lee Fuller filed an Appeal from a March 24, 1998 determination of the Privacy Act Officer of the Office of Public Affairs of the Department of Energy's (DOE) Albuquerque Operations Office requesting copies of his complete personnel security file. He also requested all "background investigation documents," and all correspondence between DOE headquarters or DOE Albuquerque offices and the DOE Personnel Security Division. In considering the Appeal, the DOE determined that the individual's personnel security file is a system of records pursuant to the Privacy Act. Furthermore, since Mr. Fuller failed to respond to a DOE request, pursuant to the DOE regulations, the DOE had sufficient grounds to deny Mr. Fuller's request for a part of his personnel security file. Accordingly, the DOE denied Mr. Fuller's appeal.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Eyman Equipment Inc	RK272–04780	5/27/98
Gulf Oil Corporation/Interstate Gulf	RR300–00294	5/29/98
Prairie Sand & Gravel, Inc	RK272–4814	5/29/98
Yellow Cab Co. Inc. et al	RK272–02335	5/29/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Delaware State Police	RF272–98910
Enron Corp	RF300–10856
Personnel Security Hearing	VSO–0202
SS Grayson Cooperative, Inc	RF272–95720
Tropigas International	RF300–18788

[FR Doc. 98–18572 Filed 7–10–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6123–7]

Subcontractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the following contractors and subcontractors for access to information that has been, or will be, submitted to EPA under sections 109–112, 114, 129 and 183 of the Clean Air Act (CAA) as amended. (1) Abt Associates, Inc., 4800 Montgomery Lane, Suite 500, Hampden Square, Bethesda, Maryland 20814; ICF, Inc., 9300 Lee Highway, Fairfax, Virginia 22031; EC/R, Inc., 1129 Weaver Dairy Road, Chapel Hill, North Carolina 27514; Eastern Research Group, 900 Perimeter Park, P.O. Box 2010, Morrisville, North Carolina 27560; Alpha-Gamma Technologies, Inc., Suite 350, 900 Ridgefield Drive, Raleigh, North Carolina 27609; Douglas Rae, 36 Gage Street, Needham, Massachusetts 02192; Jonathan Rubin, Department of Economics, University of Tennessee, 519 Stokely Management Center, Knoxville, Tennessee 37996; Robert Taylor, Department of Agricultural Economics and Rural Sociology, Auburn University, Auburn, Alabama 36849; Scott Atkinson, Department of Economics, University of Georgia, Athens, Georgia 30602; under Abt's contract number 68–D–98–001. (2) EC/R, Inc., 1129 Weaver Dairy Road, Chapel Hill, North Carolina 27514, contract number 68–D–98–026. (3) E.H. Pechan and Associates, Inc., 5537–C Hempstead Way, Springfield, Virginia 22151; Pacific Environmental Services, Inc., P.O. Box 12077, Research Triangle Park, North Carolina 27709, under contract number 68–D–98–052. (4) EC/R, Inc., 1129 Weaver Dairy Road, Chapel Hill, North Carolina 27514; The Cadmus Group Incorporated, 135 Beaver Street, Waltham, Massachusetts 02154; INDUS Corporation, 1953 Gallows Road, Suite 300, Vienna, Virginia 22182; Dr. David Burmaster, Alceon Corporation, P.O. Box 382669, Harvard Square Station, Cambridge, Massachusetts 02238, under contract number 68–D6–0065. (5) ICF, Inc., 9300 Lee Highway, Fairfax, Virginia 22031, under contract number 68–D6–0064. (6) Science Applications International Corporation, 1710 Goodridge Drive, McLean, Virginia 22101, under contract number 68–D–98–113.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than 10 days after issuance of this notice.

FOR FURTHER INFORMATION CONTACT: Melva Toomer, Document Control Officer, Office of Air Quality Planning and Standards (MD–11), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–0880.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under sections 109-112, 114, 129 and 183 of the CAA that EPA may provide the above mentioned contractors and subcontractors access to these materials on a need-to-know basis. These contractors and subcontractors will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in health and risk assessment, implementation and strategies development, program review and tracking, standards review and development, and economic impact assessments for Federal air pollution control regulations and development of innovative regulatory strategies.

In accordance with 40 CFR 2.301(h), EPA has determined that each

subcontractor requires access to CBI, submitted to EPA under sections 109–112, 114, 129 and 183 of the CAA, in order to perform work satisfactorily under the above noted contracts. The contractors' and subcontractors' personnel will be given access to information submitted under the above mentioned sections of the CAA. Some of the information may be claimed or determined to be CBI. The contractors' and subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All subcontractor access to CAA CBI will take place at the prime contractors' facility. Each subcontractor will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the subcontractor has access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 2000 under contracts 68–D–98–026 and 68–D–98–052; on September 30, 2001 under contracts 68–D6–0064 and 68–D6–0065; on September 30, 2002 under contract 68–D–98–001; and on May 1, 2003 under contract 68–D–98–113.

Dated: July 7, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–18587 Filed 7–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6123–8]

Proposed CERCLA Prospective Purchaser Agreement for the Uniroyal Hill Street Site

AGENCY: Environmental Protection Agency ("USEPA").

ACTION: Proposal of CERCLA Prospective Purchaser Agreement for the Uniroyal Plastics Hill Street Site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99–499, notice is hereby given that a proposed prospective purchaser agreement ("PPA") for the Uniroyal Plastics Hill Street Removal Action Site ("the Site") located in Mishawaka, Indiana, has been executed by the City of Mishawaka, Indiana. The proposed PPA has been approved by the Attorney General. The proposed PPA would resolve certain potential claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and claims by the State of Indiana under Indiana Code Sections 13–25–4–1—13–25–4-27 against the City of Mishawaka, Indiana. The PPA is structured in phases, with the City of Mishawaka providing certain immediate consideration and environmental benefits under a lease arrangement, while it further evaluates its option to purchase the property within a defined timeframe. Should the City exercise its option, the City must provide further consideration and substantial additional environmental benefits. The proposed PPA would require the City of Mishawaka to pay the United States $2,500 within sixty (60) days of the effective date of the PPA and $2,500 if the City exercises its option to purchase the Property. These payments will be applied toward outstanding response costs incurred by the United States in conducting federally funded removal activities at the Site. The PPA would also require the City of Mishawaka, Indiana to perform certain work, such as an asbestos inventory report, asbestos removal, and site security, as described in the PPA. The Site is not on the NPL, and no further response activities at the Site are anticipated, once the ongoing USEPA removal activities are completed.

DATES: Comments on the proposed PPA must be received by on or before August 12, 1998.

ADDRESSES: A copy of the proposed PPA is available for review at USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Hedi Bogda-Cleveland at (312) 886–5825, prior to visiting the Region 5 office.

Comments on the proposed PPA should be addressed to Hedi Bogda-Cleveland, Office of Regional Counsel, USEPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Hedi Bogda-Cleveland at (312) 886–5825, of the USEPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this notice.

William E. Muno,

Director, Superfund Division, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 98–18589 Filed 7–10–98; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 14, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
B. *New Business*
—*Regulation*
—Capital (Phase III) [12 CFR Part 615] (Final)

*Closed Session**

C. *Report*
1. OSMO Report
2. OGC Litigation Update

Dated: July 8, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–18739 Filed 7–9–98; 3:14 pm]

BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the August 13, 1998 regular meeting of the Farm Credit Administration Board (Board) will not be held. The Board will hold a special meeting at 9:00 a.m. on Tuesday, August 11, 1998. An agenda for that meeting will be forthcoming.

*Session closed-exempt pursuant to 5 U.S.C. 552b(c) (8), (9), and (10).

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TTD (703) 884–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive McLean, Virginia 22102–5090.

Dated: July 8, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–18740 Filed 7–9–98; 3:20 pm]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571; DA 98–1239]

Telecommunications Relay Services (TRS) Certification

July 7, 1998.

Notice is hereby given that the application for certification of the state Telecommunication Relay Services (TRS) program of the state listed below has been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act of 1990, 47 USC 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). On the basis of the state application, the Commission has determined that:

(1) The TRS program of the listed state meets or exceeds all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604;

(2) The TRS program of the listed state makes available adequate procedures and remedies for enforcing the requirements of the state program; and,

(3) The TRS program of the listed state in no way conflicts with federal law.

The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed state are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

On May 14, 1998, the Commission adopted a Notice of Proposed Rulemaking that proposes ways to enhance the quality of existing telecommunications relay services (TRS) and expand those services for better use by individuals with speech disabilities. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 98–90 (rel. May 20, 1998). Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with any new rules ultimately adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 1998, and ending July 25, 2003, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2002, the state may apply for renewal of its TRS program certification by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR 64.605(a) and (b).

Copies of certification letters are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM.

Sixth and Final Notice of States Approved For Certification

File No. TRS–97–10.

Applicant: Nevada Department of Employment, Training, and Rehabilitation State of: Nevada.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov: Helene Nankin, (202) 418–1466, hnankin@fcc.gov; or Kris Monteith, (202) 418–1098, kmonteit@fcc.gov, (TTY, 202–418–0484), at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–18563 Filed 7–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Fourth Meeting of the Advisory Committee for the 2000 World Radiocommunication Conference (WRC–2000 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–2000 Advisory Committee will be held on Thursday, July 30, 1998, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2000 World Radiocommunication Conference. The Advisory Committee will consider any consensus views or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: July 30, 1998; 10:00 am–12:00 noon.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Room 856, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–2000 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2000 World Radiocommunication Conference (WRC–2000). In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of the fourth meeting of the WRC–2000 Advisory Committee.

The WRC–2000 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the fourth meeting is as follows:

AGENDA

Fourth Meeting of the WRC–2000 Advisory Committee, Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, D.C. 20554

July 30, 1998; 10:00 am–12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Second Meeting
4. IWG Reports
5. Consideration of Consensus Views and Issue Papers
6. Development of Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–18561 Filed 7–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Draft 1998–2003 Strategic Plan

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Request for comment.

BACKGROUND: In accordance with the Government Performance and Results Act of 1993, the FDIC is soliciting for consideration the views and suggestions of stakeholders potentially affected by or interested in the FDIC's strategic plan.

The draft strategic plan covers the six-year period 1998 through 2003 and provides a framework for implementing the agency's mission of contributing to stability and public confidence in the nation's financial system. This is accomplished through the FDIC's three major program areas—Insurance, Supervision, and Receivership Management—that work to achieve the following results:

- Protection of insured depositors from loss, without recourse to taxpayer funding,
- Safety and soundness of insured depository institutions,
- Protection of consumers' rights and the investment by FDIC-supervised institutions in their communities, and
- Recovery to creditors of receiverships.

The plan can be reviewed on the FDIC's website, http://www.fdic.gov, in the "About FDIC" section.

Printed copies may be obtained from the FDIC Public Information Center by calling 1–800–276–6003 (202–416–6940 within the Washington metropolitan area) or sending electronic mail to PublicInfo@FDIC.gov.

DATES: The comment period closes August 10, 1998.

ADDRESSES: Interested parties are invited to submit their written comments to: FDIC—Division of Finance, Business Planning Section, Room 536, 801 17th Street, NW, Washington, DC 20434 or Internet E-mail: StrategicPlan@FDIC.gov

FOR FURTHER INFORMATION CONTACT: Gordon A. Goeke at the addresses identified above.

Dated at Washington, DC, this 8th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–18542 Filed 7–10–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1223–DR]

Florida; Amendment No. 2 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–1223–DR), dated June 18, 1998, and related determinations.

EFFECTIVE DATE: June 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include reimbursement for the eligible costs associated with the pre-staging of Emergency Management Assistance Compact fire suppression assets in the State of Florida.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–18585 Filed 7–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1223–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1223–DR), dated June 18, 1998, and related determinations.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 18, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from extreme fire hazards beginning on May 25, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under Title IV, Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.

You are hereby authorized to coordinate with other Federal agencies to provide any form of direct Federal assistance which you deem appropriate for required emergency measures, authorized under the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. In addition, you are authorized to provide such other forms of assistance under the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul W. Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

FEMA has been authorized to coordinate with other Federal agencies to provide any form of direct Federal assistance appropriate for required emergency measures, authorized under the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the counties of Brevard, Columbia, Duval, Flagler, Putnam, Seminole, St. Johns and Wakulla.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dated: June 22, 1998.

James L. Witt,

Director.

[FR Doc. 98–18586 Filed 7–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1222–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1222–DR), dated June 16, 1998, and related determinations.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 16, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe thunderstorms and tornadoes on May 31, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts, as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide reimbursement for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Reimbursement for debris removal and emergency protective measures (Categories A and B) for Chenango, Otsego, Rensselaer, and Saratoga Counties.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dated: June 22, 1998.

James L. Witt,

Director.

[FR Doc. 98–18584 Filed 7–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Technical Mapping Advisory Council Open Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following teleconference meeting will be held:

NAME: Technical Mapping Advisory Council.

DATE OF MEETING: July 16, 1998.

PLACE: The FEMA Conference Operator in Washington, DC will arrange the teleconference. Individuals interested in participating should fax a request including their telephone numbers to (202) 646–4596 no later than July 13, 1998.

TIME: 11:00 a.m. to 1:00 p.m.

PROPOSED AGENDA:

1. Call to order.
2. Announcements.
3. Action on minutes of previous meeting.
4. Develop format for the Council's 1998 annual report.
5. Develop agenda and make assignments for August meeting.
6. Discuss recommendations for use of future conditions hydrology.
7. Report on elevation certificate.
8. Adjournment.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request after they have been approved by the next Technical Mapping Advisory Council meeting on August 17 and 18, 1998.

Dated: June 29, 1998.

Craig S. Wingo,

Deputy Associate Director for Mitigation.

[FR Doc. 98–18583 Filed 7–10–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL HOUSING FINANCE BOARD

[No. 98–N–5]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (FHLBank) members it has selected for the 1998–99 second quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which

FHLBank members selected for review must submit Community Support Statements to the Finance Board.

DATES: FHLBank members selected for the 1998–99 second quarter review cycle must submit completed Community Support Statements to the Finance Board on or before August 27, 1998.

ADDRESSES: FHLBank members selected for the 1998–99 second quarter review cycle must submit completed Community Support Statements to the Finance Board either by regular mail: Office of Policy, Compliance Assistance Division, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006; or by electronic mail: BATESP@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Penny S. Bates, Program Analyst, Office of Policy, Compliance Assistance Division, by telephone at 202/408–2574, by electronic mail at BATESP@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service that FHLBank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), *id.* 2901 *et seq.*, and record of lending to first-time homebuyers. *Id.* 1430(g)(2).

Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a FHLBank member must meet in order to maintain access to long-term advances and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 936. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. *Id.* § 936.3. Only members subject to the CRA must meet the CRA standard. *Id.* § 936.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. *Id.* § 936.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each FHLBank district for community support review each calendar quarter. *Id.* § 936.2(a). The Finance Board will not review an institution's community support performance until it has been a FHLBank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each FHLBank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the August 27, 1998 deadline prescribed in this notice. *Id.* § 936.2(b)(1)(ii) and (c). On or before July 28, 1998, each FHLBank will notify the members in its district that have been selected for the 1998–99 second quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. *Id.* § 936.2(b)(2)(i). The member's FHLBank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site at WWW.FHFB.GOV. Upon request, the member's FHLBank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 1998–99 second quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Branford Savings Bank	Branford	CT
First FS&LA of East Hartford	East Hartford	CT
Enfield Federal Savings and Loan Association	Enfield	CT
Essex Savings Bank	Essex	CT
First National Bank of New England	Hartford	CT
Citizens Bank of Connecticut	Middletown	CT
First City Bank	New Britain	CT
Cargill Bank	Putnam	CT
North Middlesex Savings Bank	Ayer	MA
Boston Private Bank & Trust Company	Boston	MA
First Federal Savings Bank of Boston	Boston	MA
First Trade Union Bank	Boston	MA
Haymarket Co-operative Bank	Boston	MA
Hyde Park Savings Bank	Boston	MA
Investors Bank and Trust Company	Boston	MA
Peoples Federal Savings Bank	Brighton	MA
Cambridge Savings Bank	Cambridge	MA
East Cambridge Savings Bank	Cambridge	MA
Dedham Institution for Savings	Dedham	MA
Bank of Easthampton	Easthampton	MA
Eagle Bank	Everett	MA
Citizens-Union Savings Bank	Fall River	MA
Foxboro Federal Savings and Loan Association	Foxboro	MA
Georgetown Savings Bank	Georgetown	MA
First Essex Bank, FSB	Lawrence	MA
Marblehead Savings Bank	Marblehead	MA
Medford Co-operative Bank	Medford	MA
Plymouth Savings Bank	Middleboro	MA
Millbury Savings Bank	Millbury	MA
Monson Savings Bank	Monson	MA
Lawrence Savings Bank	North Andover	MA
Warren Five Cents Savings Bank	Peabody	MA

Saugus Co-operative Bank	Saugus	MA
Scituate Federal Savings Bank	Scituate	MA
Spencer Savings Bank	Spencer	MA
Hampden Savings Bank	Springfield	MA
Bristol County Bank	Taunton	MA
Federal Savings Bank	Waltham	MA
Middlesex Federal Savings	West Somerville	MA
Auburn Savings & Loan Association	Auburn	ME
Augusta Federal Savings Bank	Augusta	ME
First National Bank of Bar Harbor	Bar Harbor	ME
First FS&LA of Bath	Bath	ME
Aroostook County FS&LA	Caribou	ME
Kennebunk Savings Bank	Kennebunk	ME
Skowhegan Savings Bank	Skowhegan	ME
Kennebec Federal Savings & Loan Association	Waterville	ME
Federal Savings Bank of Dover	Dover	NH
Farmington National Bank	Farmington	NH
Franklin Savings Bank	Franklin	NH
Meredith Village Savings Bank	Meredith	NH
Salem Co-operative Bank	Salem	NH
First Brandon National Bank	Brandon	VT
Vermont National Bank	Brattleboro	VT
Howard Bank, N.A	Burlington	VT
Woodstock National Bank	Woodstock	VT

Federal Home Loan Bank of New York—District 2

Axia Federal Savings Bank	Avenel	NJ
Pamrapo Savings Bank, S.L.A	Bayonne	NJ
National Bank of Sussex County	Branchville	NJ
Ocean Federal Savings Bank	Brick	NJ
Farmers & Mechanics Bank	Burlington	NJ
Inter-Boro Savings and Loan Association	Cherry Hill	NJ
Freehold Savings and Loan Association	Freehold	NJ
GSL Savings Bank	Guttenberg	NJ
Oritani Savings Bank, SLA	Hackensack	NJ
Investors Savings Bank	Millburn	NJ
Millington Savings Bank	Millington	NJ
Dollar Savings Bank, SLA	Newark	NJ
Ocean City Home Savings and Loan Association	Ocean City	NJ
Amboy National Bank	Old Bridge	NJ
First Savings Bank, SLA	Perth Amboy	NJ
Ridgewood Savings Bank of New Jersey	Ridgewood	NJ
Lakeview Savings Bank	West Paterson	NJ
South Bergen Savings Bank	Wood Ridge	NJ
ALBANK, FSB	Albany	NY
Amsterdam Federal Savings & Loan Association	Amsterdam	NY
Brooklyn Federal Savings Bank	Brooklyn	NY
Canisteo Savings and Loan Association	Canisteo	NY
Canton Federal Savings and Loan Association	Canton	NY
Home Federal Savings Bank	Douglaston	NY
Elmira Savings and Loan, F.A	Elmira	NY
National Bank of Geneva	Geneva	NY
Glens Falls National Bank and Trust Company	Glens Falls	NY
Gloversville Federal Savings	Gloversville	NY
Maple City Savings and Loan Association	Hornell	NY
Sunnyside FS&LA of Irvington	Irvington	NY
First National Bank of Lisbon	Lisbon	NY
Lyons National Bank	Lyons	NY
Maspeth Federal Savings & Loan Association	Maspeth	NY
Massena Savings and Loan Association	Massena	NY
Medina Savings and Loan	Medina	NY
Long Island Savings Bank, FSB	Melville	NY
Cross County Federal Savings Bank	Middle Village	NY
Provident Savings Bank, F.A	Montebello	NY
Carver Federal Savings Bank	New York	NY
Dime Savings Bank of New York	New York	NY
The Berkshire Bank	New York	NY
Ogdensburg Federal Savings & Loan Association	Ogdensburg	NY
Wilber National Bank	Oneonta	NY
Union State Bank	Orangeburg	NY
First Federal Savings Bank	Peekskill	NY
First Tier Bank and Trust	Salamanca	NY
Saratoga National Bank and Trust	Saratoga Springs	NY
Schenectady Federal Savings Bank	Schenectady	NY
Yonkers Savings and Loan Association, FA	Yonkers	NY

Federal Home Loan Bank of Pittsburgh—District 3

Delaware National Bank	Georgetown	DE
The Travelers Bank	Newark	DE
Artisans' Savings Bank	Wilmington	DE
Laurel Savings Bank	Allison Park	PA
Investment Savings Bank	Altoona	PA
Reliance Savings Bank	Altoona	PA
Peoples Home Savings Bank	Beaver Falls	PA
Pennwood Savings Bank	Bellevue	PA
Columbia County Farmers National Bank	Bloomsburg	PA
Bryn Mawr Trust Company	Bryn Mawr	PA
Community Bank, N.A	Carmichaels	PA
Charleroi Federal Savings Bank	Charleroi	PA
Citizens National Bank of Evans City	Evans City	PA
Armstrong County Building & Loan Association	Ford City	PA
Greenville Savings Bank	Greenville	PA
Westmoreland FS&LA of Latrobe	Latrobe	PA
First National Bank of Leesport	Leesport	PA
Keystone Savings Bank	Lehigh Valley	PA
Mifflin County Savings Bank	Lewistown	PA
First Citizens National Bank	Mansfield	PA
First National Bank of Mifflintown	Mifflintown	PA
First Federal Savings Bank	Monessan	PA
Parkvale Savings Bank	Monroeville	PA
Community State Bank of Orbisonia	Orbisonia	PA
Beneficial Mutual Savings Bank	Philadelphia	PA
Firstrust Bank	Philadelphia	PA
Prudential Savings Bank	Philadelphia	PA
NorthSide Bank	Pittsburgh	PA
Troy Hill Federal Savings & Loan Association	Pittsburgh	PA
West View Savings Bank	Pittsburgh	PA
Workingmens Savings Bank, FSB	Pittsburgh	PA
Liberty Savings Bank, F.S.B	Pottsville	PA
Elk County Savings & Loan Association	Ridgway	PA
Sewickley Savings Bank	Sewickley	PA
Keystone State Savings Bank	Sharpsburg	PA
First National Bank of Slippery Rock	Slippery Rock	PA
Union National Bank	Souderton	PA
First National Bank of Spring Mills	Spring Mills	PA
East Stroudsburg Savings Association	Stroudsburg	PA
Grange National Bank of Wyoming County	Tunkhannock	PA
Washington Federal Savings Bank	Washington	PA
First FS&LA of Greene County	Waynesburg	PA
Citizens & Northern Bank	Wellsboro	PA
First Century Bank, N.A	Bluefield	WV
Huntington FS&LA	Huntington	WV
First National Bank of Keystone	Keystone	WV
Doolin Security Savings Bank FSB	New Martinsville	WV
One Valley Bank of Oak Hill, Inc	Oak Hill	WV
United National Bank	Parkersburg	WV
One Valley Bank of Mercer County, Inc	Princeton	WV
First FS&LA of Ravenswood	Ravenswood	WV
First Federal Savings and Loan Association	Sistersville	WV

Federal Home Loan Bank of Atlanta—District 4

Brantley Bank and Trust Company	Brantley	AL
Bank of Carbon Hill	Carbon Hill	AL
Heritage Bank	Decatur	AL
Robertson Banking Company	Demopolis	AL
The Citizens Bank	Greensboro	AL
City Bank of Hartford	Hartford	AL
Security Federal Savings Bank	Jasper	AL
First Citizens Bank of Monroeville	Monroeville	AL
The Citizens Bank	Moulton	AL
Phenix-Girard Bank	Phenix City	AL
Bank of Vernon	Vernon	AL
Bank of Wedowee	Wedowee	AL
Bank of Belle Glade	Belle Glade	FL
Community Bank of Manatee	Bradenton	FL
Sun Bank and Trust Company	Brooksville	FL
Citizens Bank of Clearwater	Clearwater	FL
Commercebank, N.A	Coral Gables	FL
Peoples State Bank of Groveland	Groveland	FL
First State Bank of the Florida Keys	Key West	FL

International Finance Bank	Miami	FL
Charlotte State Bank	Port Charlotte	FL
First American Bank of Walton County	Santa Rosa Beach	FL
Central Bank of Tampa	Tampa	FL
First National Bank of Tampa	Tampa	FL
Wauchula State Bank	Wauchula	FL
Alma Exchange Bank and Trust	Alma	GA
Bank of Early	Blakely	GA
Colonial Bank Southeast	Broxton	GA
Planters and Citizens Bank	Camilla	GA
Claxton Bank	Claxton	GA
First Clayton Bank and Trust Company	Clayton	GA
Central Bank and Trust	Cordele	GA
First Community Bank of Dawsonville	Dawsonville	GA
Bank Atlanta	Decatur	GA
Bank of Eastman	Eastman	GA
Gilmer County Bank	Ellijay	GA
Fairburn Banking Company	Fairburn	GA
Capital Bank	Fort Oglethorpe	GA
Bank of Hiawassee	Hiawassee	GA
Empire Banking Company	Homerville	GA
Farmers State Bank	Lincolnton	GA
Peoples Bank	Lyons	GA
Mount Vernon Bank	Mt. Vernon	GA
The Citizens Bank	Nashville	GA
Bank of Newnan	Newnan	GA
Community Bank of Wilcox	Pitts	GA
The Tattnall Bank	Reidsville	GA
Greater Rome Bank	Rome	GA
Citizens Security Bank	Tifton	GA
Bank of Georgia	Watkinsville	GA
Mercantile Safe Deposit and Trust Company	Baltimore	MD
Community Bank of Bowie	Bowie	MD
Easton Bank and Trust Company	Easton	MD
Maryland Bank and Trust Company	Lexington Park	MD
First National Bank of North East	North East	MD
The East Carolina Bank	Engelhard	NC
Catawba Valley Bank	Hickory	NC
First Bank	Troy	NC
Sandhills Bank	Bethune	SC
The Peoples Bank of Iva	Iva	SC
The Palmetto Bank	Laurens	SC
The Citizens Bank	Olanta	SC
First State Bank	Danville	VA

Federal Home Loan Bank of Cincinnati—District 5

First Federal Bank for Savings	Ashland	KY
Bank of Edmonson County	Brownsville	KY
United Citizens Bank and Trust, Inc	Campbellsburg	KY
Citizens Bank & Trust Company	Campbellsville	KY
Farmers & Traders Bank	Campton	KY
Carrollton FS&LA, Inc	Carrollton	KY
First National Bank of Central City	Central City	KY
Peoples Bank of Northern Kentucky, Inc	Crestview Hills	KY
Farmers National Bank	Cynthiana	KY
Central Kentucky Federal Savings Bank	Danville	KY
United Kentucky Bank	Falmouth	KY
Columbia Federal Savings Bank	Ft. Mitchell	KY
Bank of Germantown	Germantown	KY
HNB Bank, N.A	Harlan	KY
First Federal Savings Bank of Harrodsburg	Harrodsburg	KY
State Bank and Trust Company	Harrodsburg	KY
First Federal Savings and Loan Association	Hazard	KY
Bank of Magnolia	Hodgenville	KY
MidAmerica Bank, FSB	LaGrange	KY
First Lancaster Federal Savings Bank	Lancaster	KY
Citizens National Bank	Lebanon	KY
First Federal Savings Bank	Leitchfield	KY
Farmers Deposit Bank of Middleburg	Middleburg	KY
First State Bank of Pineville	Middlesboro	KY
Home Federal Bank	Middlesboro	KY
Middlesboro Federal Bank, F.S.B	Middlesboro	KY
Bank of Mt. Vernon	Mt. Vernon	KY
Peoples Bank Mt. Washington	Mt. Washington	KY
Banterra Bank, N.A	Paducah	KY

Family Bank, FSB	Paintsville	KY
Central Bank of North Pleasureville	Pleasureville	KY
First Bank and Trust Company	Princeton	KY
Bullitt County Bank	Shepardsville	KY
Liberty National Bank	Ada	OH
The Bartlett Farmers Bank	Bartlett	OH
Industrial Savings and Loan Association	Bellevue	OH
Bridgeport Savings and Loan Association	Bridgeport	OH
Peoples Savings and Loan Company	Bucyrus	OH
First National Bank of Southeastern Ohio	Caldwell	OH
Clifton Heights Loan and Building Company	Cincinnati	OH
The Savings Bank	Circleville	OH
The Peoples Bank Company	Coldwater	OH
First City Bank	Columbus	OH
Valley Savings Bank	Cuyahoga Falls	OH
First Federal Savings and Loan	Defiance	OH
Fidelity FS&LA of Delaware	Delaware	OH
The Peoples Banking Company	Findlay	OH
First FS&LA of Galion	Galion	OH
Peoples Bank of Gambier	Gambier	OH
Home Building and Loan Company	Greenfield	OH
Greenville Federal Savings & Loan Association	Greenville	OH
Home Federal Bank, a FSB	Hamilton	OH
First Federal Savings Bank of Ironton	Ironton	OH
Lawrence Federal Savings Bank	Ironton	OH
Liberty Federal Savings and Loan Association	Ironton	OH
Ohio River Bank	Ironton	OH
Kingston National Bank	Kingston	OH
Citizens Bank of Logan	Logan	OH
Mechanics Savings Bank	Mansfield	OH
Peoples FS&LA of Massillon	Massillon	OH
Metropolitan Savings Bank of Cleveland	Mayfield Heights	OH
Miami Savings and Loan Company	Miamitown	OH
The Middlefield Banking Company	Middlefield	OH
Security Savings Association	Milford	OH
Nelsonville Home and Savings Association	Nelsonville	OH
First FS&LA of Newark	Newark	OH
Geauga Savings Bank	Newbury	OH
Security Dollar Bank	Niles	OH
National Bank of Oak Harbor	Oak Harbor	OH
Valley Central Savings Bank	Reading	OH
Citizens Banking Company	Sandusky	OH
Peoples Federal Savings & Loan Association	Sidney	OH
Commodore Bank	Somerset	OH
First Safety Bank	St. Bernard	OH
Monroe Federal Savings and Loan Association	Tipp City	OH
Van Wert Federal Savings Bank	Van Wert	OH
Home Savings and Loan Association	Wapakoneta	OH
The Waterford Commercial & Savings	Waterford	OH
Adams County Building and Loan Company	West Union	OH
Commerce National Bank	Worthington	OH
First Federal Savings Bank of Youngstown	Youngstown	OH
Dollar Bank, FSB	Pittsburgh	PA
Bank of Bartlett	Bartlett	TN
Bank of Bolivar	Bolivar	TN
Farmers and Merchants Bank	Clarksville	TN
Farmers and Merchants Bank	Dyer	TN
First Citizens National Bank	Dyersburg	TN
Elizabethton Federal Savings Bank	Elizabethton	TN
Progressive Savings Bank, FSB	Jamestown	TN
Marion Trust & Banking Company	Jasper	TN
Home Federal Bank of Tennessee	Knoxville	TN
First Central Bank	Lenoir City	TN
American Savings Bank	Livingston	TN
Volunteer FS&LA of Madisonville	Madisonville	TN
First National Bank	McMinnville	TN
Jefferson Federal Savings & Loan Association	Morristown	TN
TNBank	Oak Ridge	TN
Union Planters Bank of N.W. Tennessee, FSB	Paris	TN
Citizens State Bank	Parsons	TN
Citizens Community Bank	Winchester	TN

Federal Home Loan Bank of Indianapolis—District 6

First Federal Savings Bank of Angola	Angola	IN
Peoples Federal Savings Bank of Dekalb County	Auburn	IN

Peoples Federal Savings Bank	Aurora	IN
Farmers and Mechanics FS&LA	Bloomfield	IN
First State Bank	Bourbon	IN
Columbus Bank and Trust Company	Columbus	IN
Peoples Trust Bank	Corydon	IN
English State Bank	English	IN
Home Loan Bank, FSB	Fort Wayne	IN
Farmers Bank, Frankfort	Frankfort	IN
Newton County Loan & Savings Association	Goodland	IN
First Federal Savings & Loan	Greensburg	IN
Lake FS&LA of Hammond	Hammond	IN
HFS Bank, F.S.B	Hobart	IN
Security Federal Savings Bank	Logansport	IN
First Federal Savings Bank of Marion	Marion	IN
Michigan City Savings & Loan	Michigan City	IN
First Merchants Bank, N.A.	Muncie	IN
Mutual Federal Savings Bank	Muncie	IN
American Savings, FSB	Munster	IN
Community Bank	Noblesville	IN
First National Bank of Odon	Odon	IN
Pendleton Banking Company	Pendleton	IN
Lincoln Federal Savings Bank	Plainfield	IN
Harrington Bank, FSB	Richmond	IN
First Parke State Bank	Rockville	IN
Scottsburg Building & Loan	Scottsburg	IN
Home Federal Savings Bank	Seymour	IN
Owen Community Bank, SB	Spencer	IN
First Farmers State Bank	Sullivan	IN
Peoples Building and Loan Association	Tell City	IN
Terre Haute First National Bank	Terre Haute	IN
Union Trust Bank	Union City	IN
First Federal Bank, a FSB	Vincennes	IN
First Federal Savings Bank of Wabash	Wabash	IN
First FS&LA of Washington	Washington	IN
Home Building Savings Bank, FSB	Washington	IN
Peoples National Bank & Trust	Washington	IN
Peoples Loan and Trust Bank	Winchester	IN
Bank of Wolcott	Wolcott	IN
First Federal S&LA of Alpena	Alpena	MI
Bank of Ann Arbor	Ann Arbor	MI
Bay Port State Bank	Bay Port	MI
Fidelity Bank	Birmingham	MI
Eaton Federal Savings Bank	Charlotte	MI
Hastings City Bank	Hastings	MI
Kalamazoo County State Bank	Schoolcraft	MI
Franklin Bank, N.A.	Southfield	MI
First National Bank of St. Ignace	St. Ignace	MI
Northwestern Savings Bank and Trust	Traverse City	MI

Federal Home Loan Bank of Chicago—District 7

State Bank of Auburn	Auburn	IL
West Pointe Bank and Trust Company	Belleville	IL
Belvidere National Bank and Trust Company	Belvidere	IL
First Federal Savings Bank of Belvidere	Belvidere	IL
American Enterprise Bank	Buffalo Grove	IL
Farmers State Bank of Camp Point	Camp Point	IL
Greene County National Bank in Carrollton	Carrollton	IL
First Federal Savings Bank—Champaign-Urbana	Champaign	IL
Charleston Federal Savings & Loan Association	Charleston	IL
Broadway Bank	Chicago	IL
Central FS&LA of Chicago	Chicago	IL
Columbus Savings Bank	Chicago	IL
Fidelity Federal Savings Bank	Chicago	IL
First Security Federal Savings Bank	Chicago	IL
Liberty Bank for Savings	Chicago	IL
Lincoln Park Savings Bank	Chicago	IL
Mutual FS&LA of Chicago	Chicago	IL
Universal Federal Savings Bank	Chicago	IL
Collinsville Building and Loan Association	Collinsville	IL
Home FS&LA of Collinsville	Collinsville	IL
Covest Banc, NA	Des Plaines	IL
Calumet Federal S&LA of Chicago	Dolton	IL
First Federal Savings and Loan Association	Edwardsville	IL
Forreston State Bank	Forreston	IL

Mercantile Bank of Northern Illinois	Freeport	IL
Fulton State Bank	Fulton	IL
Glenview State Bank	Glenview	IL
Guardian Savings Bank FSB	Granite City	IL
Herrin Security Bank	Herrin	IL
South End Savings, s.b.	Homewood	IL
First National Bank of Jonesboro	Jonesboro	IL
Eureka Savings Bank	La Salle	IL
First State Bank of Western Illinois	LaHarpe	IL
First National Bank of Illinois	Lansing	IL
Lisle Savings and Loan Association	Lisle	IL
West Suburban Bank	Lombard	IL
First Security Bank	Macknaw	IL
Milford Building and Loan Association	Milford	IL
Southeast National Bank of Moline	Moline	IL
Nashville Savings Bank	Nashville	IL
Central Illinois Bank McLean County	Normal	IL
Citizens Savings Bank, F.S.B	Normal	IL
Northview Bank and Trust	Northfield	IL
Illini State Bank	Oglesby	IL
Peoples Bank and Trust of Pana	Pana	IL
Home Guaranty Bank	Piper City	IL
Poplar Grove State Bank	Poplar Grove	IL
First Robinson Savings & Loan, F.A	Robinson	IL
Rock Island Bank	Rock Island	IL
Alpine Bank of Illinois	Rockford	IL
Damen Federal Bank for Savings	Schaumburg	IL
First FS&LA of Shelbyville	Shelbyville	IL
The Bank of Yorkville	Yorkville	IL
The International Bank of Amherst	Amherst	WI
First National Bank of Bangor	Bangor	WI
Bank of Deerfield	Deerfield	WI
Bank of Edgar	Edgar	WI
Fox Valley Savings and Loan Association	Fond du Lac	WI
National Exchange Bank and Trust	Fond du Lac	WI
First Northern Savings Bank, S.A	Green Bay	WI
Park Bank	Holmen	WI
Ixonia State Bank	Ixonia	WI
M&I Bank FSB	Kenosha	WI
First Federal Savings Bank La Crosse-Madison	La Crosse	WI
Ladysmith Federal Savings & Loan Association	Ladysmith	WI
Markesan Bank	Markesan	WI
Fidelity National Bank	Medford	WI
Merrill Federal Savings and Loan Association	Merrill	WI
Continental Savings Bank, S.A	Milwaukee	WI
Guaranty Bank, S.S.B	Milwaukee	WI
Lincoln Community Bank	Milwaukee	WI
M&I Bank SSB	Sheboygan	WI
Spencer State Bank	Spencer	WI
First Bank of Tomah	Tomah	WI
Farmers State Bank	Waupaca	WI
Paper City Savings Association	Wisconsin Rapids	WI

Federal Home Loan Bank of Des Moines—District 8

Brenton Savings Bank, FSB	Ames	IA
First American Bank	Ames	IA
Citizens Savings Bank	Anamosa	IA
Community State Bank	Ankeny	IA
Ashton State Bank	Ashton	IA
Atkins Savings Bank and Trust	Atkins	IA
Midwest FS&LA of Eastern Iowa	Burlington	IA
Iowa Trust and Savings Bank	Centerville	IA
First Security Bank and Trust Company	Charles City	IA
Page County Federal Savings Association	Clarinda	IA
First Federal Savings Bank of Creston, F.S.B	Creston	IA
State FS&LA of Des Moines	Des Moines	IA
Fidelity Bank and Trust	Dyersville	IA
Community Savings Bank	Edgewood	IA
First American Bank	Fort Dodge	IA
Security Bank Jasper-Poweshiek	Grinnell	IA
Hampton State Bank	Hampton	IA
Independence Federal Bank for Savings	Independence	IA
Hawkeye State Bank	Iowa City	IA
First Community Bank, a FSB	Keokuk	IA
Keokuk Savings Bank and Trust Company	Keokuk	IA

Iowa State Savings Bank	Knoxville	IA
Cedar Valley Bank & Trust	LaPorte City	IA
Farmers and Merchants Savings Bank	Lone Tree	IA
Keystone Savings Bank	Marengo	IA
Interstate S&LA of McGregor	McGregor	IA
United Community Bank	Milford	IA
New Albin Savings Bank	New Albin	IA
Mid-Iowa Savings Bank, F.S.B	Newton	IA
Norwalk-Cumming State Bank	Norwalk	IA
Northwestern State Bank of Orange City	Orange City	IA
Clarke County State Bank	Osceola	IA
First Trust and Savings Bank	Oxford	IA
Citizens State Bank	Pocahontas	IA
Great River Bank and Trust	Princeton	IA
Citizens Bank	Sac City	IA
American State Bank	Sioux Center	IA
Solon State Bank	Solon	IA
Northwest Federal Savings Bank	Spencer	IA
First Federal Savings Bank of the Midwest	Storm Lake	IA
Randall-Story State Bank	Story City	IA
Story County Bank & Trust	Story City	IA
Waukee State Bank	Waukee	IA
West Liberty State Bank	West Liberty	IA
The First National Bank of Aitkin	Aitkin	MN
Viking Savings Association, F.A	Alexandria	MN
21st Century Bank	Balaton	MN
First State Bank of Bigfork	Bigfork	MN
Brainerd Savings and Loan Association, a FSB	Brainerd	MN
The Oakley National Bank of Buffalo	Buffalo	MN
State Bank in Eden Valley	Eden Valley	MN
The State Bank of Faribault	Faribault	MN
State Bank of Kimball	Kimball	MN
TCF National Bank Minnesota	Minneapolis	MN
Merchants State Bank of North Branch	North Branch	MN
The First National Bank of Osakis	Osakis	MN
Valley State Bank of Oslo	Oslo	MN
First National Bank	Plainview	MN
Princeton Bank	Princeton	MN
The Goodhue County National Bank	Red Wing	MN
Norwest Bank Minnesota South, N.A	Rochester	MN
Minnwest Bank South	Slayton	MN
Citizens Independent Bank	St. Louis Park	MN
The First National Bank of St. Peter	St. Peter	MN
Tracy State Bank	Tracy	MN
Queen City Federal Savings Bank	Virginia	MN
Security State Bank of Wykoff	Wykoff	MN
Missouri Federal Savings Bank	Cameron	MO
Southwest Missouri Bank	Carthage	MO
First Bank	Creve Couer	MO
North American Savings Bank, FSB	Grandview	MO
MCM Savings Bank, FSB	Hannibal	MO
Citizens Bank of Missouri	Harrisonville	MO
First Federal Bank, F.S.B	Kansas City	MO
Laclede County Bank	Lebanon	MO
Clay County Savings and Loan Association	Liberty	MO
Liberty Savings Bank, F.S.B	Liberty	MO
Marceline Home Savings & Loan Association	Marceline	MO
First Home Savings Bank	Mountain Grove	MO
Home S&LA of Norborne, F.A	Norborne	MO
Southern Missouri Bank & Trust Company	Poplar Bluff	MO
Central Federal Savings & Loan Association	Rolla	MO
The First National Bank of the Mid-South	Sikeston	MO
Guaranty Federal Savings Bank	Springfield	MO
Midwest FS&LA of St. Joseph	St. Joseph	MO
Provident Bank, f.s.b	St. Joseph	MO
Bremen Bank and Trust Company	St. Louis	MO
BNC National Bank	Bismarck	ND
First Southwest Bank	Bismarck	ND
Ramsey National Bank & Trust Company	Devils Lake	ND
American State Bank and Trust of Dickinson	Dickinson	ND
Security State Bank	Dunseith	ND
First National Bank North Dakota	Grand Forks	ND
The National Bank of Harvey	Harvey	ND
Walhalla State Bank	Walhalla	ND
First Federal Bank, a FSB	Beresford	SD
First Savings Bank	Beresford	SD

Bryant State Bank	Bryant	SD
First Western Federal Savings Bank	Rapid City	SD

Federal Home Loan Bank of Dallas—District 9

Horizon Bank	Arkadelphia	AR
First National Bank of Sharp County	Ash Flat	AR
Arkansas National Bank	Bentonville	AR
Heartland Community Bank	Camden	AR
American State Bank	Charleston	AR
First National Bank of Conway	Conway	AR
Corning Savings and Loan Association	Corning	AR
Bank of Glenwood	Glenwood	AR
First State Bank of Gurdon	Gurdon	AR
First Jacksonville Bank and Trust	Jacksonville	AR
The Arkansas Bank	Jonesboro	AR
Arkansas Bankers' Bank	Little Rock	AR
Bank of Lincoln	Little Rock	AR
Diamond State Bank	Murfreesboro	AR
First National Bank	Paragould	AR
Peoples Bank of Paragould	Paragould	AR
Pocahontas Federal Savings & Loan Association	Pocahontas	AR
Bank of Star City	Star City	AR
Bank of Waldron	Waldron	AR
First National Bank of St. Charles Parish	Boutte	LA
Citizens Progressive Bank	Columbia	LA
Beauregard Federal Savings Bank	DeRidder	LA
Home Savings Bank, FSB	Lafayette	LA
First Federal Savings and Loan Association	Lake Charles	LA
Greater New Orleans Homestead, FSB	Metairie	LA
Minden Building and Loan Association	Minden	LA
Algiers Homestead Association	New Orleans	LA
Dryades Savings Bank, FSB	New Orleans	LA
Fifth District Savings & Loan Association	New Orleans	LA
Union Savings and Loan Association	New Orleans	LA
Plaquemine Bank and Trust Company	Plaquemine	LA
Rayne Building and Loan Association	Rayne	LA
Citizens Bank and Trust Company	Springhill	LA
Meritrust Federal Savings Bank	Thibodaux	LA
Deposit Guaranty National Bank	Jackson	MS
Inter-City Federal Bank for Savings	Louisville	MS
First National Bank of Lucedale	Lucedale	MS
First National Bank of Pontoc	Pontotoc	MS
Lamar Bank	Purvis	MS
North Central Bank For Savings	Winona	MS
Alamogordo Federal Savings & Loan Association	Alamogordo	NM
First National Bank of Artesia	Artesia	NM
First National Bank in Clayton	Clayton	NM
Matrix Capital Bank	Las Cruces	NM
First Federal Savings Bank of New Mexico	Roswell	NM
Charter Bank For Savings, FSB	Santa Fe	NM
Tucumcari Federal Savings & Loan Association	Tucumcari	NM
First Savings Bank, FSB	Arlington	TX
Franklin Federal Bancorp, a FSB	Austin	TX
Hartland Bank, N.A	Austin	TX
Hill Country Bank	Austin	TX
Citizens National Bank	BenBrook	TX
Mercantile Bank, N.A	Brownsville	TX
Homestead Bank, SSB	College Station	TX
First State Bank	Columbus	TX
First Bank of Conroe, N.A	Conroe	TX
First Commerce Bank	Corpus Christi	TX
Cuero Federal Savings and Loan Association	Cuero	TX
Dalhart Federal Savings and Loan Association	Dalhart	TX
Mercantile Bank & Trust, FSB	Dallas	TX
Texas Bank and Trust, N.A	Dallas	TX
Texas Central Bank, N.A	Dallas	TX
Union State Bank	Floresville	TX
Colonial Savings, F.A.	Fort Worth	TX
Guaranty National Bank	Gainesville	TX
National Bank	Gatesville	TX
Gilmer Savings Bank FSB	Gilmer	TX
Gladewater National Bank	Gladewater	TX
Houston Community Bank, N.A	Houston	TX
Langham Creek National Bank	Houston	TX
Justin State Bank	Justin	TX

Farmers and Merchants State Bank	Krum	TX
Fayette Savings Association	La Grange	TX
Falcon National Bank	Laredo	TX
Lubbock National Bank	Lubbock	TX
First National Bank of Mount Vernon	Mount Vernon	TX
First National Bank in Munday	Munday	TX
Morris County National Bank of Naples	Naples	TX
First FS&LA of Paris	Paris	TX
Peoples National Bank	Paris	TX
Firstbank Southwest NA	Perryton	TX
PointBank, N.A	Pilot Point	TX
Citizens First Bank	Rusk	TX
Intercontinental National Bank	San Antonio	TX
First National Bank of San Augustine	San Augustine	TX
Balcones Bank, SSB	San Marcos	TX
Citizens State Bank	Sealy	TX
Southern National Bank of Texas	Sugarland	TX
American National Bank of Texas	Terrell	TX
Terrell Federal Savings and Loan	Terrell	TX
Texarkana National Bank	Texarkana	TX
TexStar National Bank	Universal City	TX
First Bank and Trust Company	White Deer	TX
American National Bank	Wichita Falls	TX

Federal Home Loan Bank of Topeka—District 10

San Luis Valley FS&LA of Alamosa	Alamosa	CO
Vectra Bank Colorado, N.A	Alamosa	CO
Collegiate Peaks Bank	Buena Vista	CO
Pikes Peak National Bank	Colorado Springs	CO
Community Banks of Colorado	Cripple Creek	CO
Rocky Mountain Bank and Trust	Florence	CO
First National Bank	Fort Collins	CO
Gunnison Savings & Loan Association	Gunnison	CO
First Federal Bank of Colorado	Lakewood	CO
American Bank	Loveland	CO
Rio Grande Savings & Loan Association	Monte Vista	CO
Firstate Bank of Colorado	Northglenn	CO
First National Bank of Ordway	Ordway	CO
Paonia State Bank	Paonia	CO
Minnequa Bank of Pueblo	Pueblo	CO
Rocky Ford FS&LA of Colorado	Rocky Ford	CO
Century Savings and Loan Association	Trinidad	CO
Park State Bank	Woodland Park	CO
Prairie State Bank	Augusta	KS
First National Bank in Cimarron	Cimarron	KS
Golden Belt Bank, FSA	Ellis	KS
Farmers Bank and Trust, N.A	Great Bend	KS
Citizens National Bank	Independence	KS
Central National Bank	Junction City	KS
Argentine Federal Savings & Loan Association	Kansas City	KS
Citizens Bank of Kansas, N.A	Kingman	KS
University National Bank of Lawrence	Lawrence	KS
Mutual Savings Association, F.S.A.	Leavenworth	KS
The Citizens State Bank	Liberal	KS
The Citizens State Bank	Moundridge	KS
Midland National Bank	Newton	KS
Bank of Blue Valley	Overland Park	KS
Johnson County Bank	Overland Park	KS
Mercantile Bank	Overland Park	KS
Peabody State Bank	Peabody	KS
The Bank of Perry	Perry	KS
The Plains State Bank	Plains	KS
Peoples Bank	Pratt	KS
First Bank Kansas	Salina	KS
Security Savings Bank, F.S.B	Salina	KS
Stockton National Bank	Stockton	KS
First National Bank	Syracuse	KS
The Bank of Tescott	Tescott	KS
Capitol Federal Savings and Loan Association	Topeka	KS
Silver Lake Bank	Topeka	KS
Kendall State Bank	Valley Falls	KS
Bank of Commerce and Trust	Wellington	KS
Garden Plain State Bank	Wichita	KS
Community First National Bank	Alliance	NE
Western Heritage Credit Union	Alliance	NE

Farmers and Merchants National Bank	Ashland	NE
Beatrice National Bank and Trust Company	Beatrice	NE
Bank of Bellevue	Bellevue	NE
Clarkson Bank	Clarkson	NE
Nebraska Energy Federal Credit Union	Columbus	NE
American Interstate Bank	Elkhorn	NE
Overland National Bank	Grand Island	NE
United Nebraska Bank	Grand Island	NE
First Federal Lincoln Bank	Lincoln	NE
National Bank of Commerce Trust and S.A	Lincoln	NE
First National Bank of McCook	McCook	NE
Platte Valley National Bank	Morrill	NE
American National Bank	Nebraska City	NE
Otoe County Bank and Trust Company	Nebraska City	NE
Nehawka Bank	Nehawka	NE
First National Bank in Ogallala	Ogallala	NE
First National Bank	Osceola	NE
Platte Valley National Bank	Scottsbluff	NE
First National Bank	Sidney	NE
Wymore State Bank	Wymore	NE
Legacy Bank ACB	Binger	OK
Community Bank	Bristow	OK
Oklahoma Bank and Trust Company	Clinton	OK
United Bank	Del City	OK
Amquest Bank, NA	Duncan	OK
Citizens Bank of Edmond	Edmond	OK
First National Bank and Trust	Elk City	OK
Guthrie Federal Savings Bank	Guthrie	OK
Bank of the Panhandle	Guymon	OK
Legacy Bank	Hinton	OK
First State Bank	Hobart	OK
First State Bank	Keyes	OK
City National Bank & Trust Company	Lawton	OK
First National Bank	Marlow	OK
Community Bank	Okarche	OK
First National Bank in Okeene	Okeene	OK
BancFirst	Oklahoma City	OK
Bankers Bank	Oklahoma City	OK
Local Federal Bank, F.S.B	Oklahoma City	OK
National Bank of Commerce	Oklahoma City	OK
Bank of the Lakes, N.A	Owasso	OK
First State Bank of Porter	Porter	OK
Farmers State Bank	Quinton	OK
First National Bank and Trust	Shawnee	OK
Local America Bank of Tulsa, FSB	Tulsa	OK
Triad Bank, N.A	Tulsa	OK
Valley National Bank	Tulsa	OK
First American Bank, N.A	Woodward	OK

Federal Home Loan Bank of San Francisco—District 11

First Arizona Savings FSB	Scottsdale	AZ
Founders Bank of Arizona	Scottsdale	AZ
Trust Bank, F.S.B	Arcadia	CA
Borrego Springs Bank	Borrego Springs	CA
Fullerton Community Bank	Fullerton	CA
Hemet Federal Savings & Loan Association	Hemet	CA
First Fidelity Thrift and Loan	Irvine	CA
Washington Mutual	Irvine	CA
Western Financial Bank, F.S.B	Irvine	CA
Home Savings of America, FSB	Irwindale	CA
Scripps Bank	La Jolla	CA
Silvergate Thrift and Loan Company	La Mesa	CA
Broadway FS&LA of Los Angeles	Los Angeles	CA
California Federal Bank	Los Angeles	CA
Family Savings Bank	Los Angeles	CA
Monterey County Bank	Monterey	CA
Standard Savings Bank, FSB	Monterey Park	CA
Capitol Thrift and Loan Association	Napa	CA
Cerritos Valley Bank	Norwalk	CA
Metropolitan Bank	Oakland	CA
Community Bank	Pasadena	CA
Bank of Petaluma	Petaluma	CA
El Dorado Savings Bank	Placerville	CA
Mid Valley Bank	Red Bluff	CA
Kings River State Bank	Reedley	CA

Life Bank	San Bernardino	CA
First Nationwide Bank (merged)	San Francisco	CA
Sincere Federal Savings Bank	San Francisco	CA
East-West Bank, F.S.B	San Marino	CA
Bay View Bank, a FSB	San Mateo	CA
First FS&LA of San Rafael	San Rafael	CA
First State Bank of Southern California	Santa Fe Springs	CA
First Federal Bank of California	Santa Monica	CA
Sunwest Bank	Tustin	CA
Desert Community Bank	Victorville	CA
First FS & Loan of San Gabriel Valley	West Covina	CA
Bank of Yorba Linda	Yorba Linda	CA
InterWest Bank	Fallon	NV
Citibank, FSB	New York	NY

Federal Home Loan Bank of Seattle—District 12

Mt. McKinley Mutual Savings	Fairbanks	AK
Bank of Guam	Agana	GU
American Savings Bank, F.S.B	Honolulu	HI
First FS&LA of America	Honolulu	HI
Mountain West Savings Bank, FSB	Coeur D'Alene	ID
Big Sky Western Bank	Big Sky	MT
First Security Bank of Bozeman	Bozeman	MT
Glacier Bank of Eureka	Eureka	MT
Heritage Bank, a F.S.B	Great Falls	MT
American Federal Savings Bank	Helena	MT
Glacier Bank	Kalispell	MT
Manhattan State Bank	Manhattan	MT
Stockman Bank of Montana	Miles City	MT
Western Security Bank	Missoula	MT
Bank of Astoria	Astoria	OR
Security Bank	Coos Bay	OR
Bank of Salem	Salem	OR
Columbia River Banking Company	The Dalles	OR
First Security Bank, N.A	Salt Lake City	UT
Cascade Bank	Everett	WA
InterWest Bank	Oak Harbor	WA
Centennial Bank	Olympia	WA
North Sound Bank	Poulsbo	WA
Raymond Federal Savings Bank	Raymond	WA
EvergreenBank	Seattle	WA
Washington Federal Savings	Seattle	WA
Sterling Savings Association	Spokane	WA
Buffalo Federal Savings Bank	Buffalo	WY
Hilltop National Bank	Casper	WY
Big Horn Federal Savings Bank	Greybull	WY

II. Public Comments

To encourage the submission of public comments on the community support performance of FHLBank members, on or before July 28, 1998, each FHLBank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 1998–99 second quarter review cycle. 12 CFR 936.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. *Id.* § 936.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 1998–99 second quarter review cycle must be delivered to the Finance Board on or before the August 27, 1998 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.

Dated: July 6, 1998.

William W. Ginsberg,

Managing Director

[FR Doc. 98–18299 Filed 7–10–98; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 27, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Gene C., Charlotte, Gene S., Charles, and Greg Lange, all of Alexandria, Virginia; to acquire additional voting shares of Madison Holding Company, Winterset, Iowa, and thereby indirectly acquire additional

voting shares of Union State Bank, Winterset, Iowa.

2. John F., Judy, Scott and Brett Lange all of Linn Creek, Missouri, and Thomas J., Carol, Jennifer, Brittany and Tyler Lange, all of Sac City, Iowa; to acquire additional voting shares of Citizens Holding Company, Sac City, Iowa, and thereby indirectly acquire additional voting shares of Citizens Bank, Sac City, Iowa.

Board of Governors of the Federal Reserve System, July 7, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–18447 Filed 7–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Androscoggin Bancorp, MHC, and Androscoggin Bancorp, Inc., both of Lewiston, Maine; to become bank holding companies by acquiring 100 percent of the voting shares of Androscoggin Savings Bank, Lewiston, Maine.

Board of Governors of the Federal Reserve System, July 8, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–18604 Filed 7–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-17945) published on page 36692 of the issue for Tuesday, July 7, 1998.

Under the Federal Reserve Bank of Kansas City heading, the entry for Marfa Bancshares, Inc., Marfa, Texas, and Marfa Delaware Bancshares, Inc., Wilmington, Delaware is revised to read as follows:

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Marfa Bancshares, Inc., Marfa, Texas, and Marfa Delaware Bancshares, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The Marfa National Bank, Marfa, Texas.

Comments on this application must be received by July 31, 1998.

Board of Governors of the Federal Reserve System, July 8, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–18605 Filed 7–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Friday, July 17, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 9, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–18750 Filed 7–9–98; 3:12 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 972–3255]

TrendMark Inc., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 11, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom or Ronald Waldman, New York Regional Office, Federal Trade Commission, 150 William Street, 13th Floor, New York, N.Y. 10038–2603. (212) 264–1242.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period

of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 25, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to fine approval, an agreement to a proposed consent order ("proposed order") from TrendMark Inc., also doing business as TrendMark International ("TrendMark"), and its principals, William McCormack and E. Robert Gates.

The proposed order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns weight loss products which were marketed by the proposed respondents via unsolicited commercial e-mail sent to users of America Online. The e-mail directed recipients to click on a hyperlink that would then take them to TrendMark's website on the Internet. Both the e-mail and Internet website made various weight loss and health-related claims about respondents' Thin-Thin Diet™ which consisted of two products—Neuro-Thin™ and Lipo-Thin™.

The Commission's complaint alleges that proposed respondents engaged in deceptive advertising in violation of Sections 5 and 12 of the FTC Act by making unsubstantiated claims that: (1) Neuro-Thin™ controls appetite; (2) taking Neuro-Thin™ and Lipo-Thin™ in combination causes significant weight loss without a change in diet; (3) taking Neuro-Thin™ and Lipo-Thin™ in combination causes long-term or permanent weight loss; (4) Lipo-Thin™ helps prevent the absorption of ingested fat; (5) Lipo-Thin™ lowers LDL cholesterol and boosts HDL cholesterol; (6) Lipo-Thin™ promotes healing of ulcers and lesions; (7) Lipo-Thin™ helps prevent irritable bowel syndrome; (8) Lipo-Thin™ reduces levels of uric acid in the blood; (9) Lipo-Thin™ helps improve cardiovascular health; and (10) testimonials from consumers appearing in advertisements for the Thin-Thin Diet™ reflect the typical or ordinary experience of members of the public who use Neuro-Thin™ and Lipo-Thin™. The complaint alleges that the proposed respondents did not have a reasonable basis for these weight loss and health-related claims. In addition, the complaint alleges that testimonials given by individuals on respondents' website failed to disclose adequately that these individuals had material connections with individuals marketing and profiting from the sales off Neuro-Thin™ and Lipo-Thin™.

The proposed respondents indicated that they neither possessed nor were aware of any studies relating specifically to the Neuro-Thin™ or Lipo-Thin™ products. Moreover, the purported support which proposed respondents did rely upon for the above claims—studies on individual components of Neuro-Thin™ or Lipo-Thin™—did not relate adequately to their advertising claims. For example, most of the studies that were submitted by the proposed respondents as support were test tube studies and studies of rats. These studies cannot be used as adequate support for the therapeutic effects of Neuro-Thin™ and Lipo-Thin™ in human beings.

The complaint further alleges that proposed respondents made a false claim that clinical evidence proves that Neuro-Thin™ and Lipo-Thin™ cause users to lose significant weight.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from claiming that Neuro-Thin™ and Lipo-Thin™ or any other product or program: (1) controls appetite; (2) causes significant weight loss without a change in diet; (3) causes long-term or permanent weight loss; (4) prevents or helps prevent the absorption of ingested fat; (5) lowers LDL cholesterol or boosts HDL cholesterol; (6) promotes healing of ulcers or lesions; (7) helps prevent irritable bowel syndrome; (8) reduces levels of uric acid in the blood; and (9) helps improve cardiovascular health, unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order states that the proposed respondents shall not represent, in any manner, expressly or by implication, that the experience represented by any user who gives a testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless: (a) at the time it is made, the proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or (b) the proposed respondents disclose, clearly and prominently, and in close proximity to the testimonial or endorsement, either: (1) what the generally expected results would be for users of the product, or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Paragraph III of the proposed order prohibits proposed respondents from making any representation for Neuro-Thin™ and Lipo-Thin™ or any other food, drug, dietary supplement, drug, or device, about the health benefits, performance, or efficacy of such product unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph IV of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or study.

Paragraph V of the proposed order requires the proposed respondents to disclose, clearly and prominently, a material connection, when one exists, between a person providing an endorsement for any product or program and any respondent, or any individual or entity labeling, advertising, promoting, offering for sale, selling, or distributing such product or program.

Paragraph VI of the proposed order provides that nothing in this order shall prohibit proposed respondents from making any representation about any drug permitted by the Food and Drug Administration.

Paragraph VII of the proposed order provides that nothing in this order shall prohibit proposed respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug

Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Paragraph VIII of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, paragraph IX requires distribution of a copy of the consent order to current and future officers and agents having responsibility with respect to the subject matter of the order. Further, Paragraph X provides for Commission notification upon a change in the corporate respondent. Paragraph XI requires proposed respondents William McCormack and E. Robert Gates to notify the Commission when either of them discontinues his current business or employment and of an affiliation by either of them with any new businesses or employment. Paragraph XII of the proposed order requires the proposed respondents to file a compliance report. Finally, paragraph XIII of the proposed order provides for the termination of the order after twenty years under specified conditions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–18616 Filed 7–10–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS). Subcommittee on Standards and Security.

Times and Dates: 10:00 a.m.–6:00 p.m., July 20, 1998; 9:00 a.m.–6:00 p.m., July 21, 1998.

Place: James R. Thompson Center, Room 9–040, 100 West Randolph Street, Chicago, Illinois.

Status: Open.

Purpose: Under the Administrative Simplification provisions of P.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified transactions to enable health information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses, and health care providers who choose to conduct these transactions electronically must comply with these standards. The law also requires the Secretary to adopt a number of supporting standards including standards for unique health identifiers for providers, plans, employers and individuals. The Secretary is required to consult with the National Committee on Vital and Health Statistics (NCVHS) in complying with these provisions. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

The NCVHS already has provided recommendations and advice to HHS relating to most of the transaction and supporting standards, and HHS is in the process of publishing several Notices of Proposed Rulemaking that describe the proposed standards for public review and comment in the Federal Register. HIPAA also requires the Secretary to adopt a standard for unique identifier for individuals for use in the health care system. Because of privacy concerns and because no consensus exists in the industry concerning the standard for a unique health identifier, HHS is planning to issue, later this summer, a Notice of Intent, i.e., a request for information on various alternatives and issues at this stage rather than proposing a standard.

To assist in developing the NCVHS recommendations to HHS relating to the standard for unique health identifier, the NCVHS Subcommittee on Standards and Security has scheduled a public meeting on July 20–21, 1998 in Chicago, Illinois. For the meeting, the Subcommittee is inviting specific, interested and affected organizations and individuals to provide their views, perspectives and concerns, to address specific questions relating to the unique health identifier, and to answer further questions from the Subcommittee. Other individuals and organizations that would also like to submit written or oral statements to the Subcommittee on these issues are invited to do so at the meeting. Speakers will be asked to address a series of questions relating to the unique health identifier. The tentative agenda for the meeting, as well as a description of the panels of speakers and the list of questions are posted on the NCVHS website: http://aspe.os.dhhs.gov/ncvhs. To further assist speaker, a white paper that outlines the various potential alternatives for the standard for the unique health identifier as well as issues relating to privacy, implementation and other considerations has been posted on the HHS administrative simplification website: http://aspe.os.dhhs.gov.admnsimp.

The NCVHS plans to hold additional public hearings on the unique health identifier and related issues, including a planned hearing in Washington, DC in September. The dates of subsequent meetings will be announced as they are selected.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of subcommittee members may be obtained from Bill Braithwaite, lead Subcommittee staff, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 260–0546, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: http://aspe.os.dhhs.gov/ncvhs.

Dated July 6, 1998.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 98–18448 Filed 7–10–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Phase II SBIR Contract—"Researcher's Handbook for Conducting Drug Abuse Research With Hispanic Populations."

Date: July 9, 1998.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–49, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857, (301) 443–1644.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist

Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 7, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18625 Filed 7–9–98; 9:23 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Who Application Review.

Date: July 9, 1998.

Time: 1:00 pm to 4:00 pm.

Agenda: to review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 7, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18626 Filed 7–9–98; 9:23 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4377–FA–01]

Housing Counseling Program Announcement of Funding Award—FY 1998

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department of Housing and Urban Development. Noncompetitive funding was provided under the Housing Counseling Program initiatives, for homebuyer education and counseling, targeted to potential first-time homebuyers. This announcement contains the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Kitty Woodley, Director of Marketing and Outreach, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Telephone (202) 708–0614, ext. 2307. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Housing Counseling Program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x).

The objective of this grant is to promote first-time homeownership through homebuyer education and counseling to potential first-time homebuyers. The Congress of National Black Churches, Inc. (CNBC) is a coalition of eight major historically black denominations. Together, these denominations represent 65,000 churches and a membership of more than 19 million people. CNBC will facilitate delivery of homebuyer education and counseling through affiliate organizations in major cities throughout the country. Since 1996, HUD has been working in partnership with CNBC through the HOME-NOW program to address the lack of homeownership opportunities for families in underserved communities.

The Catalog of Federal Domestic Assistance number for the Housing Counseling Program is 14.169.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

Congress of National Black Churches, Inc., 1225 Eye Street, NW, Suite 750, Washington, DC 20005.

Amount: $348,900.

Dated: July 1, 1998.

Ira G. Peppercorn,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 98–18469 Filed 7–10–98; 8:45 am]

BILLING CODE 4310–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Technical/Agency Draft Multi-Species Recovery Plan for the Threatened and Endangered Species of South Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of Volume II of a two-volume draft multi-species recovery plan for the threatened and endangered species of South Florida and the ecosystems upon which they depend. Volume II provides an ecosystem approach toward restoration of the South Florida Ecosystem, and discusses the biological composition, status, trends, management, and restoration needs of 23 major ecological communities in this region. This volume integrates the needs for species of concern in addition to the federally listed species discussed in Volume I. A notice announcing the availability of Volume I was published in the **Federal Register** on March 6, 1998 (63 FR 11304). The Service solicits review and comments from the public on Volume II of the draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before September 30, 1998, to ensure consideration by the Service.

ADDRESSES: Copies of the draft recovery plan can be obtained by contacting the U.S. Fish and Wildlife Service Publications Unit, National Conservation Training Center, c/o Aramark, Rt. 1 Box 166, Shepherd Grade Rd., Shepherdstown, West Virginia 25443. The Service is encouraging that requests for copies be for the CD–ROM version as the hard copy encompasses approximately 850 pages. Additionally, this document may be viewed or downloaded from the Service's South Florida Ecological Service's Field Office website at: http://www.fws.gov/r4eao/esvb.htm.

Written comments and materials regarding the plan should be addressed to Dawn Jennings, South Florida Field Office, 1360 U.S. Highway 1, Suite 5, Vero Beach, Florida 32960. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the South Florida Field Office.

FOR FURTHER INFORMATION CONTACT: Dawn Jennings at the South Florida Field Office (561) 562–3909 for information on the recovery plan; the U.S. Fish and Wildlife Service Publications Unit (304) 876–7203 for additional copies of the draft recovery plan.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Fish and Wildlife Service's threatened and endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions that may be necessary for conservation of these species, establish criteria for the recovery levels for reclassification from endangered to threatened status or removal from the list, and estimate the time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during the recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The Multi-Species Recovery Plan identifies the recovery and restoration needs of 68 threatened and endangered species and their habitats in the South Florida Ecosystem—an area encompassing 67,346 square kilometers covering the 19 southernmost counties in Florida, using an ecosystem-wide approach. The species addressed in this plan are found throughout South Florida. Some are endemic to this area, others range outside of South Florida, and some of the species included in this plan migrate through or winter in South Florida. These species use every vegetative, terrestrial, and aquatic community present in South Florida. The status of these species varies, although very few show an increasing trend. These species include:

Status	Species	Scientific name
	Mammals	
E	Florida panther	*Puma (=Felis) concolor coryi.*
E	Key deer	*Odocoileus virginianus clavium.*
E	Key Largo cotton mouse	*Peromyscus gossypinus allapaticola.*
E	Key Largo woodrat	*Neotoma floridana smalli.*
E	Silver rice rat	*Oryzomys palustris natator (=O. argentatus).*
E	Lower Keys marsh rabbit	*Sylvilagus palustris hefneri.*
T	Southeastern beach mouse	*Peromyscus polionotus niveiventris.*
E	West Indian manatee	*Trichechus manatus.*
	Birds	
T	Audubon's crested caracara	*Polyborus plancus audubonii.*
E	Bachman's warbler	*Vermivora bachmanii.*
T	Bald eagle	*Haliaeetus leucocephalus.*
E	Cape Sable seaside sparrow	*Ammodramus (=Ammospiza) maritimus mirabilis.*
E	Snail kite	*Rostrhamus sociabilis plumbeus.*
E	Florida grasshopper sparrow	*Ammodramus savannarum floridanus.*
T	Florida scrub-jay	*Aphelocoma coerulescens.*
E	Ivory-billed woodpecker	*Campephilus principalis.*
E	Kirtland's warbler	*Dendroica kirtlandii.*
T	Piping plover	*Charadrius melodus.*
E	Red-cockaded woodpecker	*Picoides (=Drendrocopos) borealis.*
T	Roseate tern	*Sterna dougallii dougallii.*
E	Wood stork	*Mycteria americana.*
	Reptiles	
E	American crocodile	*Crocodylus acutus.*
T	Atlantic salt marsh snake	*Nerodia clarkii (=fasciata) taeniata.*
T	Bluetail (blue-tailed) mole skink	*Eumeces egregius lividus.*
T	Eastern indigo snake	*Drymarchon corais couperi.*
E	Green sea turtle	*Chelonia mydas.*
E	Hawksbill sea turtle	*Eretmochelys imbricata.*
E	Kemp's (Atlantic) ridley sea turtle	*Lepidochelys kempii.*
E	Leatherback sea turtle	*Dermochelys coriacea.*
T	Loggerhead sea turtle	*Caretta caretta.*

Status	Species	Scientific name
T	Sand skink	*Neoseps reynoldsi.*
	Invertebrates	
E	Schaus swallowtail butterfly	*Heraclides (=Papilio) aristodemus ponceanus.*
T	Stock Island tree snail	*Orthalicus reses.*
	Plants	
E	Avon Park harebells	*Crotalaria avonensis.*
E	Beach jacquemontia	*Jacquemontia reclinata.*
E	Beautiful pawpaw	*Deeringothamnus pulchellus.*
E	Britton's beargrass	*Nolina brittoniana.*
E	Carter's mustard	*Warea carteri.*
E	Crenulate lead-plant	*Amorpha crenulata.*
E	Deltoid spurge	*Chamaesyce (=Euphorbia) deltoidea.*
T	Florida bonamia	*Bonamia grandiflora.*
E	Florida golden aster	*Chrysopsis (=Heterotheca) floridana.*
E	Florida perforate cladonia	*Cladonia perforata.*
E	Florida ziziphus	*Ziziphus celata.*
E	Four-petal pawpaw	*Asimina tetramera.*
E	Fragrant prickly-apple	*Cereus eriophorus* var. *fragrans.*
T	Garber's spurge	*Chamaesyce (=Euphorbia) garberi.*
E	Garrett's mint	*Dicerandra christmanii.*
E	Highlands scrub hypericum	*Hypericum cumulicola.*
E	Key tree-cactus	*Pilosocereus (=Cereus) robinii.*
E	Lakela's mint	*Dicerandra immaculata.*
E	Lewton's polygala	*Polygala lewtonii.*
E	Okeechobee gourd	*Cucurbita okeechobeensis* ssp. *okeechobeensis.*
T	Papery whitlow-wort	*Paronychia chartacea (=Nyachia pulvinata).*
T	Pigeon wing	*Clitoria fragrans.*
E	Pygmy fringe-tree	*Chionanthus pygmaeus.*
E	Sandlace	*Polygonella myriophylla.*
E	Scrub blazing star	*Liatris ohlingerae.*
T	Scrub buckwheat	*Eriogonum longifolium* var. *gnaphalifolium.*
E	Scrub lupine	*Lupinus aridorum.*
E	Scrub mint	*Dicerandra frutescens.*
E	Scrub plum	*Prunus geniculata.*
E	Short-leaved rosemary	*Conradina brevifolia.*
E	Small's milkpea	*Galactia smallii.*
E	Snakeroot	*Eryngium cuneifolium.*
E	Tiny polygala	*Polygala smallii.*
E	Wide-leaf warea	*Warea amplexifolia.*
E	Wireweed	*Polygonella basiramia (=ciliata* var. *b.).*

The Service has completed recovery plans for many of these species at various times between 1980 and 1996 to identify actions necessary to effect recovery. The ivory-billed woodpecker, Bachman's warbler, silver rice rat, Key Largo woodrat, Key Largo cotton mouse, and Okeechobee gourd do not have approved recovery plans. Since the approval of many of the recovery plans for South Florida species, identified tasks have been completed, and new information has become available on the biology, distribution, life history, and needs of these species. In addition, some species with a South Florida population had no tasks identified for recovery in this area. This plan updates some existing recovery plans, serves as the recovery plan for other species, or identifies South Florida's contribution to recovery. The plan also addresses new threats and needs for all the species identified within it. This plan is a two-volume effort to identify recovery needs of the species of South Florida and the ecosystems upon which they depend. The focus of Volume I is the individual species, while Volume II integrates the species needs with those of the ecological communities in which they reside.

Paper copies of both volumes of the draft recovery plan are available for public inspection at the following locations:

U.S. Fish and Wildlife Service, South Florida Field Office, U.S. Highway 1, Suite 5, Vero Beach, Florida 32960. 561–562–3909

U.S. Fish and Wildlife Service, Merritt Island National Wildlife Refuge, 4 miles east of Titusville, State Road 402, Titusville, Florida 32782. 407–861–0667

U.S. Fish and Wildlife Service, J.N. "Ding" Darling National Wildlife Refuge, 1 Wildlife Drive, Sanibel, Florida 33957. 813–472–1100

U.S. Fish and Wildlife Service, Florida Panther National Wildlife Refuge, 3860 Tollgate Boulevard, Suite 300, Naples, Florida 34114. 941–353–8442

U. S. Fish and Wildlife Service, National Key Deer Refuge, Winn Dixie Shopping Plaza, Big Pine Key, Florida 33043–1510. 305–872–2239

U.S. Fish and Wildlife Service, Loxahatchee National Wildlife Refuge, 10216 Lee Road, Boynton Beach, Florida 33437–4796. 561–732–3684

University of Florida, Smathers Library West, Gainesville, Florida 32611

University of Miami Library, 4600 Rickenbacker Causeway, Miami, Florida 33149

University of Central Florida Library, 4000 Central Florida Blvd., Orlando, Florida 32816

Florida Atlantic University Library, 777 Glades Rd, Boca Raton, Florida 33431

Florida International University Library, FIU University Park, 11200 SW A St., Miami, Florida 33199
University of South Florida Library, 4202 E. Fowler Ave., Tampa, Florida 33620
Florida Gulf Coast University Library, 19501 Ben Hill Griffin Parkway, Ft. Myers, Florida 33965–6565
Archbold Biological Station Library, P.O. Box 2057, Old State Road 8, Lake Placid, Florida 33852
Fairchild Tropical Garden Library, 11935 Old Cutler Road, Miami, Florida 33156
Big Pine Key Branch Library, 213 Key Deer Boulevard, Big Pine Key, Florida 33043

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date identified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 24, 1998.

James J. Slack,

Project Leader.

[FR Doc. 98–17671 Filed 7–10–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–930–08–1210–00]

Notice of Closure of Public Lands; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a temporary closure to off highway vehicle use for portions of the Moquith Mountain Wilderness Study Area including the Coral Pink Sand Dunes.

SUMMARY: This notice closes to off highway vehicle (OHV) use approximately 14,140 acres of the Moquith Mountain Wilderness Study Area (WSA) including some 800 acres within the Coral Pink Sand Dunes. Areas within the WSA that will remain open to vehicle use include designated routes within closed areas and approximately 700 acres within the Coral Pink Sand Dunes. OHV access to the open portion of the dunes will be provided by three designated access routes. Five designated routes within the non sand dune portion of the WAS on Moquith Mountain will also remain open. Temporary fencing and signing will be used as necessary to facilitate this action. The authority for this action is 43 CFR 8341.2.

DATES: This closure will begin immediately and remain in effect pending amendment of the Vermilion Land Use Plan, which is expected to be completed by the end of April 1999.

ADDRESSES: Copies of maps are available at the Bureau of Land Management (BLM). Kanab Area Field Office, 318 North First East, Kanab, Utah 84741 and BLM Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Verlin Smith, Kanab Area Field Office, at (435) 644–2672, ext. 2646 or Ronald Bolander, BLM, Utah State Office, at (801) 539–4065.

SUPPLEMENTARY INFORMATION: The 14,830-acre Moquith Mountain WSA was established in 1980 and includes the northern segment of the Coral Pink Sand Dunes (about 1,500 acres). The remaining 2,000 acres of the dunes are part of the Coral Pink Sand Dunes State Park which was established in 1963. The sand dunes are a historic and popular OHV and other recreational use area. Most of the WSA is currently designated as open to OHV use as documented in the Vermilion Management Framework Plan, completed in 1981.

In 1994, BLM implemented management actions through the Moquith Mountain WSA Management Guidance and Schedule (Guidance) to protect wilderness resource values. In 1998, an interdisciplinary team was established to review the effectiveness of the Guidance and determine if impairment of wilderness values was occurring. BLM policy allows for an open OHV category in sand dune areas as long as impairment of wilderness suitability does not occur.

The team determined that no impairment of wilderness values is occurring on the majority of the dunes. However, impairment is occurring in peripheral areas of the northern portion of the dunes where vegetation is more prevalent. Therefore, BLM is temporarily closing to OHV use the sand dunes north and west of an existing allotment fence with the exception of a portion of a dry lake bed and designated OHV access routes which will remain open. The three designated OHV access routes are located as follows: (1) Sand Spring; (2) the dry lake bed east of the Yellowjacket Road and, (3) the Hancock Road near the Ponderosa Grove Campground.

BLM is also concerned that vehicle routes may be forming in other portions of the WSA. Therefore, the non sand dune portion of the WSA will also be temporarily closed with the exception of the following designated routes that will remain open: the Sand Spring Road, South Fork Indian Canyon Petroglyph Road, the Moquith Mountain Loop, Hell Drive and Lamb's Point routes.

Dated: July 7, 1998.

Linda S. Colville,

Acting State Director.

[FR Doc. 98–18536 Filed 7–10–98; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–51]

Notice of Iditarod Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Iditarod Advisory Council Meeting.

SUMMARY: The Iditarod Advisory Council will conduct an open meeting Tuesday, August 4, 1998, and Wednesday, August 5, 1998, from 9 a.m. until 4 p.m. each day. The purpose of the meeting is to discuss the formation of a non-profit organization to assist in the management of the Iditarod National Historic Trail. The meeting will be held at the BLM Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, AK.

Public comments pertaining to management of the Iditarod National Historic Trail will be taken from 1–2 p.m. Tuesday, August 4. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: July 1, 1998.

Nick Douglas,

Field Manager.

[FR Doc. 98–18607 Filed 7–10–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the twenty-sixth meeting of the Gettysburg National Military Park Advisory Commission.

Date: The Public meeting will be held on July 16, 1998, from 7:00 p.m.—9:00 p.m.

Location: The meeting will be held at Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

Agenda: Sub-Committee Reports, Update on General Management Plan, Federal Consistency Projects Within the Gettysburg Battlefield Historic District, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: July 1, 1998.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 98–18551 Filed 7–10–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on June 25, 1998, a proposed consent decree in *United States* v. *Cornell-Dubilier Electronics, Inc. et al.*, Civil Action No. 92–11865–REK, was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against defendants Cornell-Dubilier Electronics, Inc. ("CDE") and Federal Pacific Electric Company ("FPE") relating to the Sullivan's Ledge Superfund Site ("Site") in New Bedford, Massachusetts. The Complaint alleges that CDE and FPE are liable to the United States pursuant to Section 107(a)(3) of CERCLA.

Pursuant to the Consent Decree, CDE and FPE shall pay $1.581 million to the United States in satisfaction of their alleged liability for past and future response costs pursuant to Section 107 of CERCLA. Pursuant to separate agreements, CDE and FPE will also pay approximately $4 million to certain prior settling parties who are currently performing the remediation at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Cornell-Dubilier Electronics, Inc. et al.*, Civil Action No. 92–11865–REK, D.J. Ref. 90–11–2–388A.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Massachusetts, J. W. McCormack Post Office and Courthouse, Boston, Massachusetts, 02109, and at Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $11.00 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–18477 Filed 7–10–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on June 12, 1998, a proposed consent decree in *United States* v. *Kauffman & Minteer, et al.*, Civil Action No. 94–5225 (GEB), was lodged with the United States District Court for the District of New Jersey. This proposed consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against Paul C. Kauffman relating to response costs that have been or will be incurred at or from a Site known as the Kauffman & Minteer Superfund Site ("Site") located in Jobstown, Springfield Township, New Jersey. The consent decree requires Mr. Kauffman to pay the United States $25,000 in three installments.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Kauffman & Minteer et al.*, D.J. Ref. 90–11–2–1067.

The proposed consent decree may be examined at the office of the United States Attorney, 402 East State Street, Room 502, Trenton, New Jersey 08608, and at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $6.75 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environment Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 98–18476 Filed 7–10–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Weirton, et al.*, C.A. No. 5:96–CV–21, was lodged on June 26, 1998, with the United States District Court for the Northern District of West Virginia. The consent decree resolves the United States' claims for civil penalties and injunctive relief, pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* Under the consent decree, the City of Weirton will construct and operate a wastewater treatment facility to come into compliance with the Clean Water Act and its National Pollutant Discharge Elimination System Permit. The City of Weirton will also pay a civil penalty of $150,000 to the United States and the State of West Virginia.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Weirton, et al.*, DOJ Reference No. 90–5–1–1–4265.

The proposed consent decree may be examined at the office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003; the Region III Office of the Environmental Protection Agency, 840 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.25 (.25 cents per page production costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–18475 Filed 7–10–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Agreement To Establish a Common Computer Tape Storage Specification

Notice is hereby given that, on January 23, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Agreement to establish a common computer tape storage specification has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Hewlett-Packard Company ("HP"), Palo Alto, CA; International Business Machines Corporation ("IBM"), Armonk, NY; Seagate Technology, Inc. ("SEAGATE"), Scotts Valley, CA. The nature and objectives of the venture are to develop, produce and establish a common computer tape storage specification; to combine and integrate into this specification complementary intellectual property of each of the parties; to develop an appropriate third-party mechanism for licensing such intellectual property as part of a license to use the specification to all interested parties under terms and conditions conducive to establishing an open, widely followed industry specification; to promote the development, production and sale of next-generation computer tape storage products compatible with this specification, thereby providing enhanced functionality afforded through the use of licensed intellectual property; and, through all of the foregoing, to enhance demand for next-generation computer tape storage products as alternatives to competing storage technologies.

The parties will file additional written notifications disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–18473 Filed 7–10–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that, on March 2, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new non-voting members of POSC: GlavNIVC (Ministry of Natural Resources of the Russian Federation), Moscow, RUSSIA; Seismic Micro-Technology Inc., Houston, TX; INTesa, Caracas, VENEZUELA; Hitec ASA, Stavanger, NORWAY; China National Petroleum Corporation, Beijing, CHINA; Intelligent Computer Solutions, London, UNITED KINGDOM; and Iona Technologies Ltd., Cambridge, MA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation ("POSC") intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, petrotechnical Open Software Corporation ("POSC") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on October 16, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 1997 (62 FR 63389).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–18474 Filed 7–10–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,472; Magnetek, Inc., Prairie Grove, AR
TA–W–34,456; Weyerhaeuser Co., Alameda, CA
TA–W–34,570; Buena Vista Manufacturing Co., Buena Vista, VA
TA–W–34,342; Alps Electric (USA), Inc., Huntington Beach, CA
TA–W–34,340; Weyerhaeuser Co., Composite Products Div., Springfield, OR
TA–W–34,407; General Die Cast, Oak Park, MI
TA–W–34,541; Toroplast Manufacturing Co, McAllen, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,606; Mid-Atlantic Regional Joint Board, U.N.I.T.E, Bristol, VA
TA–W–34,486; Fruit of the Loom, Inc., Contract Business Dept., Bowling Green, KY
TA–W–34,576; OPS, Inc., Great Bend, KS
TA–W–34,591; Americold Logisitics, Nampla, ID
TA–W–34,631; Donnkenny Apparel, Inc., Mickey & Co., Rural Retreat Distribution, Rural Retreat, VA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,609; Allied Signal, Inc., Columbia, SC
TA–W–34,242; Tennessee Woolen Mills, Inc., Lebanon, TN
TA–W–34,463; Northrop Grumman, Fleetville, PA
TA–W–34,440; Taylor Lumber & Treating, Inc., Sheridan, OR
TA–W–34,504; Sharp Microelectronics Technology, Inc., Flat Panel Display Manufacturing Div., Camas, WA
TA–W–34,498; Kunkle Foundry Co., Inc., Andrews, IN
TA–W–34,543; Asko, Inc., American Shear Knife Div., West Homestead, PA
TA–W–34,350; General Electric Environmental Service, Inc., Lebanon, PA
TA–W–34,554; Ann Travis, Inc., New York, NY
TA–W–34,354; Tescom Corp., Elk River, MN
TA–W–34,427; Sterling Commerce, Commerce Internet Div., Wayne, PA
TA–W–34,441; TRW Steering Wheel Systems, Yaphank, NY Including the Following Leased Workers of Manpower, Hauppage, NY and Interpool, Hicksville, NY Employed at TRW Steering Wheel Systems, Yakphank, NY
TA–W–34,372; CCL Container Corp., CCL Industries, Chester, PA
TA–W–34,618; Philips Components, Saugerties, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,536; Gerber Baby Foods, Asheville, NC

Company made a business decision to consolidate its' domestic manufacturing in Arkansas and Michigan and close its' Asheville, NC plant.

TA–W–34,326; Rubbermaid Courtland, Inc., Courtland, NY

A Corporate decision was made to transfer production of injection molded plastic products from Courtland, NY to other existing domestic manufacturing facilities.

TA–W–34,509; Constar Plastic, City of Industry, CA

Aggregate imports of plastic bottles are negligible during the relevant period.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,310; Molycorp, Inc., Mountain Pass, CA: February 2, 1997.
TA–W–34,506; Lyon Fashion, Inc., McAlisterville, PA: April 14, 1997.
TA–W–34,468; T.L. Edwards, Inc., Statesville, NC: April 6, 1997.
TA–W–34,512; Easton Corp., Commercial Controls Div., Salisbury, MD: April 17, 1997.
TA–W–34,454; Vogue Originals, Miami, FL: April 1, 1997.
TA–W–34,526; The Amory Garment Co., Amory, MS: April 28, 1997.
TA–W–34,428; Denise Lingerie, Div. of Hose of Ronnie, Inc., Johnson City, TN: March 23, 1997.
TA–W–34,547; VF Knitwear, Inc., Kingston, NC: May 1, 1997.
TA–W–34,546; VF Knitwear, Inc., Bakersville, NC: May 1, 1997.
TA–W–34,588; Tri-Clover, Inc., Fittings Factory, Kenosha, WI: May 14, 1997.
TA–W–34,511; Rayovac Corp., Madison, WI: April 22, 1997.
TA–W–34,451; Richfield Apparel, Richfield, PA: March 30, 1997.
TA–W–34,343; The Torrington Co., Calhoun, GA: March 5, 1997.
TA–W–34,345; Little Sister, Inc., Windsor, PA: March 8, 1997.
TA–W–34,497; Imperial Home, Decor Group, Ashaway, RI: April 21, 1997.
TA–W–34,567; VF Knitwear, Inc., Hillsville, VA: May 11, 1997.
TA–W–34,545; Fun-Tees, Inc., Andrews, SC: May 4, 1997.
TA–W–34,455; Emerson Boot, Cuba, MO: March 30, 1997.
TA–W–34,641; J & J Lingerie, Glen Falls, NY: May 22, 1997.
TA–W–34,464; Walls Industries, Inc., Hamilton, TX: March 23, 1997.
TA–W–34,613; Hovland Mfg. Co., Inc., Cody, WY: May 18, 1997.
TA–W–34,501; U.S. Repeating Arms Co., Inc., North Terminal Div., Hingham, MA: April 23, 1997.
TA–W–34,478; Premier Autoglass Corp., Lancaster, OH: April 17, 1997.
TA–W–34,594; The Goodyear Tire and Rubber Co., Tire Cord Div., Cartersville, GA: March 31, 1997.
TA–W–34,320; Montgomery Kone Machining Center, Moline, IL: March 3, 1998.
TA–W–34,358 A&B; Pioneer Natural Resources USA, Inc.,

Headquartered in Midland, TX, and Operating Throughout the State of Texas and Operating Throughout the State of Oklahoma: February 8, 1997.

TA–W–34,532; Breed Technologies, Inc., Air Bag & Seat Belt Div. Formerly Known as Allied Signal Safety Restraint Systems, El Paso, TX: May 1, 1997.

TA–W–34,533; Breed Technologies, Inc., Air Bag & Seat Belt Div., Formerly Known as Allied Signal Safety Restraint Systems, Brownsville, TX: July 19, 1998.

TA–W–34,534; Breed Technologies, Inc., Air Bag & Seat Belt Div., Formerly Known as Allied Signal Safety Restraint Systems, Douglas, AZ: April 27, 1997.

TA–W–34,639; Breed Technologies, Inc., Air Bag & Seat Belt Div., Formerly Known as Allied Signal Safety Restraint Systems, Greenville, AL: May 23, 1998.

TA–W–34,520; LaValle Mills Underwear Co., Inc. Long Island City, NY: April 16, 1997.

TA–W–34,598; J. Fashion International, Jessup, PA: May 18, 1997.

TA–W–34,616; Springfield Manufacturing, Springfield, GA: January 30, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02391; Buena Vista Manufacturing Co., Buena Vista, VA

NAFTA–TAA–02353, & A; Justin Boot Co., Carthage, MO and Sarcoxie, MO

NAFTA–TAA–02341 & A, B; DRS Ahead Technology, Inc., Dassel, MN and St. Croix Falls, WI and Plymouth, MN

NAFTA–TAA–02415 and A; Halmode Apparel, Inc., New Castle, VA and Turner & Minter, Inc., Eagle Rock, VA

NAFTA–TAA–02425; Philips Components, Saugerties, NY

NAFTA–TAA–02347; Kunkle Foundry Co., Inc., Andrews, IN

NAFTA–TAA–02289; Weyerhaeuser Co., Alameda, CA

NAFTA–TAA–02235; Weyerhaeuser Co., Composite Products Div., Springfield, OR

NAFTA–TAA–02164; Tennessee Woolen Mills, Lebanon, TN

NAFTA–TAA–02255; General Electric Environmental Services, Inc., Lebanon, PA

NAFTA–TAA–02434; Magnetek, Inc., Prairie Grove, AR

NAFTA–TAA–02371; Toroplast Manufacturing Co., McAllen, TX

NAFTA–TAA–02402; Kleinert's Inc. of Florida, Largo, FL

NAFTA–TAA–02332; Northrop Grumman, Fleetville, PA

NAFTA–TAA–02392; Wausau-Mosinee Paper Corporation, Rhinelander Mill, Rhinelander, WI

NAFTA–TAA–02316; Taylor Lumber & Treating, Inc., Sheridan, OR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02398; Americold Logistics, Nampa, ID

NAFTA–TAA–02223; Thomson Consumer Electronics, El Paso, TX and DSI Staff Connxions SW, Inc., El Paso, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02274; CCL Container Corp., CCL Industries, Chester, PA: March 19, 1997.

NAFTA–TAA–02311; B.W. Manufacturing Corp., Indiana, PA: March 30, 1997.

NAFTA–TAA–02403; Eastman Kodak Co., BIS Focus Finishing Factory Advanced Imaging Materials Manufacturing, Rochester, NY: May 15, 1997.

NAFTA–TAA–02383; Tops Malibu, Eugene, OR: April 8, 1997.

NAFTA–TAA–02346; Kirby Mfg. Co/ AAA Enterprises Plus, McClure, PA: April 17, 1997.

NAFTA–TAA–02365; Breed Technologies, Inc., Air Bag and Seat Belt Div. Formerly Known as Allied Signal Safety Restraint Systems, Brownsville, TX: March 17, 1998.

NAFTA–TAA–02365 A and NAFTA–TAA–02366; Breed Technologies, Inc., Air Bag and Seat Belt Div. Formerly Known as Allied Signal Safety Restraint Systems, El Paso, TX and Douglas, AR: April 27, 1997.

NAFTA–TAA–02299; Richfield Apparel Co., Inc., Richfield, PA: March 30, 1997.

NAFTA–TAA–02342; Rayovac Corp., Madison, WI: April 22, 1997.

NAFTA–TAA–02410; Taylor Precision Products, Fletcher, NC: May 20, 1997.

NAFTA–TAA–02388; Paul-Son Gaming Supplies, Inc., Las Vegas, NV: April 20, 1997.

NAFTA–TAA–02381; Hasbro Manufacturing Services, El Paso, TX: April 18, 1998.

NAFTA–TAA–02390; Tri-Clover, Inc., Fittings Factory, Kenosha, WI: May 14, 1997.

NAFTA–TAA–02262 & A, B; Pioneer Natural Resources USA, Inc., Headquartered in Midland, TX and Operating Throughout the State of Texas & Throughout the State of Oklahoma: March 10, 1997.

NAFTA–TAA–02323; Walls Industries, Inc., Hamilton, TX: March 23, 1997.

NAFTA–TAA–02356; Escalator Handrail USA, Orchard Park, NY: April 21, 1997.

NAFTA–TAA–2369 & A; VF Knitwear, Inc., Bakersville, NC and Kinston, NC: May 1, 1997.

NAFTA–TAA–2360; VF Knitwear, Inc., Hillsville, VA: May 1, 1997.

NAFTA–TAA–02328; Larcan–TTC, Inc., Louisville, CO: April 8, 1997.

NAFTA–TAA–02393; Alps Electric (USA), Inc., Huntington Beach, CA: March 12, 1997.

NAFTA–TAA–02417; Idea Courier, Div. Of IDE Corp., Phoenix, AR: May 29, 1997.

NAFTA–TAA–02345; Hamrick's, Roebuck, SC: April 20, 1997.

NAFTA–TAA–02312; TRW Steering Wheel Systems, Yaphank, NY, Including the Leased Workers of Manpower, Hauppauge, NY and Interpool, Hicksville, NY Employed at TRW Steering Wheels System, Yaphank, NY: April 13, 1997.

NAFTA–TAA–02281; Collins Products LLC, A Div. Of Collins Pine Co., Klamath Falls, OR: March 24, 1997.

NAFTA–TAA–02344; Polaroid Corp., Waltham, MA: April 16, 1997.

NAFTA–TAA–02295; Alcoa Fujikura LTD, Automotive Div., Del Rio, TX: March 27, 1997.

I hereby certify that the aforementioned determinations were issued during the month of June 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 1, 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–18574 Filed 7–10–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,691]

Amity Dyeing & Finishing, Augusta, Georgia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 22, 1998, in response to a petition filed on behalf of workers at Amity Dyeing & Finishing, Augusta, Georgia.

The subject plant closed in August of 1997 and has not reopened since that time. Workers at the plant were denied eligibility to apply for Trade Adjustment Assistance in a determination issued on November 24, 1997 (TA–W–33,815). No new evidence has been brought forward to indicate that conditions have changed. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 23rd day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–18579 Filed 7–10–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

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 Acting 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 Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 23, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 23, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/22/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,663	Crown Pacific (IAMAW)	Sandpoint, ID	06/04/98	Lumber.
34,664	Rod Ric Drilling Corp (Wkrs)	Midland, TX	06/08/98	Crude Oil.
34,665	Alcoa Fujikura, Ltd (Co.)	El Paso, TX	05/19/98	Automotive Wire Harnesses.
34,666	New Creations (UNITE)	Farmingdale, NY	06/03/98	Ladies' Bathing Suits.
34,667	Brunswick Bicycles (Co.)	Effingham, IL	06/09/98	Bicycles.
34,668	Keystone Weaving Mills (Wkrs)	Lebanon, PA	05/27/98	Fabrics—Home.
34,669	MKE Quantum Components (Co.)	Shrewsbury, MA	05/28/98	Wafer—MR Heads.
34,670	Rexworks, Inc (USWA) (Co.)	Milwaukee, WI	06/02/98	Cement Mixers, Landfill Compaction.
34,671	BASF Corp (Wkrs)	Santa Ana, CA	06/05/98	Polystryrene Pellets.
34,672	Henderson Sewing Machine (Co.)	Andalusia, AL	05/26/98	Distribute Industrial Sewing Machines.
34,673	Newell Co (Wkrs)	Statesville, NC	06/01/98	Picture Frames.
34,674	Donnkenny Apparel (Wkrs)	Dryden, VA	06/09/98	Ladies' Apparel.
34,675	J.E. Morgan Knitting Mill (Wkrs)	Gilbertsville, PA	06/11/98	Thermal Underwear.
34,676	United Container Mach. (Co.)	Glen Arm, MD	05/12/98	Capital Equipment Machinery.
34,677	Trico Products (Co.)	Buffalo, NY	06/11/98	Windshield Wiper Systems.
34,678	Mitsubishi Semiconductor (Co.)	Durham, NC	06/09/98	DRAM Semiconductors.

APPENDIX—Continued

[Petitions instituted on 06/22/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,679	L–K Wireline, Inc (Wkrs)	Hays, KS	06/07/98	Oilfield Services.
34,680	Duro Test Lighting (Co.)	Clifton, MJ	05/26/98	Light Bulbs.
34,681	Raytheon Systems (UPIU)	Fort Wayne, IN	06/12/98	Military Communications.
34,682	Glencraft Lingerie (Wkrs)	New York, NY	05/05/98	Sleepwear and Robes.
34,683	Topps Safety Apparel (Wkrs)	Greensburg, KY	06/12/98	Uniforms.
34,684	Shin Etsu Polymer America (Co.)	Union City, CA	06/12/98	Silicone Ruber Molded Assembly Products.
34,685	Siebe Automotive North (Co.)	Knoxville, TN	06/12/98	Automobile EGR Valves.
34,686	Rocco Shady Brook Farms (Wkrs)	St. Pauls, NC	06/15/98	Process Turkeys.
34,687	Huffy Bicycle (Co.)	Celina, OH	06/11/98	Bicycles.
34,688	Breuil Automation, Inc (Wkrs)	Gainsville, GA	06/12/98	Poultry Equipment.
34,689	Sanda Hosiery Mills (Co.)	Cleveland, TN	05/26/98	Infant's and Toddler's Socks.
34,690	Imation Corp. (Wkrs)	Wahpeton, ND	06/01/98	Computer Diskettes & Cartridges.
34,691	Amity Dyeing & Finishing (Wkrs)	Augusta, GA	06/06/98	Dyed Cotton Fabric.

[FR Doc. 98–18578 Filed 7–10–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,505]

Dade Behring Inc., Miami, Florida; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 4, 1998, in response to a worker petition which was filed by the company on behalf of its workers at Dade Behring Inc., Miami, Florida.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 25th day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–18582 Filed 7–10–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,572]

Joe Sharp Manufacturing Company, Inc. Rancho Cucamunga, California; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 26, 1998, in response to a worker petition which was filed on behalf of workers at Joe Sharp Manufacturing Company, Inc., Rancho Cucamunga, California.

An active certification covering the petitioning group of workers at the subject firm remains in effect under the name Sharp Manufacturing Company (TA–W–34, 302). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 23rd day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–18580 Filed 7–10–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,416]

Lynley Designs, Jefferson, Louisiana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1998 in response to a petition which was filed on March 25, 1998 on behalf of workers at Lynley Designs, located in Jefferson, Louisiana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 24th day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–18581 Filed 7–10–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02046]

Freeport Sulphur Co., and Leased Workers of Pecos Valley Field Services, Inc., Freeport McMoRan Sulphur, Inc., Pecos, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 17, 1998, applicable to all workers of Freeport Sulphur Company, including leased workers of Pecos Valley Field Services, Incorporated, Pecos, Texas. The notice was published in the **Federal Register** on March 16, 1998 (63 FR 12838).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers separated from employment at Freeport Sulphur Company had their wages reported under a separate unemployment insurance (UI) tax account at Freeport McMoRan Sulphur, Incorporated. Workers from Freeport McMoRan Sulphur, Incorporated produced molten elemental sulphur at the Pecos, Texas location of Freeport Sulphur Company.

Based on these findings, the Department is amending the certification to include workers from Freeport McMoRan Sulphur, Incorporated, Pecos, Texas who were engaged in the production of molten elemental sulphur at Freeport Sulphur Company, Pecos, Texas.

The intent of the Department's certification is to include all workers of Freeport Sulphur Company adversely affected by the shift of production to Mexico.

The amended notice applicable to NAFTA—02046 is hereby issued as follows:

All workers of Freeport Sulphur Company, Pecos, Texas (NAFTA—02046), including leased workers of Pecos Valley Field Services, Incorporated and Freeport McMoRan Sulphur, Incorporated, Pecos, Texas, engaged in employment related to the production of molten elemental sulphur for Freeport Sulphur Company, Pecos, Texas who became totally or partially separated from employment on or after October 24, 1996 through February 17, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 1st day of July, 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–18575 Filed 7–10–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02185]

Gambro Healthcare, inc.. Deland, FL., and Leased Workers of TTC Illinois, Inc. Boca Raton, FL.; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 19, 1998, applicable to all workers of Gambro Healthcare, Incorporated, located in Deland, Florida. The notice was published in the **Federal Register** on March 16, 1998 (63 FR 12838).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce on-off dialysis kits. New information provided by the company shows that some workers separated from employment at Gambro Healthcare, Incorporated, Deland, Florida has their wages reported under a separate unemployment insurance (UI) tax account, at TTC Illinois, Incorporated, Boca Raton, Florida. Workers from TTC Illinois provided payroll function services to the Deland, Florida facility of Gambro Healthcare, Incorporated. Worker separations occurred at TTC Illinois, Incorporated as a result of worker separations at Gambro Healthcare, Incorporated.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Gambro Healthcare, Incorporated adversely affected by imports from Mexico.

The amended notice applicable to NAFTA—02185 is hereby issued as follows:

All workers of the Gambro Healthcare, Incorporated, Deland, Florida (NAFTA—02185), and leased workers of TTC Illinois, Incorporated, Boca Raton, Florida that provided payroll function services for Gambro Healthcare, Incorporated, Deland, Florida who became totally or partially separated from employment on or after January 29, 1997 through February 19, 2000 are eligible to apply for the NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 1st day of July, 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–18576 Filed 7–10–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02210; NAFTA–02210A]

TRICO Products Corporation, Vanceboro, North Carolina; and TRICO Products Division Headquarters Buffalo, New York; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Tital II, of the Trade Act of 1974 as amended (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 13, 1998, applicable to all workers at TRICO Products Corporation, located in Vanceboro, North Carolina. The notice was published in the **Federal Register** on May 6, 1998 (63 FR 25083).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at TRICO Products Division Headquarters, located in Buffalo, New York. The Buffalo, New York location is the corporate headquarters and administrative offices for the North American production facilities of TRICO Products Corporation, including Vanceboro, North Carolina where workers produce windshield wipers, including blades, refills and parts.

The intend of the Department's certification is to include all workers of TRICO Products Corporation who were adversely affected by increased imports from Mexico. Accordingly, the Department is amending the certification to cover the workers of TRICO Products Corporation, TRICO Products Division Headquarters, Buffalo, New York.

The amended notice applicable for NAFTA—02210 is hereby issued as follows:

"All workers of TRICO Products Corporation, Vanceboro, North Carolina (NAFTA—02210), and TRICO Products Division Headquarters, Buffalo, New York (NAFTA—02210A) who became totally or partially separated from employment on or after February 11, 1997 through April 13, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of July, 1998.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–18577 Filed 7–10–98; 8:45 am]

BILLING CODE 4510–30–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Notice of Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

ACTION: Notice of Availability of Draft Performance-Based Service Contracting (PBSC) Documents on Selected Professional and Technical Services.

SUMMARY: OFPP initiated an interagency project to develop generic guidance materials to assist agencies in converting selected professional and technical services to PBSC methods. Working groups, consisting of agency technical and procurement personnel, are developing generic PBSC documents that include: performance requirements, performance standards, quality assurance techniques, positive and negative incentives, and evaluation criteria for selected services. Draft documents have been prepared for software maintenance, studies and reports, aircraft maintenance, test range support, and surveys. After the

documents have been finalized, they will be published as a reference source for agency voluntary use. We feel that public review and comment on the draft documents would provide us with valuable feedback and insight.

ADDRESSES: Those persons interested in obtaining a copy and reviewing the draft documents should contact Ms. Margaret B. Christian, OFPP, New Executive Office Building, Room 9001, 725 17th Street, NW, Washington, DC 20503, (202–395–6803).

Allan Brown,

Acting Administrator.

[FR Doc. 98–18564 Filed 7–10–98; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–093)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Envirotest Systems Corporation, of Sunnyvale, CA 94086, has applied for an exclusive license within the field of use defined as "motor vehicle exhaust emission monitoring" to practice the inventions disclosed in U.S. Patent No. 5,128,797 entitled, "NON-MECHANICAL OPTICAL PATH SWITCHING AND ITS APPLICATION TO DUAL BEAM SPECTROSCOPY INCLUDING GAS FILTER CORRELATION RADIOMETER" and NASA Case No. LAR–15361–1–CU entitled, "SIMULTANEOUS MEASUREMENT OF TWO OR MORE GASES USING OPTICAL PATH SWITCHING" for which a U.S. Patent Application was filed, and both the U.S. Patent and U.S. Patent Application are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–3230; fax (757) 864–9190.

Dated: July 6, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–18608 Filed 7–10–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–094)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Weider Nutrition International of Salt Lake City, Utah 84104–4726, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,447,730, entitled "Rehydration Beverage," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATE: Responses to this notice must be received by September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Dal Bon, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: July 6, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–18609 Filed 7–10–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 27, 1998. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail:records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs

the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Agency-wide (N1–463–98–2, 2 items, 2 temporary items). Reduction in retention periods of license issuance records and investigation files, which were previously approved for disposal, to meet requirements of the U.S. Grain Standards Act.

2. Department of Agriculture, Animal and Plant Health Inspection Service, Agency-wide (N1–463–98–1, 2 items, 2 temporary items). Credit card account set-up files and program holder files documenting the issuance and use of government employee credit cards for agency purchases.

3. Department of the Army, Army-wide (N1–AU–97–10, 6 items, 6 temporary items). Records relating to logistics and materiel issues, including readiness of aircraft, missiles and ground equipment and the capability of the logistics system to sustain deployed forces in simulated combat.

4. Department of the Army, Army-wide (N1–AU–97–25, 4 items, 4 temporary items). Reduction in the retention period of special review board records previously approved for disposal. Files relate to suitability evaluation boards, academic evaluation report appeals, officer evaluation report appeals and enlisted evaluation report appeals.

5. Department of Commerce, National Oceanic and Atmospheric Administration, Agency-wide (N1–370–97–3, 1 item, 1 temporary item). Fishery Management Regulations Guidance Files maintained at NOAA headquarters and regional offices which consist of guidance on the preparation and publication of regulations in the **Federal Register**, regulatory training materials pertaining to fishery regulations development and regulations pertaining to Fishery Management Plans.

6. Department of Energy, Alaska Power Administration, Agency-wide (N1–447–97–1, 5 items, 1 temporary item). The single temporary item in this schedule permits the Alaska Power Administration (which will cease operation in 1998) to apply to its records disposal authorities contained in 10 separate schedules approved for analogous records of the Bonneville Power Administration. Records proposed for disposal document payroll, budget, work requests, quality control, line inspections and other day-to-day operations.

7. Department of Health and Human Services, Health Care Financing Administration (N1–440–98–1, 1 item, 1 temporary item). Demonstration records created by the Office of Financial Management to support the management and payment for research projects conducted by HCFA to test the feasibility of covering currently noncovered services or activities and/or to test alternate reimbursement methodologies. The files include cost reports, financial statements, award/initiation letters, correspondence, progress reports, corrective actions, site visit reports, interim and final reports, desk review programs, notices of program reimbursement, adjustment reports, appeals information (e.g., position papers), payment information, enrollee data and monthly and history edits.

8. Department of Health and Human Services, Health Care Financing Administration (N1–440–98–2, 1 item, 1 temporary item). Adjusted Community Rate (ACR) Proposals created by individual HMO's consisting of documentation supporting the proposed monthly premium charge to enrolled Medicare beneficiaries.

9. Department of Health and Human Services, National Institute for Occupational Safety and Health (N1–442–98–1, 4 items, 4 temporary items). Epidemiological Study Records and Employee Exposure and Medical Records. Epidemiological Study Records include medical records and consent forms, questionnaires, notification letters, study protocols, draft reports and peer review correspondence (the final study report is not authorized for destruction). Employee Exposure and Medical Records will be retained for 40 years in accordance with requirements specified in 29 CFR 1910.

10. Department of Justice, Agency-wide (N1–60–98–3, 1 item, 1 temporary item). Removal of Records Request and Nondisclosure Agreements. Executed printed forms required of all departing employees certifying that documentary materials removed are non-record copies and contain no sensitive information.

11. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information System Division (N1–65–98–1, 1 item, 1 temporary item). A reduction in the retention period for single fingerprint cards for individuals born prior to 1/1/29, previously approved for disposal.

12. Department of Justice, Immigration and Naturalization Service (N1–85–98–1, 2 items, 2 temporary items). Firearms Operating Module, an automated system tracking issuance of firearms to INS enforcement personnel.

13. Department of Justice, United States Parole Commission (N1–438–98–1, 1 item, 1 temporary item). Parole cases transferred from the custody of the District of Columbia Parole Board to the Commission pursuant to the requirements of P.L. 1005–33.

14. Department of Treasury, Internal Revenue Service, Assistant Commissioner (International) (N1–058–98–8, 10 items, 10 temporary items). The records consist of Exemption from Withholding on Compensation for Independent Personal Services of a Non-Resident Alien (Form 8233) and two administrative systems: the Territory Post Model System which prioritizes potential international posts-of-duty, and the Centralized International Case Management System, which tracks information pertaining to international examinations.

15. Department of Treasury, Internal Revenue Service, Service Centers (N1–058–98–12, 20 items, 20 temporary items). The records consist of forms and

accounting records created and maintained in the Centers pertaining to revenue collection and accounting; processing, analysis, and disposition of tax returns, tax information and related records; mailing of tax forms, transcription of statistical information and preparation of reports.

16. Department of Treasury, Internal Revenue Service, Office of the Chief, Management and Administration; Assistant Commissioner, Support Services; Office of the Chief, Headquarters Operations; Office of the Director, Support Services; Regional Commissioners (N1–058–97–9, 42 items, 36 temporary items). The records proposed for disposal consist largely of administrative records pertaining to such matters as air quality management, building renovation projects, management improvement studies, operating plans, space planning, parking programs, work information tracking, and membership in professional organizations.

17. Department of Treasury, Internal Revenue Service, Service Centers (N1–058–98–11, 1 item, 1 temporary item). A reduction in the retention period for Posting, Payment, and Adjustment Documents, which were previously approved for disposal.

18. Department of Treasury, Under Secretary, Domestic Finance, Office of Federal Financing Bank (N1–056–98–1, 4 items, 2 temporary items). A reduction in the retention period for Federal Financing Note and Obligation Files and Transaction Files, which were previously approved for disposal.

19. African Development Foundation, Office of Programs and Field Operations (N1–487–98–1, 4 items, 4 temporary items). Master Grant Documentation Files, including electronic versions of records created by electronic mail and word processing applications.

20. Environmental Protection Agency, Laboratory Records (N1–412–97–5, 1 item, 1 temporary item). Employee Occupational Exposure to Ionizing Radiation records consisting of quarterly employee exposure reports, lists of approved radioactive isotope users, Nuclear Regulatory Commission (NRC) correspondence, policies regarding handling of radiation, questionnaires and requisitions for and inventories of radioactive materials. These files will be maintained for 75 years after the termination of the NRC license.

21. Federal Emergency Management Agency (FEMA), Agency-wide (N1–311–97–2, 4 items, 2 temporary items). Records of external committees and conferences sponsored by other agencies.

22. National Archives and Records Administration (N1–GRS–98–1, 2 items, 2 temporary items). An addition to General Records Schedule 1, applicable to all Federal agencies, providing disposition authority for records documenting positive drug test results for Federal employees and job applicants.

23. Central Intelligence Agency, Agency-wide (N1–263–98–1, 3 items, 2 temporary items). The temporary records include agency posters produced in support of routine events and subjects and pre-production materials. Mission related posters are proposed for permanent retention.

24. Tennessee Valley Authority, Chief Engineer (N1–142–98-14, 2 items, 1 temporary item). Temporary files of the Chief Engineer consisting of field engineering log books, concreting operations records, progress reports, blasting records and administrative records. Project files relating to water control and related photographs, fatalities at TVA facilities, and Townlift correspondence are proposed for permanent retention.

Dated: July 2, 1998.

Geraldine N. Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 98–18458 Filed 7–10–98; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc., et al. (Joseph M. Farley Nuclear Plant, Units 1 and 2); exemption

I

Southern Nuclear Operating Company, Inc., et al. (the licensee) is the holder of Facility Operating License Nos. NPF–2 and NPF–8, for the Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The FNP facility consists of two pressurized-water reactors located at the licensee's site in Houston County, Alabama.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71, "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided that the interval between successive updates [to the UFSAR] does not exceed 24 months." The FNP, Units 1 and 2, share a common UFSAR; therefore, this rule requires the licensee to update the same document within 6 months after a refueling outage for either unit. By letter dated January 19, 1998, the licensee requested an exemption from the requirements of 10 CFR 50.71(e)(4).

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states that:

> The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *." As noted in the staff's supporting Safety Evaluation, the licensee's proposed schedule for UFSAR updates will ensure that the FNP UFSAR will be maintained current within 24 months of the last revision and the interval for submission of the 10 CFR 50.59 design change report will not exceed 24 months. The proposed schedule fits within the 24-month duration specified by 10 CFR 50.71(e)(4). Literal application of 10 CFR 50.71(e)(4) would require the licensee to update the same document within 6 months after a refueling outage for either unit; a more burdensome requirement than intended. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.71(e)(4). The licensee will be required to submit updates to the FNP UFSAR within 6 months after the Unit 1 refueling outage. With the current length of fuel cycles, UFSAR updates would be submitted

every 18 months, but not to exceed 24 months from the last submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (63 FR 35985 dated July 1, 1998).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of July 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18548 Filed 7–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1 located in Callaway County, Missouri.

The proposed amendment would support a modification to the plant to increase the storage capacity of the spent fuel pool.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

In the analysis of the safety issues concerning the expanded pool storage capacity, the following previously postulated accident scenarios have been considered:

a. A spent fuel assembly drop in the Spent fuel pool
b. Loss of Spent fuel pool cooling flow
c. A seismic event
d. Misloaded fuel assembly

The probability that any of the accidents in the above list can occur is not significantly increased by the modification itself. The probabilities of a seismic event or loss of spent fuel pool cooling flow are not influenced by the proposed changes. The probabilities of accidental fuel assembly drops or misloadings are primarily influenced by the methods used to lift and move these loads. The method of handling loads during normal plant operations is not significantly changed, since the same equipment (i.e., Spent Fuel Handling Machine) and procedures will be used. A new offset handling tool will be required to assess some storage rack cells located adjacent to the pool walls. The grapple mechanism, procedures, and fuel manipulation methods will be very similar to those used by the standard fuel handling tool. Therefore, this tool does not represent a significant change in the methods used to lift or move fuel. Since the methods used to move loads during normal operations remain nearly the same as those used previously, there is no significant increase in the probability of an accident.

During rack removal and installation, all work in the pool area will be controlled and performed in strict accordance with specific written procedures. Any movement of fuel assemblies required to be performed to support the modification (e.g., removal and installation of racks) will be performed in the same manner as during normal refueling operations. Shipping cask movements will not be performed during the modification period.

Accordingly, the proposed modification does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the previously postulated scenarios for an accidental drop of a fuel assembly in the spent fuel pool have been re-evaluated for the proposed change. The results show that the postulated accident of a fuel assembly striking the top of the storage racks will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin, K_{eff} less than or equal to 0.95, will be maintained. The structural damage to the Fuel Building, pool liner, and fuel assembly resulting from a fuel assembly drop striking the pool floor or another assembly located within the racks is primarily dependent on the mass of the falling object and the drop height. Since these two parameters are not changed by the proposed modification, the structural damage to these items remains unchanged. Cycle specific calculations, using core specific parameters continue to ensure that the radiological dose at the exclusion area boundary remain within the limits documented in the Callaway FSAR [Final Safety Analysis Report]. Dose levels will remain "well within" the levels required by 10 CFR 100, paragraph 11, as defined in Section 15.7.4.II.1 of the Standard Review Plan. Thus, the results of the postulated fuel drop accidents remain acceptable and do not represent a significant increase in consequences from any of the previously evaluated accidents that have been reviewed and found acceptable by the NRC.

The consequences of a loss of spent fuel pool cooling have been evaluated and found to have no increase. The concern with this accident is a reduction of spent fuel pool water inventory from bulk pool boiling resulting in uncovering fuel assemblies. This situation would lead to fuel failure and subsequent significant increase in offsite dose. Loss of spent fuel pool cooling at Callaway is mitigated by ensuring that a sufficient time lapse exists between the loss of forced cooling and uncovering fuel. This period of time is compared against a reasonable period to re-establish cooling or supply an alternative water source. Evaluation of this accident usually includes determination of the time to boil. The time allowed for operator actions is much less than the onset of any significant increase in offsite dose, since once boiling begins it would have to continue unchecked until the pool surface was lowered to the point of exposing active fuel. The time to boil represents the onset of loss of pool water inventory and is commonly used as a gage for establishing the comparison of consequences before and after a reracking project. The heat up rate in the Spent fuel pool is a nearly linear function of the fuel decay heat load. The fuel decay heat load will increase subsequent to the proposed changes because of the increase in the number of assemblies. The methodology

used in the thermal-hydraulic analysis determined the maximum fuel decay heat loads which are allowed by maintaining the current time allowed for operator actions (i.e., more than two hours to boil during complete loss of forced cooling). In the unlikely event that all pool cooling is lost, sufficient time will still be available subsequent to the proposed changes for the operators to provide alternate means of cooling before the onset of pool boiling. Therefore, the proposed change represents no increase in the consequences of loss of pool cooling.

The consequences of a design basis seismic event are not increased. The consequences of this accident are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The new racks have been analyzed in their new configuration and found safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed poison configurations subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The Fuel Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator/coolant. Thus, the consequences of a seismic event are not increased.

This rerack amendment does not involve an increase in fuel enrichment or burnup levels and does not alter the source term.

Fuel misloading accidents were previously postulated occurrences. The consequence of this type of accident has been analyzed for the worst possible storage configuration subsequent to the proposed modification and the consequences were found to be acceptable because the reactivity in the spent fuel pool remained below 0.95. After the proposed modification, the worst case postulated accident condition, for the MZTR configuration, occurs when a fresh fuel assembly of the highest possible enrichment in inadvertently loaded into a Region 2 storage cell. Further, after the proposed modification, the worst case postulated accident condition, for the checkerboard configuration, occurs when a fresh fuel assembly of the highest possible enrichment is inadvertently loaded into an empty storage cell. In both postulated accident scenarios, credit is allowed for soluble boron in the water, and the spent fuel pool reactivity is maintained below 0.95. Therefore, there is no increase in consequences due to the modification.

Therefore, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

To assess the possibility of new or different kind of accidents, a list of the important parameters required to ensure safe fuel storage was established. Safe fuel storage is defined here as providing an environment which would not present any significant threats to workers or the general public. In other words, meeting the requirements of 10 CFR 100 and 10 CFR 20. Any new events which would modify these parameters sufficiently to place them outside of the boundaries analyzed for normal conditions and/or outside of the boundaries previously considered for accidents would be considered a new or different accident. The criticality and radiological safety evaluations were reviewed to establish the list of important parameters. The fuel configuration and the existence of the moderator/coolant were identified as the only two parameters which were important to safe fuel storage. Significant modification of these two parameters represents the only possibility of an unsafe storage condition. Once the two important parameters were established, an additional step was taken to determine what events (which were not previously considered) could result in changes to the storage configuration or moderator/coolant presence during or subsequent to the proposed changes. This process was adopted to ensure that the possibility of any new or different accident scenario or event would be identified.

Due to the proposed changes, an accidental drop of a rack module during construction activity in the pool was considered as the only event which might represent a new or different kind of accident.

A construction accident resulting in a rack drop is an unlikely event. A new temporary hoist and rack lifting rig will be introduced to lift and suspend the racks from the bridge of the Cask Handling Crane. These items have been designed in accordance with the requirements of NUREG–0612 and ANSI N14.6. The postulated rack drop event is commonly referred to as a "heavy load drop" over the pools. Heavy loads will not be allowed to travel over any racks containing fuel assemblies. The danger represented by this event is that the racks will drop to the pool floor and the pool structure will be compromised leading to loss of moderator/coolant, which is one of the two important parameters identified above. However, although the analysis of this event has been performed and shown to be acceptable, the question of a new or different type of event is answered by determining whether heavy load drops over the pool have been considered previously. The postulated drop of a pool gate was previously evaluated and represents a similar heavy load drop consideration. All movements of heavy loads over the pool will be in accordance with the objectives of the Union Electric Company, NRC approved submittals in response to NUREG–0612. Therefore, the rack drop does not represent a new or different kind of accident.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The proposed change does not affect any of the important parameters required to ensure safe fuel storage. Therefore, the potential for a new or previously unanalyzed accident is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The function of the spent fuel pool is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with the spent fuel pool.

UE has addressed the safety issues related to the expanded pool storage capacity in the following areas:

1. Material, mechanical and structural considerations
2. Nuclear criticality
3. Thermal-hydraulic and pool cooling

The mechanical, material, and structural designs of the new racks have been reviewed in accordance with the applicable provisions of the NRC Guidance entitled, "Review and Acceptance of Spent Fuel Storage and Handling Applications". The rack materials used are compatible with the spent fuel assemblies and the spent fuel pool environment. The design of the new racks preserves the proper margin of safety during abnormal loads such as a dropped assembly and tensile loads from a stuck assembly. It has been shown that such loads will not invalidate the mechanical design and

material selection to safely store fuel in a coolable and subcritical configuration.

The methodology used in the criticality analysis of the expanded Spent fuel pool meets the appropriate NRC guidelines and the ANSI standards (GDC 62, NUREG 0800, Section 9.1.2, the OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications, Reg. Guide 1.13, and ANSI ANS 8.17). The margin of safety for subcriticality is maintained by having the neutron multiplication factor equal to, or less than 0.95 under all accident conditions, including uncertainties. This criterion is the same as that used previously to establish criticality safety evaluation acceptance and remains satisfied for all analyzed accidents. Therefore, the accepted margin of safety remains the same.

The thermal-hydraulic and cooling evaluation of the pool demonstrated that the pool can be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The bulk pool temperature will not exceed 207 °F during an assumed loss of all cooling for up to two hours. Bulk pool boiling will not occur, nor will fuel cladding experience DNB [departure from nucleate boiling] or excessive thermal stresses. The fuel will not undergo any significant heat up after an accidental drop of fuel assembly on top of the rack blocking the flow path. A loss of cooling to the pool will allow sufficient time (2 hours) for the operators to intervene and line up alternate cooling paths and the means of inventory make-up before the onset of pool boiling. Therefore the allowed operator response time remains unchanged from the previous design basis. In the unlikely event that all pool cooling is lost coincident with the completion of a full core discharge, sufficient time will still be available, subsequent to the proposed changes, for the operators to provide alternate means of cooling before the onset of bulk pool boiling. Therefore, the accepted margin of safety remains the same.

Thus, it is concluded that the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 12, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The

contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John O'Neill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under Section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in conroversy among the parties." The hybrid procedures in Section 134 provide for oral argument on matters in controversy, preceeded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of Section 134 and set for hearing after oral argument.

The Commission's rules implementing Section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

For further details with respect to this action, see the application for amendment dated March 20, 1998, as supplemented by letter dated May 28, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 7th day of July 1998.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18545 Filed 7–10–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42 issued to Wolf Creek Nuclear Operating Corporation (the licensee) for operation of the Wolf Creek Nuclear Generating Station, Unit No. 1 located in Coffey County, Kansas.

The proposed amendment would support a modification to the plant to increase the storage capacity of the spent fuel pool and increase the maximum nominal fuel enrichment to 5.0 nominal weight percent U–235.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

In the analysis of the safety issues concerning the expanded Spent Fuel Pool storage capacity, the following previously postulated accident scenarios have been considered:

a. A spent fuel assembly drop in the Spent Fuel Pool
b. Loss of Spent Fuel Pool cooling flow
c. A seismic event
d. Misloaded fuel assembly

The probability that any of the accidents in the above list can occur is not significantly increased by the modification itself. The probabilities of a seismic event or loss of Spent Fuel Pool cooling flow are not influenced by the proposed changes. The probabilities of accidental fuel assembly drops or misloadings are primarily influenced by the methods used to lift and move these loads. The method of handling loads during normal plant operations is not significantly changed, since the same equipment (i.e., Spent Fuel Pool Bridge Crane) and procedures will be used. A new offset handling tool will be required to assess some storage rack cells located adjacent to the pool walls. The grapple mechanism, procedures, and fuel manipulation methods will be very similar to those used by the spent fuel handling tool. Therefore, this tool does not represent a significant change in the methods used to lift or move fuel. Since the methods used to move loads during normal operations remain nearly the same as those used previously, there is no significant increase in the probability of an accident.

During rack removal and installation, all work in the pool area will be controlled and performed in strict accordance with specific written procedures. Any movement of fuel assemblies required to be performed to support the modification (e.g., removal and installation of racks) will be performed in the same manner as during normal refueling operations. Shipping cask movements will not be performed during the modification period.

Accordingly, the proposed modification does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the previously postulated scenarios for an accidental drop of a fuel assembly in the Spent Fuel Pool have been re-evaluated for the proposed change. The results show that the postulated accident of a fuel assembly striking the top of the storage racks will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin, K_{eff} less than or equal to 0.95, will be maintained. The structural damage to the Fuel Building, pool liner, and fuel assembly resulting from a fuel assembly drop striking the pool floor or another assembly located within the racks is primarily dependent on the mass of the falling object and the drop height. Since these two parameters are not changed by the proposed modification, the structural damage to these items remains unchanged. Cycle specific calculations, using core specific parameters continue to ensure that the radiological dose at the exclusion area boundary remain within the limits documented in the WCGS [Wolf Creek Generating Station] Updated Safety Analysis Report. Dose levels remain well within the levels required by 10 CFR 100, paragraph 11, as defined in Section 15.7.4.II.1 of the Standard Review Plan. Thus, the results of the postulated fuel drop accidents remain acceptable and do not represent a significant increase in consequences from any of the same previously evaluated accidents that have been reviewed and found acceptable by the NRC.

The consequences of a loss of Spent Fuel Pool cooling have been evaluated and found to have no increase. The concern with this accident is a reduction of Spent Fuel Pool water inventory from bulk pool boiling resulting in uncovering fuel assemblies. This situation would lead to fuel failure and subsequent significant increase in offsite dose. Loss of Spent Fuel Pool cooling at WCGS is mitigated in the usual manner by ensuring that a sufficient time lapse exists between the loss of forced cooling and uncovering fuel. This period of time is compared against a reasonable period to re-establish cooling or supply an alternative water source. Evaluation of this accident usually includes determination of the time to boil. The time allowed for operator action is much less than the onset of any significant increase in offsite dose, since once boiling begins it would have to continue unchecked until the Spent Fuel Pool surface was lowered to the point of exposing active fuel. The time to boil represents the onset of loss of Spent Fuel Pool water inventory and is commonly used as a gage for establishing the comparison of consequences before and after a refueling project. The heat up rate in the Spent Fuel Pool is a nearly linear function of the fuel decay heat load. The fuel decay heat load will increase subsequent to the proposed changes because of the increase in the number [of] assemblies and higher fuel burnups. The methodology used in the thermal-hydraulic analysis determined the maximum fuel decay heat loads which are allowed by maintaining the current time allowed for operator action (i.e., more than two hours to boil during complete loss of forced cooling). Therefore, the allowed operator action time remains unchanged from the previous design basis. In the unlikely event that all Spent Fuel Pool cooling is lost, sufficient time will still be available subsequent to the proposed changes for the operators to provide alternate means of cooling before the onset of pool boiling. Therefore, the proposed change represents no increase in the consequences of loss of Spent Fuel Pool cooling.

The consequences of a design basis seismic event are not increased. The consequences of this accident are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The new racks have been analyzed in their new configuration and found safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed poison configurations subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The Fuel Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator/coolant. Thus, the consequences of a seismic event are not increased.

Fuel misloading accidents were previously postulated occurrences. The consequence of this type of accident has been analyzed for the worst possible storage configuration subsequent to the proposed modification and the consequences were found to be acceptable because the reactivity in the Spent Fuel Pool remained below 0.95. After the proposed modification, the worst case postulated accident condition, for the Mixed Zone Three Region configuration, occurs when a fresh fuel assembly of the highest possible enrichment is inadvertently loaded into a Region 2 storage cell. Further, after the proposed modification, the worst case postulated accident condition, for the checkerboard configuration, occurs when a fresh fuel assembly of the highest possible

enrichment is inadvertently loaded into an empty storage cell. In both postulated accident scenarios, credit is allowed for soluble boron in the water, and the Spent Fuel Pool reactivity is maintained below 0.95. Therefore, there is no increase in consequences due to the modification.

Therefore, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

To assess the possibility of new or different kind of accidents, a list of the important parameters required to ensure safe fuel storage was established. Safe fuel storage is defined here as providing an environment which would not present any significant threats to workers or the general public. In other words, meeting the requirements of 10 CFR 100 and 10 CFR 20. Any new events which would modify these parameters sufficiently to place them outside of the boundaries analyzed for normal conditions and/or outside of the boundaries previously considered for accidents would be considered a new or different accident. The criticality and radiological safety evaluations were reviewed to establish the list of important parameters. The fuel configuration and the existence of the moderator/coolant were identified as the only two parameters which were important to safe fuel storage. Significant modification of these two parameters represents the only possibility of an unsafe storage condition. Once the two important parameters were established, an additional step was taken to determine what events (which were not previously considered) could result in changes to the storage configuration or moderator/coolant presence during or subsequent to the proposed changes. This process was adopted to ensure that the possibility of any new or different accident scenario or event would be identified.

Due to the proposed changes, an accidental drop of a rack module during construction activity in the pool was considered as the only event which might represent a new or different kind of accident.

An installation accident of a rack dropping onto stored spent fuel or the pool floor liner is not a postulated event due to the defense-in-depth approach to be taken, as discussed in detail within Section 3.5 of the Licensing Report [Enclosure I to the March 20, 1998 letter]. This approach is similar to that taken previously for lifting a pool gate with the Spent Fuel Pool Bridge Crane. A new temporary hoist and rack lifting rig will be introduced to lift and suspend the racks from the bridge of the Cask Handling Crane. These temporary lift items have been designed in accordance with the requirements of NUREG–0612 and ANSI N14.6 with respect to redundancy in load path or safety margin. The postulated rack drop event is commonly referred to as a "heavy load drop" over the pools. Heavy loads will not be allowed to travel over any racks containing fuel assemblies, thus a rack drop onto fuel is precluded. A rack drop to the pool liner is not a postulated event, since all of the lifting components (except for the Cask Handling Crane) either provide redundancy in load path or are designed with safety margins greater than a factor of ten. Nevertheless, the analysis of a rack dropping to the liner has been performed and shown to be acceptable. However, the question of a new or different type of event is answered by determining whether similar heavy loads have been carried over the pool. As stated above, pool gates have been previously lifted within the Spent Fuel Pool. The pool gate and the storage racks are both designated as "heavy loads" and the safeguards taken to preclude these accidents are similar. All movements of heavy loads over the pool will comply with the applicable administrative controls and guidelines (i.e., plant procedures, NUREG–0612, etc.) Therefore, the rack drop does not represent a new or different kind of accident.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The proposed change does not affect any of the important parameters required to ensure safe fuel storage. Therefore, the potential for a new or previously unanalyzed accident is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The function of the Spent Fuel Pool is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with the Spent Fuel Pool.

WCNOC has addressed the safety issues related to the expanded pool storage capacity in the following areas:

1. Material, mechanical and structural considerations
2. Nuclear criticality
3. Thermal-hydraulic and pool cooling

The mechanical, material, and structural designs of the new racks have been reviewed in accordance with the applicable provisions of the NRC Guidance entitled, "Review and Acceptance of Spent Fuel Storage and Handling Applications". The rack materials used are compatible with the spent fuel assemblies and the Spent Fuel Pool environment. The design of the new racks preserves the proper margin of safety during abnormal loads such as a dropped assembly and tensile loads from a stuck assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration.

The methodology used in the criticality analysis of the expanded Spent Fuel Pool meets the appropriate NRC guidelines and the ANSI standards (GDC 62, NUREG–0800, Section 9.1.2, the "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," Regulatory Guide 1.13, and ANSI ANS 8.17). The criticality analysis for the Mixed Zone Three Region and/or checkerboard configuration confirms that the K_{eff} is maintained less than 0.95 without credit for the soluble boron in the Spent Fuel Pool. Calculations show that for the most severe accident condition, a soluble boron concentration of 500 ppm boron, in addition to the Boral contained in the racks, would be adequate to maintain the K_{eff} less than 0.95. In accordance with NRC guidelines, the soluble boron in the Spent Fuel Pool may be credited in accident conditions. A minimum boron concentration of 2000 parts-per-million (ppm) is maintained in the Spent Fuel Pool. The soluble boron in the Spent Fuel Pool will ensure that K_{eff} is maintained substantially less than the design limitations under all conditions. The margin of safety for subcriticality is maintained by having the neutron multiplication factor equal to, or less than, 0.95 under all accident conditions, including uncertainties. This criterion is the same as that used previously to establish criticality safety evaluation acceptance and remains satisfied for all analyzed accidents.

The thermal-hydraulic and cooling evaluation of the pool demonstrated that the pool can be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The bulk pool temperature will not exceed 207°F during the worst single failure of a

cooling pump. Localized pool boiling is predicted to occur in the worst single failure of a cooling pump in the hypothetical worst case storage cell, immediately following the completion of a full-core discharge. This cell is very conservatively modeled to contain the hottest spent fuel assembly, with maximum flow resistance including 50% blockage of both the inlet and outlet flow areas. However, bulk pool boiling will not occur, nor will fuel cladding experience DNB [departure from nucleate boiling] or excessive thermal stresses. The fuel will not undergo any significant heat up after an accidental drop of a fuel assembly on top of the rack blocking the flow path. A loss of cooling to the pool will allow sufficient time (2 hours) for the operators to intervene and line up alternate cooling paths and the means of inventory make-up before the onset of pool boiling. Therefore the allowed operator action time remains unchanged from the previous design bases. In the unlikely event that all pool cooling is lost coincident with the completion of a full-core discharge, sufficient time will still be available subsequent to the proposed changes for the operators to provide an alternate means of cooling before the onset of bulk pool boiling. Therefore, the accepted margin of safety remains the same.

Thus, it is concluded that the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 12, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under Section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in Section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of Section 134 and set for hearing after oral argument.

The Commission's rules implementing Section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

For further details with respect to this action, see the application for amendment dated March 20, 1998, as supplemented by letter dated May 28, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 7th day of July 1998.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18544 Filed 7–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated May 27, 1998, Mr. Jonathan M. Block, on behalf of the Citizens Awareness Network, Inc. (CAN or Petitioner), requested that the U.S. Nuclear Regulatory Commission (NRC) take immediate action with regard to the Vermont Yankee Nuclear Power Station. The Petitioner requested that the NRC take immediate enforcement action by suspending the operating license for Vermont Yankee until the entire facility has been subjected to an independent safety analysis review similar to the one conducted at the Maine Yankee Atomic Power Station. As an alternative, the Petitioner requested that the NRC immediately act to modify the operating license for the facility by requiring that, before restart (1) Vermont Yankee management certify under oath that all backup safety systems and all security systems are fully operable, and that all safety systems and security systems meet and comply with NRC requirements; (2) Vermont Yankee be held to compliance with all of the restart criteria and protocols in the NRC Inspection Manual; (3) Vermont Yankee only be allowed to resume operations after the NRC has conducted a "vertical slice" examination of the degree to which the new design-basis documents (DBDs) and FSAR accurately describe at least two of the primary safety systems for the Vermont Yankee reactor; (4) once operation resumes, Vermont Yankee only be allowed to continue operation for as long as it adheres to its schedule for coming into compliance and completing the DBD and FSAR project; and (5) the NRC holds a public hearing before restart to discuss the changes to the torus, Vermont Yankee DBD and FSAR projects, and Vermont Yankee's scheduled completion of these projects in relation to operational safety.

As the basis for this request, the Petitioner raised concerns about the operation of the Vermont Yankee

facility, including challenges to the single-failure criterion, inadequate safety evaluations, potential overreliance on Yankee Atomic Electric Company analyses, an inadequate operational experience review program, high potential for other serious safety problems, and lack of adequate perimeter security. The Petitioner also attached four documents prepared by the Union of Concerned Scientists (UCS). One UCS document, dated May 14, 1998, provided a review of Vermont Yankee Daily Event Reports (DERs) made over the previous year as requested by CAN. DERs are verbal reports made by licensees under 10 CFR 50.72 to the NRC and put in written form by the NRC. Another UCS document, dated January 29, 1998, was addressed to the NRC Region I Senior Allegation Coordinator; it discussed a specific concern with NRC Daily Event Report 33545 of January 15, 1998, associated with Vermont Yankee water hammer on certain systems. The third document, a UCS letter dated May 5, 1997, to the NRC Chairman and Commissioners, discussed mislocated fuel bundle loading errors. The final UCS document attached was titled "Potential Nuclear Safety Hazard Reactor Operation with Failed Fuel Cladding," dated April 2, 1998. By letter dated June 9, 1998, Petitioner renewed the request for relief based on the events occurring on June 9, 1998, at Vermont Yankee and reported by the licensee in DER 34366. This event involved the automatic shutdown of the reactor due to problems in the feedwater system. The Petitioner states that this event indicates a lack of reasonable assurance that safety-related systems at Vermont Yankee will perform adequately.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time.

By letter dated July 6, 1998, the Director denied Petitioner's request for immediate action at Vermont Yankee Nuclear Power Station.

A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555–0001 and at the local public document room located at Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 6th day of July, 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18547 Filed 7–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Fire Barrier Penetration Seals in Nuclear Power Plants; Availability of Draft NUREG–1552, Supp. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of Draft NUREG–1552, Supplement 1, "Fire Barrier Penetration Seals in Nuclear Power Plants," dated June 1998, for public comment. Comments on the previously published NUREG–1552, "Fire Barrier Penetration Seals in Nuclear Power Plants," July 1996, are also being accepted.

DATES: Submit comments by September 11, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: NUREG–1552 and Draft NUREG–1552, Supplement 1 are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20038. A free single copy of Draft NUREG–1552, Supplement 1, to the extent of supply, may be requested by writing to U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Chris Bajwa, Plant Systems Branch, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–1237

Electronic Access

Draft NUREG–1552, Supplement 1, is also available electronically by visiting NRC's Home Page (http://www.nrc.gov).

Dated at Rockville, Maryland, this 6th day of July, 1998.

For the Nuclear Regulatory Commission.

Gary Holahan,

Director, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18549 Filed 7–10–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549

Extension:

Rule 17j–1 [17 CFR 270.17j–1], SEC File No. 270–239, OMB Control No. 3235–0224

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17j–1 under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act") addresses conflicts of interest between registered investment company ("fund") personnel and their funds that may arise when fund personnel buy or sell securities for their personal accounts ("personal investment activities"). Rule 17j–1, which the Commission adopted in 1980,[1] generally prohibits fund personnel from engaging in fraud in connection with personal transactions in securities held or to be acquired by the fund. In order to prevent fraud, the rule currently: (i) Requires a fund and each investment adviser and principal underwriter to the fund (collectively, "rule 17j–1 organizations") to adopt a code of ethics ("code") designed to prevent "access persons" [2] from engaging in fraudulent securities activities, (ii) requires an access person to report personal securities transactions to his or her rule 17j–1 organization at least quarterly, and (iii) requires a rule 17j–1 organization to maintain certain records.

In 1995, the Commission issued a release proposing amendments to rule 17j–1 ("Proposing Release").[3] The

[1] Prevention of Certain Unlawful Activities With Respect To Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) [45 FR 73915 (Nov. 7, 1980)].

[2] Rule 17j–1 defines "access person" to include directors, officers, general partners, and any employee who, in connection with his or her regular functions or duties, participates in the selection of a fund's portfolio securities or who has access to information regarding a fund's upcoming purchases or sales of portfolio securities.

[3] Personal Investment Activities of Investment Company Personnel and Codes of Ethics of Investment Companies and their Investment

proposed amendments would require, among other things, that a majority of a fund's board, including a majority of independent directors, approve the fund's code, and review the codes of any investment adviser or principal underwriter to the fund. The proposed amendments also would require that the management of a rule 17j–1 organization, at least once a year, provide the fund's board with an issues and certification report: (i) Describing issues that arose during the previous year under the codes of ethics applicable to the rule 17j–1 organization, and (ii) certifying to the fund's board that the rule 17j–1 organization has adopted procedures that are reasonably necessary to prevent its access persons from violating its code of ethics.

In order to facilitate the identification of all securities held by access persons, the proposed amendments would require that every access person provide an initial holdings report to his or her rule 17j–1 organization listing all securities beneficially owned by the access person at the time that he or she becomes an access person. The proposed amendments also would expand the types of securities excepted from the requirements of the rule, thereby increasing the number of rule 17j–1 organizations and access persons excluded from the rule's requirements concerning codes of ethics, quarterly transaction reports, and initial holdings reports.

Funds also currently are not required to disclose to the public any information about their codes of ethics. In order to provide more information to the public about a fund's policies concerning personal investment activities, the proposed amendments to rule 17j–1 would require a fund to disclose in its registration statement: (i) That the fund and its investment adviser and principal underwriter have adopted codes of ethics, (ii) whether these codes permit personnel subject to the codes to invest in securities for their own accounts, and (iii) that the codes are on public file with, and are available from, the Commission.[4] The proposed conforming amendments to rule 204–2 under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (the "Advisers Act")[5] would reduce the burden on registered investment advisers by expanding the types of transactions in securities excepted from the rule's recordkeeping requirement.

The requirement that the management of a 17j–1 organization provide the fund's board with an annual issues and certification report is intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of access persons. The requirement that every access person provide an initial holdings report is intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist rule 17j–1 organizations and the Commission's examinations staff in determining whether there have been violations of rule 17j–1.

The requirement that a fund make available in its registration statement information on the fund's policies concerning personal investment activities is intended to promote the integrity of the fund industry and provide investors with information they may want when making investment decisions. Disclosure also may encourage fund boards to give closer consideration when approving and reviewing the contents of codes of ethics applicable to their funds.

The conforming amendments to rule 204–2 are intended to reduce the reporting and recordkeeping burden on advisers and to modify rule 204–2(a) to except from the recordkeeping requirement transactions in securities that are excepted from the definition of "security" in rule 17j–1.

The Commission's staff estimates that there are approximately 3,800 registered investment companies that would be required to comply with the requirements of rule 17j–1. Investment advisers and principal underwriters of registered investment companies also are required to comply with certain requirements of rule 17j–1. The staff estimates that there are approximately 7,500 investment advisers registered with the Commission, of which the staff estimates 820 are investment advisers to registered investment companies. The staff also estimates that there are approximately 425 principal underwriters of registered investment companies.[6]

The staff estimates that each year 275 new rule 17j–1 organizations each will expend 8 burden hours to formulate and provide codes of ethics for a total of 2,200 burden hours. The staff estimates that the managerment of 5,045 rule 17j–1 organizations[7] each will annually expend 3 burden hours to provide the fund board with an annual issues and certification report for a total of 15,135 burden hours. The staff estimates that access persons[8] each will expend .5 burden hours for the filing of each quarterly transaction report[9] for a total

Advisers and Principal Underwriters, Investment Company Act Release No. 21341 (Sept. 8, 1995) [60 FR 47844 (Sept. 14, 1995)]. The Commission's proposal was based on reports prepared by the Commission's Division of Investment Management and the Investment Company Institute ("ICI") Advisory Group on Personal Investing, which studied the practices and standards governing personal investment activities of fund personnel. Division of Investment Management, Personal Investment Activities of Investment Company Personnel (1994); ICI, Report of the Advisory Group on Personal Investing (1994). These studies followed press reports and Congressional inquiries in the early 1990s regarding the personal investment activities of fund personnel.

[4] The registration forms the Commission is proposing to amend are: Form N–1A (open-end funds); Form N–2 (closed-end funds); Form N–3 (separate accounts that offer variable annuity contracts that are registered under the Investment Company Act); Form N–5 (small business funds); and Form N–8B–2 (unit investment trusts). Although the Commission has not proposed amending Form S–6 (unit investment trusts), the proposed amendments to Form N–8B–2 would affect the burden of complying with Form S–6 because Form S–6 requires a unit investment trust to provide information required by Form N–8B–2.

[5] Rule 204–2(a)(12), (13) [17 CFR 275.204–2(a)(12), (13)].

[6] Funds that are money market funds or that invest only in securities excluded from the definition of "security" in rule 17j–1, and any investment advisers, principal underwriters, and access persons to these funds, do not have to comply with the rule's requirements concerning codes of ethics, quarterly transaction reports, and initial holdings reports. The estimated number of respondents reported in this section may therefore overstate the number of entities actually required to comply with the rule's requirements.

[7] Comprised of an estimated 3,800 registered companies, 820 investment advisers to registered investment companies, and 425 principal underwriters to registered investment companies.

[8] The Commission estimates that, on average, a rule 17j–1 organization will have 20 access persons. This number may vary considerably depending on the size of the rule 17j–1 organization. Under rule 17j–1, access persons of investment advisers to funds are exempt from filing quarterly transaction reports if the reports would duplicate information provided under rule 204–2 of the Advisers Act. Thus, the Commission staff estimates that the number of access persons filing quarterly transaction reports is equal to the average number of access persons for each 17j–1 organization multiplied by the total number of funds and principal underwriters of funds (20 x (3800 + 425) = 84,500)).

[9] The number of access persons who are required to file quarterly transaction reports will vary depending on the personal investment activities of each access person. In addition, proposed rule 17j–1 contains several exceptions to filing quarterly transaction reports, including an exception if the report would duplicate information contained in broker trade confirmations or account statements received by the rule 17j–1 organization. Although a number of access persons may, on average, have transactions to report during more than one quarter each year, many access persons also may not have to provide a quarterly transaction report because their 17j–1 organizations have received the information in a broker trade confirmation or account statement. Accordingly, the Commission staff has estimated that each access person, on

Continued

of 42,250 burden hours. The staff estimates that each year new access persons each will expend 1 burden hour for the filing of an initial holdings report to be provided by persons who become access persons [10] for a total of 4,895 burden hours. Finally, the staff estimates that 5,045 rule 17j–1 organizations each will expend 2 burden hours to maintain records of codes of ethics, records of violations of codes of ethics, reports by access persons, and issues and certification reports for a total of 10,090 burden hours.

The total annual burden of the rule's paperwork requirements therefore is estimated to be 74,570 hours. This estimate represents an increase of 25,470 hours from the prior estimate of 49,100 hours. The increase in burden hours is attributable to updated information about the number of affected portfolios and other entities, and to a more accurate calculation of the component parts of some information burdens.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, N.W., Washington, DC 20549.

Dated: July 6, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18591 Filed 7–10–98; 8:45 am]

BILLING CODE 8010–01–M

average, would file one quarterly transaction report each year.

[10] Based on conversations with the industry, the Commission estimates that, on average, rule 17j–1 organizations will have two new access persons each year. However, proposed rule 17j–1 would not require an access person to submit an initial holdings report if the access person has previously provided information equivalent to that which is required in the initial holdings report. Proposed rule 17j–1 also contains several other exceptions to filing initial holdings reports. The Commission therefore estimates after taking into consideration the number of respondents excluded from this requirement of the rule, that, on average, there will be 4,895 annual responses to this requirement.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 13, 1998.

A closed meeting will be held on Thursday, July 16, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The closed meeting scheduled for Thursday, July 16, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 9, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–18677 Filed 7–9–98; 10:57 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40176; File No. SR–MSRB–98–9]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

July 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") 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 Board. 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 Board is filing a proposed rule change to institute a service ("the Service") to provide daily reports from the Board's Transaction Reporting Program ("the Program") that will summarize information about customer and inter-dealer transactions in municipal securities reported to the Board under rule G–14. The Board is establishing a fee for an annual subscription to the Service of $15,000. The proposed fee is structured to defray the Board's cost of disseminating the transaction data and to defray, in part, the cost of collecting and compiling transaction data that will be used in the Program. The Board does not expect or intend to make a profit from the Service.

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 Board 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 Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Service is to increase transparency in the municipal securities market by adding information about transactions between dealers and customers ("customer transactions") to the information currently disseminated by the Program. Under the proposed rule change, aggregate data about market activity, and certain volume and price information about transactions in frequently traded securities, would be disseminated to promote investor confidence in the market and its pricing mechanism. The information provided by the Service would be a daily public report summarizing prices and volumes of trading in the municipal securities market during the previous day (the "Combined Daily Report"). The Combined Daily Report's format is a revision of the Board's currently produced Inter-Dealer Daily Report. Like the Inter-Dealer Daily Report, the Combined Daily Report will be made available by approximately 6:00 a.m. each business day, reporting on the previous day's market. Subscribers would transfer the report, in electronic form, from the Board's system to their own computer systems. A printed copy of the report would be available for examination, free of charge, in the Board's Public Access Facility in Alexandria, Virginia. These dissemination methods are the same as for the current Inter-Dealer Daily Report.

Previous Filings Regarding the Program. As discussed below, the Board has been operating a program for inter-dealer transaction reporting since 1995. Dealers are required to report their inter-dealer transactions to the Board under rule G–14. In 1996, the Board filed with the Commission an amendment to rule G–14 to require dealers to report their customer transactions in municipal securities to the Board in certain prescribed formats and a description of the changes to the inter-dealer transaction reporting program necessary to add customer transaction information.[3] The 1996 filing provided for a period from July 1, 1997, to December 31, 1997, during which dealers would test their customer transaction reporting capabilities with the Board. The Commission approved this amendment and plan, with the amendments to rule G–14 ultimately becoming effective March 1, 1998.[4] In March 1998, the Board filed with the Commission its intention to release samples of the Combined Daily Report for public comment and to make the Report available on an operational basis in the third quarter of 1998.[5]

Background and Description of the Program. Since 1995, rule G–14 has required brokers, dealers and municipal securities dealers ("dealers") to report to the board their inter-dealer transactions in municipal securities via the automated comparison system for municipal securities operated by National Securities Clearing Corporation ("NSCC"). The Board has used this information to create a database of transaction information that can be used for market surveillance purposes and for inspection and enforcement by agencies and organizations charged with enforcement of Board rules. The Board also uses the reported transaction information to create the Inter-Dealer Daily Report, which is used by market participants to help gauge the value of municipal securities. The Board currently has eight subscribers to the Inter-Dealer Daily Report. Most of these are information vendors that redistribute the information to their own subscribers and/or use the information in various securities valuation products that they market.[6]

Customer trades have been reported by dealers to the Board under rule G–14 since March 1, 1998. Both customer and inter-dealer transactions must be reported by midnight of trade date. Although different mechanisms are used for reporting the two types of trades, the Board's computerized Transaction Processing System ("TRS") will merge the reported trade data to produce the Combined Daily Report and the surveillance database.

The criteria for including municipal securities information on the proposed Combined Daily Report will be the same as that described in the Board's March 1998 filing to produce sample daily reports. These are essentially the same as the criteria for the current Inter-Dealer Daily Report. If a municipal security (identified by its CUSIP number) is reported, in compliance with rule G–14, as having been traded four or more times on a given day, then the high, low, and average price and total par value of all the reported trades in that security will be on the Daily Report the next morning. The average price will be calculated as the arithmetic mean of reported transaction prices of those trades between $100,000 and $1,000,000 in par value. This reporting band is meant to exclude odd lots and very large trades from the average price. In applying these criteria, inter-dealer and customer transactions will be considered together. This means that any combination of inter-dealer and customer transactions totaling four or more in one CUSIP will trigger the inclusion of price information in the Combined Daily Report.

The Board expects to make the Combined Daily Report Service available during the third quarter of 1998, and will file with the Commission, in advance, an exact date for beginning operation. In addition to the Combined Daily Report Service, the Board also will use the data reported by dealers under rule G–14 to create a surveillance database available to regulatory agencies and organizations responsible for enforcement of Board rules. The surveillance database will not be available to regulators until early 1999.

Methods for Reporting Transaction Reporting Data. Since 1995, inter-dealer transactions have been reported to the Board by dealers each night through the NSCC automated comparison system. This reporting mechanism is convenient for dealers, since most of the trade data that must be reported to the Board has to be reported to NSCC in any event, for clearance and settlement purposes. The automated comparison system processes the transaction data to determine, among other things, whether both parties to each trade have agreed to certain details (*e.g.*, CUSIP number, par amount, final monies required for settlement).[7] Each night, the automated comparison system provides electronic files to the TRS that include trade information reported by dealers, plus an indication for each trade whether it was successfully "compared" as to its reported details.

Customer transactions have been reported to the Board each night by dealers since March 1, 1998 in accordance with the rule G–14 amendment that became effective on that date, requiring dealers to generate

[3] Exchange Act Release No. 37859 (Oct. 23, 1996), 61 FR 56072 (Oct. 30, 1996).

[4] Exchange Act Release No. 37998 (Nov. 29, 1996), 61 FR 64782 (Dec. 6, 1996) (approved of amendment to rule G–14); Exchange Act Release No. 39495 (Dec. 29, 1997), 63 FR 585 (Jan. 6, 1998) (delay of effectiveness to March 1, 1998).

[5] Exchange Act Release No. 39835 (Apr. 7, 1998), 63 FR 18242 (Apr. 14, 1998).

[6] The current subscribers are Bloomberg Financial Markets, Chapdelaine & Company, Dow Jones Telerate, Interactive Data Corp., J. J. Kenny Co., Inc., Muller Data Corp., Smith Barney, Inc., and TradeHistory, LLC.

[7] NSCC procedures provide an exception for transactions involving the distribution of new issue securities from a syndicate manager to syndicate members, wherein only the syndicate manager submits information to the automated comparison system.

a file of required information, in a format specified by the Board, and transmit the file electronically to the TRS. For most high-volume dealers, the first step in file transmission is to send the trade file over existing "computer-to-computer" connections between their computer systems and the NSCC. In the second step, NSCC forwards these files to the Board without any processing of the trade data. Some dealers, especially those with low volumes of customer trades who do not have electronic connections to NSCC, submit customer transaction files directly to the Board by means of personal computer software provided free by the Board.

Correction of Data Submitted by Dealers. Corrections to inter-dealer trade information are made by dealers according to NSCC procedures, and, after processing, corrected data is provided by the comparison system to the TRS. Regarding customer trade data, the TRS sends messages to dealers, electronically or by facsimile, acknowledging receipt of a day's file and identifying records that appear to be in error. Dealers submit corrections using a methods similar to that for repairing trades. A dealer may also "cancel" a trade record if this is necessary to reflect cancellation of the trade by the parties or to remove erroneous information submitted to the system.

Description of the Combined Daily Report. Once all transaction information for a business day has been received; the TRS generates the Combined Daily Report. As noted, both inter-dealer and customer trades are counted to determine whether an issue (CUSIP number) was traded four or more times. Based upon transaction data reported to the Board in March, April and May 1998, it appears that approximately one thousand issues will be traded four or more times on a typical day.

The Combined Daily Report includes summary information describing the day's market in municipal securities. The summary covers all municipal securities trades, regardless of frequency of trading. The average daily market statistics during the week of March 30, 1998 were:

Total par amount traded: $8.6 billion
Total number of trades reported: 22,199
Total number of issues traded: 11,499
Number of issues traded four or more times: 1,025

The following data elements of each issue would be published in the Combined Daily Report.

CUSIP number: The CUSIP number that identifies the issue.

Security description: A short description of the issue that was traded.

Number of trades: The total number of trades in the issue (both inter-dealer and customer) that were reported to the MSRB.

Volume traded: The total dollar value of all trades in the issue on the trade date.

High price: The highest price of all trades in the issue.

Low price: The lowest price of all trades in the issue.

Average price: The arithmetic mean of all trades whose par values were between $100,000 and $1,000,000.

Trades in average: The number of trades whose par values were between $100,000 and $1,000,000.

When issued: If "yes," indicates that the issue was traded while in "when, as, and if issued" status.

Assumed settlement date: In some cases, it is necessary to assume a settlement date to calculate price from yield for inclusion of the price in the Daily Report. The assumed settlement date for both inter-dealer and customer trades will be 15 business days after the trade date (T+15). When it has been necessary to assume a settlement date, this date will be shown on the Daily Report.

Review Process for Customer Transaction Data Used in Combined Daily Report. Customer transaction records submitted by dealers are reviewed automatically as part of data processing within the Transaction Reporting System. Trade records are excluded from eligibility for the Combined Daily Report if: (i) the trade date reported in the record is for a day other than the day being reported in the Daily Report; (ii) the trade record or the file containing the trade record is not in the required format or otherwise violates stated system input requirements;[8] (iii) the submitter of the file has not filed with the Board the required information to identify itself; (iv) the trade record contains a dealer identifier that is unknown to the Board;[9] (v) the information contained in the trade record is so substantially outside expected parameters that an input error is suspected; (vi) the CUSIP number submitted is not known to be a valid CUSIP number for a municipal securities issue;[10] or (vii) the trade record contains no dollar price and a dollar price cannot be calculated from the reported yield on the transaction using the Board's available data about the security and standard yield-to-price calculation techniques for securities with periodic interest payments and with more than six months to redemption, contained in Board rule G–33(b)(i)(B)(2).[11]

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[12] which requires, in pertinent part, that the Board's rules "be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating . . . transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The 1995 and 1996 Requests for Comments

The Board published a notice in February 1995,[13] requesting comment on a plan to collect and report information about transactions between dealers and institutional customers, and in January 1996 published a revised plan[14] to collect information about all

[8] Format requirements and input procedures are described in "Board to Proceed with Customer Transaction Reporting Program: Rule G–14" (MSRB Reports, Vol. 16, No. 3 (September 1996) at 3–16). This document, along with explanatory questions and answers and the latest information on the Program, can be found on the Board's World Wide Web site (www.msrb.org).

[9] To identify dealers, the Board uses symbols assigned to dealers by the NASD. Dealers are required to obtain a valid symbol under rule G–14(b)(iii). The transaction reporting procedures contained within rule G–14 also require that each dealer effecting customer transactions provide the Board with certain contact information and testing-related information.

[10] The Board currently receives updated information on municipal securities CUSIP numbers each day from the CUSIP Service Bureau and J.J. Kenny Co., Inc.

[11] The current software used for calculation is provided by TIPs, Inc. The securities information used to calculate price from yield currently is provided by J.J. Kenny Co., Inc.

[12] 15 U.S.C. 78o–4(b)(2)(C).

[13] "Transaction Reporting Program for Municipal Securities: Phase II," MSRB Reports, Vol. 15, No. 1 (April 1995) at 11–15.

[14] "Reporting Customer Transactions in Municipal Securities: Rule G–14," MSRB Reports, Vol. 16, No. 1 (January 1996) at 15–18, and "Customer Transaction Reporting: Proposed Technical Specifications and Request for Comment," ibid. at 19–22.

customer transactions. The Board received a number of comments in response. The comments were provided to the Commission and addressed by the Board in an August 1996 filing.[15] Some commentators suggested reporting individual transactions,[16] while others suggested combining data from all trades falling within a given par value range.[17] One commentator suggested combining prices and volumes for inter-dealer and customer trades for public reporting,[18] and another suggested identifying retail prices as such.[19] It was also suggested that trades be summarized by par value in four categories ($5,000 to $45,000, $50,000 to $95,000, $100,000 to $1,000,000, and over $1,000,000).[20] In considering various possible formats for the report, the Board decided that it would serve the purpose of simplicity, and aid users in comparing the new and old reports, to make the Combined Report's format the same as that of the Inter-Dealer Report, which has been in use for over three years. If experience with the Combined Daily Report indicates revisions are needed, the Board will revise the format to ensure that the Program will continue to provide market transparency to market participants.

The 1998 Request for Comments

In April 1998, the Board released samples of the Combined Daily Report for comment.[21] In response, comments were received from Bloomberg L.P.[22] and TradeHistory, LLC.[23] One commentator[24] requested that the Board continue to publish the Inter-Dealer Daily Report after commencing publication of the Combined Daily Report. The proposed Service would make no change to the publication of the Inter-Dealer Daily Report.[25] The other commentator[26] requested that the Board add "filler" (blank) fields in the new format to make the format of the electronic Combined Daily Report compatible with its programs that process the electronic Inter-Dealer Daily Report. This change has been made and would be part of the proposed Service.

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 published its reasons for so finding or (ii) as to which the MSRB consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, 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 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–98–9 and should be submitted by August 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18590 Filed 7–10–98; 8:45 am]

BILLING CODE 8010–01–M

[15] Exchange Act Release No. 37859 (Oct. 23, 1996), 61 FR 56072 (Oct. 30, 1996).

[16] Letter from Ron Moore, Applied Financial Management, Inc., to Larry M. Lawrence, MSRB, May 22, 1995, and letter from Glenn Burnett, Zia Corporation, to Larry M. Lawrence, July 2, 1996.

[17] Letter from George Brakatselos, Public Securities Association (PSA), to Larry M. Lawrence, MSRB, May 2, 1996.

[18] PSA.

[19] Zia.

[20] PSA.

[21] Exchange Act Release No. 39835 (Apr. 7, 1998), 63 FR 18242 (Apr. 14, 1998). The Board also made the sample reports available via the Internet at its Web site (www.msrb.org).

[22] Letter from John Loza, Bloomberg L.P., to Harold L. Johnson, MSRB (April 20, 1998).

[23] Electronic mail from Bruce Hechler, TradeHistory, LLC, to Thomas A. Hutton, (May 4, 1998).

[24] TradeHistory.

[25] The Board will continue to provide, as it has since January 1995, daily reports of inter-dealer transactions in municipal securities in a service whose annual fee will remain unchanged at $15,000. The Board has chosen to make the price of the proposed Service the same as the price of the existing Inter-Dealer Service.

[26] Bloomberg.

[27] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EDT), July 15, 1998.

PLACE: East Tennessee State University, D.P. Culp University Center Ballroom Left, Southwest Boundary Road, Johnson City, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 18, 1998.

New Business

B—Purchase Award

B1. Contract with CEC Alsthom to design, manufacture, and install high-pressure turbine capacity upgrades for Bull Run, Paradise, and Widows Creek Fossil Plants.

B2. Contract with ABB Power Generation to design, manufacture, and install high-pressure turbine capacity upgrades for Cumberland Fossil Plant.

E—Real Property Transactions

E1. Nineteen-year commercial recreation lease of the May Springs Recreation Area to Claudia Ann Holbrook, d/b/a as Greenlee Campground, R.V. & Marine, affecting approximately 104 acres of lands on Cherokee Lake in Grainger County, Tennessee (Tract No. XCK–580L).

E2. Nineteen-year commercial recreation lease to John Cooper and Greg Yarbrough affecting 10.78 acres of land on Guntersville Lake, Jackson County, Alabama (Tract No. XGR–748L), for development of Wood Yard Marina and amendment of the Guntersville Reservoir Land Management Plan (Tract No. XGR–105PT) to change the allocated use from barge terminal to commercial recreation.

E3. Sale of a permanent easement to D.L. Hutson for a road, affecting 0.5 acre of land on Norris Lake in Campbell County, Tennessee (Tract No. XNR–904H).

F—Unclassified

F1. Contract with Zurich—American Insurance Group for Workers' Compensation employer's liability, and general liability insurance for the owner-controlled insurance program.

Information Items

1. Amendments to make certain changes to resolutions on March 2, 1998, relating to the sale of the Tennessee Valley Authority Power Bonds.

2. Delegation of authority to the Vice President, Fuel Supply and Engineering, or a designated representative, to modify three coal contracts (Sextet Mining Company, Warrier Coal Corporation, and Peabody COALSALES Company) resulting from renegotiation under each contract's reopener provision.

3. Grant of permanent easements to the City of Chattanooga, Tennessee, for the expansion of the Chattanooga/Hamilton County Convention and Trade Center and a proposed conferencing center (Tract No. XCOFC–3E) (approximately 1.58 acres) and Tract No. XTCOFC–8E (approximately 0.76 acre).

4. TVA Contribution to the TVA Retirement System for Fiscal Year 1999.

5. TVA retiree medical contributions for persons covered by the Civil Service Retirement System and the Federal Employees Retirement System.

6. Amendments to the Rules and Regulations of the TVA Retirement System and the provision of the TVA Savings and Deferral Retirement Plan (401(k) Plan).

7. Grant of a permanent easement to Rhea County Economic and Tourism Council, Inc, for the construction, operation, and maintenance of a building, affecting approximately 1.90 acres of land on Chickamauga Lake in Rhea County, Tennessee (Tract No. XTCR–194B).

8. Contract with Mee Industries Incorporated to design, furnish, and install fogging evaporative inlet cooling systems for the entire fleet of 48 combustion turbines.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: July 8, 1998.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 98–18673 Filed 7–9–98; 8:48 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Federal Aviation Administration

[Docket No. OST 98–4025]

Request for Public Comment on Competitive Issues Affecting the Domestic Airline Industry

AGENCY: Office of the Secretary, Federal Aviation Administration, United States Department of Transportation.

ACTION: Request for public comment.

SUMMARY: The Department of Transportation is gathering information on airport practices and whether they may affect competition among air carriers. We intend to meet with airport and airline professional associations and other interested participants, review data and information provided by industry organizations, review of comments filed in this docket, and use other means as appropriate. Specifically, we seek to determine: (1) Whether airports have used Passenger Facility Charges in ways that have enhanced competition; (2) whether the types of issues raised in complaints to the Department regarding airport practices have prevented competition among air carriers; (3) whether leasing agreements and financing arrangements at airports limit access and thus competition; and (4) whether airport planning, development, and commercial practices limit access.

DATES: Comments should be received by September 1, 1998. Comments that are received after that date will be considered to the extent possible.

ADDRESSES: Comments should be sent to: Docket Clerk, Docket No. OST–98–4025, Room PL–401, United States Department of Transportation, 400 7th Street, SW, Washington DC, 20590.

FOR FURTHER INFORMATION CONTACT: Please contact James New (202–366–4868) or Larry Phillips (202–366–4382) for additional information on the scope of the Department's study or the name of the individual in DOT who is in the best position to answer your questions. A copy of this Notice can be obtained via the World Wide Web at: http://www.dot.gov/ost/aviation/. Comments placed in the docket will be available for viewing on the Internet.

SUPPLEMENTARY INFORMATION: Deregulation of the domestic airline industry has resulted in enormous benefits for the traveling public. Average air fares (adjusted for inflation) have declined approximately one-third since 1978, and airline service has improved in the vast majority of markets. Despite the overall success of deregulation, however, questions remain as to whether certain conditions and institutional arrangements are preventing the industry from being as competitive as it could be. For example, several studies, including those performed by DOT staff, have found fare premiums at certain airports where market concentration is high and where new entrant air carriers have either not attempted or have been largely unsuccessful in establishing a significant market presence. In other instances, new entrant air carriers have encountered problems in gaining access to the range of airport facilities that would allow them to challenge incumbent air carriers.

Competition is a dynamic process, especially in the airline industry. Competition works best, however, when carriers are able to enter and exit markets in response to changing market conditions. Air carriers are only able to raise fares above competitive levels when competitors are unable to enter a market or to expand service. We recognize that the ability of an air carrier to provide new service at an airport depends on numerous factors, including the expected growth in passenger demand, the ability to gain access to gates and other critical facilities, the cost and marketing advantages incumbent air carriers enjoy, and the size of the irreversible ("sunk") investment an entrant would incur if it were forced to withdraw from the market.

Our objective is to gather information and data about current market conditions at airports. We are not investigating compliance or judging business practices. We welcome comments from all interested parties, including state and local officials, airport operators, air carriers, academics, financial experts, and the traveling public. Our goal is to have a final report completed by February 1999.

We are interested in obtaining information that would help us answer the following questions: (1) What is the exact nature of the airport (landside) constraints air carriers have encountered when attempting to enter a market or expand service? (2) Have these constraints been so significant as to preclude entry at certain airports? (3) What is the exact nature and competitive significance of the complaints that have been raised against current airport practices? (4) Do leasing practices and financing agreements at airports limit access and discourage entry? (5) Are airport financing practices

changing in ways that will allow airports to have greater control over how they allocate gates? (6) Have airport projects funded through Passenger Facility Charges been successful in promoting competition? Why or why not? (7) What actions have airports taken to promote entry? (8) How do Majority-in-Interest Agreements affect the competitive environment at airports? (9) Is there a trend away from long-term, exclusive-use gate leases? (10) Have airports reallocated gates away from incumbent carriers ("recapture" provisions) in ways that promote entry? (11) Do airports involve themselves in monitoring subleasing/use agreements among air carriers? (12) Do airports attempt to ensure that prices charged for subleased facilities or ancillary services are reasonable? (13) Is there any evidence that established air carriers are transferring access to airport facilities among themselves in ways that affect competition? (14) Are there reasons to retain current airport practices even if they adversely affect competition?

Issued in Washington, D.C., July 8, 1998.

Rosalind A Knapp,

Deputy General Counsel, Department of Transportation.

Susan L. Kurland,

Assistant Administrator for Airports, Federal Aviation Administration.

[FR Doc. 98–18615 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4022]

In the Matter of Union Pacific (Formerly Known as Southern Pacific Transportation Company)

AGENCY: United States Coast Guard, DOT.

ACTION: Notice of proposed penalty; opportunity to comment.

SUMMARY: The United States Coast Guard gives notice of and provides an opportunity to comment on the proposed assessment of a Class II administrative penalty to Union Pacific, formerly known as Southern Pacific Transportation Company, for violations of the Federal Water Pollution Control Act (FWPCA). The alleged violations involved the discharge of approximately 1012 barrels of oil into the waters of Buffalo Bayou, Houston, Texas and adjoining shorelines from September 25, 1995 to September 29, 1996. Interested persons may participate or file comments in this proceeding.

DATES: Filings in this matter must be received not later than August 12, 1998.

ADDRESSES: Interested persons must submit all filings in this matter to the Hearing Docket Clerk. Filings should reference ALG Docket number 98–0001–CIV.

If you file by mail, the address is Hearing Docket Clerk, Administrative Law Judge Docketing Center, United States Coast Guard, 40 South Gay Street, Room 412, Baltimore, Maryland 21202–4022.

If you file by fax, then send to (410) 962–1762.

If you file in person, then deliver the filings to the same address at room 412 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The public may inspect the administrative record for this Class II civil penalty proceeding at the same address and times.

FOR FURTHER INFORMATION CONTACT: Mr. George J. Jordan, Director of Judicial Administration, Office of the Chief Administrative Law Judge, Commandant (G–CJ), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, Telephone (202) 267–2940.

SUPPLEMENTARY INFORMATION: This proceeding is a Class II civil penalty proceeding brought under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended by the Oil Pollution Act of 1990 (33 U.S.C. 1321(b)). The FWPCA requires that the Coast Guard publish notice of the proposed issuance of an order assessing a Class II civil penalty in the **Federal Register**.

If you wish to be an interested person, you must file written comments on the proceeding or written notice of intent to present evidence at any hearing held in this Class II civil penalty proceeding with the Hearing Docket Clerk. You must file not later than August 12, 1998.

The following table explains how interested persons may participate in a Class II civil penalty proceeding.

If	Then
A hearing is scheduled.	You will be given • Notice of any hearing. • A reasonable opportunity to be heard and to present evidence during any hearing. • Notice and a copy of the decision. 33 CFR 20.404.
The proceeding is concluded without a hearing.	You may petition the Commandant of the Coast Guard to set aside the order and to provide a hearing. You must file the petition within 30 days after issuance of the administrative law judge's order. 33 CFR 20.1102.

You can find the regulations concerning Class II civil penalty proceedings in 33 CFR Part 20.

This proceeding (ALJ Docket Number: 98–0001–CIV) results from an alleged discharge of approximately 1012 barrels of oil into Buffalo Bayou, Houston, Texas and adjoining shorelines beginning on or about September 25, 1995, and continuing through and including September 29, 1995. The Coast Guard filed the Complaint on June 1, 1998, at New Orleans, LA.

The Respondent is Union Pacific (formerly known as Southern Pacific Transportation Company), 808 Travis, Suite 620, Houston, Texas 77001.

The Coast Guard seeks a civil penalty of $50,000.

Dated: July 7, 1998.

George J. Jordan,

Director of Judicial Administration, Office of the Chief Administrative Law Judge, United States Coast Guard.

[FR Doc. 98–18555 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–97–2287; MC–96–40]

Motor Carrier Regulatory Relief and Safety Demonstration Project; Modifications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is extending the application period for the Motor Carrier Regulatory Relief and Safety Demonstration Project (Project), published in the **Federal Register** on June 10, 1997. The agency is also seeking public comment upon proposed modifications to the entry criteria and reporting requirements of the Project. In the June 1997 notice, the FHWA indicated that it would later publish additional information clarifying the eligibility criteria and application process. This notice is that clarifying document and proposes to provide additional incentives to participating

motor carriers without adversely impacting highway safety. Motor carriers operating commercial motor vehicles (CMVs) with a gross vehicle weight rating (GVWR) between 10,001 and 26,000 pounds, in interstate commerce, may qualify for exemptions from certain portions of the Federal Motor Carrier Safety Regulations (FMCSRs) if they exhibit exemplary safety records. Motor carriers participating in this Project would have the opportunity to demonstrate they can maintain or improve their safety records when they are given greater latitude to select the means by which their safety performance is attained. The FHWA seeks the comments of all interested parties regarding these Project modifications, especially comments aimed at aiding the FHWA in providing substantive industry incentives while maintaining the highest degree of safety. Upon review of public comment, the FHWA intends to modify the project, authorize qualified motor carrier participation, and publish a supplemental notice of final determination.

DATES: Comments must be received no later than August 12, 1998. Written comments addressing the information collection requirements of this Project must be received on or before September 11, 1998. Applications for participation in the Project must be submitted no later January 30, 1999.

ADDRESSES: Signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, Docket No. FHWA–97–2287; MC–96–40, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped envelope or postcard.

For Internet users, all comments received will be available for examination at the universal resource locator—*http://dms.dot.gov*—24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Miller, Office of Motor Carriers, (202) 523–0178, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, DOT, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Availability

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the GPO's web page at: http://www.access.gpo.gov/su_docs/aces/aaces002.html.

Background

On November 28, 1995, the President signed the National Highway System Designation Act of 1995 (NHS Act) (Pub. L. 104–59, 109 Stat. 568 (1995)). Section 344 of the NHS Act requires the FHWA to implement a pilot program under which motor carriers operating CMVs with a GVWR between 10,001 and 26,000 pounds, in interstate commerce, could qualify for exemptions from the FMCSRs (49 CFR Part 325 *et seq.*). In accordance with the NHS Act, the FHWA developed the Project and published a detailed description of the Project in the **Federal Register** on June 10, 1997. There has been limited industry interest to participate in the Project since the publication date.

Through a series of outreach sessions, the FHWA discovered the absence of extensive industry interest is due, in part, to a lack of understanding of how the Project would work and questions about potential incentives for program participation. The purpose of this notice is to provide the public with an opportunity to assist the FHWA in determining whether clear and sufficient incentives have been included, while maintaining the highest degree of safety. Modifications have been made to the current details of the Project and additional exemptions are proposed. The FHWA is seeking all points of view before implementing these newly proposed parameters as part of the Project. The FHWA will peruse all suggestions and weigh carefully the facts upon which they are based.

The FHWA proposes that in order to participate in the Project, a motor carrier would have to meet the criteria for admission developed by the Secretary and outlined later in this notice. The criteria for admission has been modified regarding the definition of "accident" and the Project entry accident rate threshold. Motor carriers seeking to participate are still required to develop a written Safety Control Plan for the Project. This plan should outline the measures which the motor carrier would undertake to ensure its current level of safety is not compromised while operating under the proposed exemptions. The motor carrier would also enter into a written agreement of participation with the FHWA in which it would agree to abide by its Safety Control Plan and to work with the FHWA in generating and monitoring certain Project data. The FHWA would grant, for the term of the Project only, an exemption to participating motor carriers from certain current requirements of the FMCSRs, but such exemption would apply only to the eligible CMVs and drivers designated by the motor carrier in its application. The FHWA will evaluate the Project data throughout the Project, with particular focus upon the significance of the data with regard to FHWA's regulatory reinvention and zero-base initiatives. The FHWA would, in accordance with the NHS Act, use this data to conduct a zero-base review of the need for, and the costs and benefits of, all the FMCSRs.

The requirements for participation in the Project include several information collection requirements which must be approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). On November 6, 1997, the OMB reinstated the authorization for the FHWA's submission of these information collection requirements as provided under OMB No. 2125–0575, with an expiration date of November 30, 2000.

Analysis of Project data will occur throughout the Project, and only at such time as that analysis is complete will the FHWA be in a position to consider other performance-based initiatives. Given the Project parameters, the FHWA believes that three years of continuous and sustained motor carrier operations is the minimum amount of time necessary to draw conclusions about operational safety. In view of the customary level of activity for a motor carrier, the FHWA, after three years, should be able to assert, with reasonable certainty, that the data accumulated with respect to the activity of the class of motor carriers in this Project is representative of future behavior.

Table of Contents

I. Introduction

Many commenters to the original June 10, 1997 proposal contended the design of the Project would discourage motor carrier participation. The explanation most frequently offered for this belief was that the paperwork requirements of the Project, both at the time of application and during the Project, were too burdensome and outweighed the regulatory relief participating motor carriers would receive. The commenters strenuously objected to the proposed paperwork requirements, while noting that substantive exemptions weren't offered. For instance, it was suggested that most motor carriers would continue to require a pre-employment road test for new hires even if they were exempt from that requirement. For these reasons and given the current level of industry interest, clarifying and amending the Project requirements, as well as providing additional incentives, seem to be in order. We believe these modifications will reduce participants' burden and improve industry interest.

II. Current Project Exemptions

In accordance with the NHS Act, qualified interstate motor carriers would be exempt from certain regulatory requirements while participating in the Project. In the June 10, 1997 **Federal Register** notice, the regulations described below were those from which participating motor carriers would be exempt. Those Project exemptions would continue to be offered. No current exemptions would be removed. Clarifications and modifications of these exemptions are explained in this section. Motor carriers participating in the Project are only exempt from the regulations specified in the Project. A participating motor carrier may elect to voluntarily comply with any of the requirements described below as part of its normal business practices. For the purposes of the Project, however, the motor carriers would be exempt from those requirements. Project motor carriers, and their eligible drivers, would, with regard to the interstate operation of CMVs with a GVWR between 10,001 and 26,000 pounds, be exempt from the following requirements of the FMCSRs:

Driver Qualifications

Drivers would not be required to prepare, or furnish to the employing motor carrier, an annual list of violations of motor vehicle laws, or a certificate in lieu thereof, in accordance with 49 CFR 391.11(b)(8) and 391.27. Motor carriers, however, would be required to obtain a State driving record as required by 49 CFR 391.23. Further, drivers would not be required to successfully complete a Driver's Road Test, or furnish an employing motor carrier an Application For Employment, in accordance with 49 CFR 391.11(b)(10) and 391.31 and 49 CFR 391.11(b)(11) and 391.21. In addition, motor carriers would not have to maintain "complete" Driver Qualification Files on each driver in accordance with 49 CFR 391.51. The documents identified above would not be required to be in the qualification file. Only those documents from which participating motor carriers are not exempt would be required to be in the driver qualification file.

Driver Hours-of-Service

Project drivers would not be required to comply with record of duty status regulations, whether this entails maintenance of a record of duty status (logbook) in accordance with 49 CFR 395.8, use of a time card in accordance with 49 CFR 395.1(e), or the use of an interactive automatic on-board recording device in accordance with 49 CFR 395.15. Project motor carriers and drivers, however, must observe the provisions governing maximum driving time, and the use of ill or fatigued operators in accordance with 49 CFR 395.3 and 392.3. Additionally, Project motor carriers and their drivers would not forfeit any other exemptions available under the FMCSRs.

CMV Inspections

While participating in the Project, motor carriers would be exempt from those requirements pertaining to CMV inspection records and their retention, in accordance with 49 CFR 396.3 (b) and (c). Exemption would also be granted from the regulations pertaining to the preparation of driver vehicle inspection reports and the driver vehicle inspection requirements (49 CFR 396.11 and 396.13 (b) and (c)). In addition, driveaway-towaway inspections would not be required of Project motor carriers or their drivers (49 CFR 396.15). Periodic inspections and the preparation of periodic inspection reports (49 CFR 396.17 and 396.21) would also fall under the exemption. However, motor carriers would not be relieved of their responsibility to inspect, repair and maintain their motor vehicles in accordance with 49 CFR 396.3(a). Furthermore, Project drivers and CMVs would be subject to roadside safety inspections.

Accident Information

Project motor carriers would be exempt from the requirement that they maintain an accident register in accordance with 49 CFR 390.15 (b)(1) and (2).

III. Proposed Additional Project Exemptions

The FHWA has received recommendations for additional incentives to be included in the Project to increase industry interest. The FHWA has analyzed those recommendations and has determined that the following additional incentives should be offered:

Driver Qualifications

Drivers would not be required to read or speak the English language in accordance with 49 CFR 391.11(b)(2), provided they can effectively communicate with enforcement officials. Motor carriers would not be required to document investigations of drivers' employment history in accordance with 49 CFR 391.23(c). Motor carriers would also be relieved from documenting the annual review of drivers' records in accordance with 49 CFR 391.25. In addition, relief would be provided regarding medical examinations and certifications. The current requirement for drivers to be medically re-examined and certified each 24 months in accordance with 49 CFR 391.45(b)(1) would be removed for the duration of the Project, provided participating drivers have a current medical examination certification prior to entry into the Project. Newly hired drivers would be required to be medically examined once, prior to entry into the Project, in accordance with 49 CFR 391.45(a). We believe participating motor carriers will ensure drivers are physically fit for duty as part of their normal business practices.

In addition to driver qualification exemptions, motor carriers would be relieved from the unauthorized passenger transportation prohibition of 49 CFR 392.60.

Driver Hours-of-Service

The industry has asked the FHWA to reconsider providing relief from the underlying hours-of-service (HOS) regulations, not just recordkeeping. The FHWA has evaluated this request and has determined that some relief might be provided without reducing highway safety. Most trucks in this weight range are used in local transportation operations. Drivers return to the home terminal at the end of each work shift and do not spend overnight periods on the road. If overnight stays are needed, drivers generally sleep in motels

because these CMVs are usually not equipped with sleeper berths. These are optimal conditions for obtaining restorative sleep. The vast majority of drivers operating this class of CMV are local drivers operating between 6 a.m. and 9 p.m. Their on-duty hours are usually regular in nature. They are usually afforded ample time to obtain sufficient recuperative sleep (9–12 hours off-duty in every 24) during the optimal time for sleep (midnight to 6 a.m.). Due to the nature of their operations, they are the least affected by regulatory restrictions. Additionally, the largest fraction of *non-local* use is by private motor carriers of freight, primarily driver-operators in service industries. The nature of their work is such that they generally set their own schedules and are not influenced by third-party customers to the degree a for-hire motor carrier is affected.

The FHWA is, therefore, proposing to allow participating drivers to be on duty for 12 consecutive hours with no mileage limit and no constraints on their activities. The premise being that such drivers perform other functions in addition to driving and will not exceed the current 10-hour driving limitation. This action would parallel the exemption allowed by 49 CFR 395.1 (e). As stated previously, drivers will be required to comply with the driving-time provisions of 49 CFR 395.3(a) and (b).

CMV Inspections

In the June 10, 1997 **Federal Register** notice, the FHWA relieved participating motor carriers from performing annual vehicle inspections in accordance with 49 CFR 391.17. Since we are proposing to exempt participating motor carriers from the annual inspection, the participating motor carriers would be exempt from the annual inspector qualification requirements set forth in 49 CFR 396.19 while participating in the Project and inspecting program CMVs. Participating motor carriers would also be relieved of the requirements for brake inspector qualifications and recordkeeping in accordance with 49 CFR 396.25, except for inspectors working on air brake systems. The rationale for this is that most of these vehicles are equipped with hydraulic brakes.

The FHWA seeks public comment on whether these additional exemptions are appropriate and whether these additional incentives will increase the industry's interest in participating. The NHS Act requires the FHWA to ensure the Project is designed to achieve a level of operational safety "equal to or greater than" that under the current requirements of the FMCSRs. In considering additional exemptions under this Project, the FHWA carefully weighed whether adequate safety measures exist to ensure the exemptions do not adversely affect highway safety.

IV. Criteria for Admission to the Project

The FHWA believes participation in this Project should be limited to those motor carriers that have exemplary safety records. The agency further believes that the best measure of an exemplary record would be an accident rate equal to, or better than, that of the top 25 percent of motor carriers. The FHWA estimates this accident rate to be 0.5, or fewer, accidents per one million vehicle miles of travel. Accidents are those incidents resulting in (1) a fatality, (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

This rate is derived from an analysis of Compliance Review (CR) data, collected for the years 1993 through 1997. The decision to base this rate on accidents was made after discussions with representatives from the motor carrier industry. This approach is consistent with the FHWA's definition of the term "accident" as it appears in 49 CFR 390.5.

Note that the FHWA does not maintain any CR or other accident data specific to motor carriers operating CMVs within the 10,000 pound to 26,000 pound range. Thus, the agency's analysis of the CR data could not be limited precisely to the population targeted for this Project. The analysis was, however, limited to only those motor carriers operating at least one straight truck. The FHWA estimates that between 50 and 75 percent of all straight trucks are within the 10,000 pound to 26,000 pound range. Further, only those motor carriers, in the CR data base, having three or more years of accident data were considered. The analysis was further limited to those carriers averaging at least one million vehicle miles traveled (VMT) over a three year period. This was done to (1) be consistent with the carrier eligibility requirements established for this Project, and (2) guard against any bias resulting from including carriers having an insufficient number of VMT to determine an accident rate accurately.

For the 271 motor carriers meeting these conditions in the analysis file, 25 percent had an accident rate of 0.5 or fewer accidents per one million VMT, based on three or more years of data. Hence, the cut-off for identifying the top 25 percent of carriers based on this analysis is 0.5.

Using CR data allows us to analyze accident data at the carrier level. No other data base available to the agency allows for such an analysis. Although it may be argued that by using such data, the agency is basing its accident rate cut-off point on a group of motor carriers already identified as substandard, only 36 out of 223, or 16 percent of these carriers had a SafeStat crash safety evaluation area (SEA) score greater than 75, thereby indicating a potentially high accident rate (for 48 of the carriers, the SEA score could not be obtained or inferred).

Furthermore, overall accident statistics produced from this file are not dramatically different from accident statistics generated from other data sources. For example, the average accident rate across all carriers based on this analysis file (composed of carriers with straight trucks, having at least three CRs between 1993 and 1997, and an average three year VMT of one million or higher) is 0.75 accidents per million VMT. If all motor carriers having had three or more CRs between 1993 and 1997 are considered, with no constraints on power unit composition or VMT, the accident rate drops slightly to 0.72. Using the General Estimates System (GES) data base for purposes of comparison, the overall accident rate between 1993 and 1996 for straight and combinations trucks is 0.6 accidents per one million VMT.

The FHWA, therefore, proposes to modify the Project participation requirement regarding accident rates by eliminating the "police-reportable" accident definition and using the definition of an "accident" in 49 CFR 390.5. Furthermore, the FHWA proposes an accident rate, for entry into and exit from the Project, of no more than 0.5 accidents per million VMT, averaged over the most recent 36 months. Motor carriers with less than one million VMT in the most recent 36 months would be eligible for the Project if they have no more than one accident during that period of time. Two or more accidents would result in a motor carrier being declared ineligible for this Project. It is important to note that the accidents and mileage used in calculating this accident rate only include vehicles eligible for the Project and no others.

The FHWA seeks public comment on these proposed criteria. Is an accident rate of no more than 0.5 accidents per 1,000,000 VMT a prudent requirement in view of the need to limit

participation to those carriers with exemplary safety records? Are there other tenable approaches? If yes, what data or rationale support them?

The criteria for admission to the Project has otherwise remained the same as published in the June 10, 1997 **Federal Register**, except for the change regarding the definition of an accident and the accident rate for Project eligibility described above. No other criteria modifications are being proposed for admission to the Project. Each motor carrier applying for admission to the Project must satisfy the following 7 prerequisites:

1. The motor carrier operates in interstate commerce.

2. The motor carrier operates CMVs having a GVWR between 10,001 and 26,000 pounds.

Note: CMVs designed to transport more than 15 passengers (including the driver), or used to transport hazardous materials in placardable quantities, as defined in regulations issued by the Secretary of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), are not eligible to participate in this Project.

3. The motor carrier does not currently have a Safety Fitness Rating of "Unsatisfactory" issued by the FHWA. Motor carriers that have not received a safety rating issued by the FHWA are eligible for this Project.

4. For CMVs eligible for this Project, the motor carrier has an accident rate equal to or less than 0.5 accidents per million VMT, averaged over the most recent 36 months. The term "accident" is defined in 49 CFR 390.5. For example, a motor carrier which has had 2 accidents and has 5 million VMT by eligible CMVs over the most recent 36 months would be eligible for the Project based upon the following calculation: 2 divided by 5 equals 0.4, which is less than 0.5. This calculation is to be based solely upon the accidents and mileage of those CMVs which have a GVWR between 10,001 pounds and 26,000 pounds.

Motor carriers with less than one million VMT in the most recent 36 months are eligible for the Project if they have not had more than 1 accident during that period of time. Two or more accidents would result in ineligibility for this Project.

5. The motor carrier is active on a year-round basis. "Seasonal" motor carriers are not eligible for the Project.

6. The drivers assigned by the motor carrier for participation in the Project have not been convicted, in the past three years, of:

(a) An offense that directly arose out of a fatal traffic accident;

(b) Driving a CMV while under the influence of alcohol, including;

(i) Driving a CMV while the person's alcohol concentration is 0.04 percent or more;

(ii) Driving under the influence of alcohol, as prescribed by State law; and

(iii) Refusal to undergo testing for alcohol or controlled substances as required by any State or jurisdiction;

(c) Driving a CMV while under the influence of a controlled substance;

(d) Leaving the scene of an accident involving a CMV; or

(e) A felony involving the use of a CMV, including the use of a CMV in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.

7. The motor carrier has a written Safety Control Plan for this Project. This plan must, in some form, clearly detail the measures which the motor carrier will undertake to ensure the current level of safety is not compromised by the operation of the Project exemptions. This document may entail no more than submitting pertinent portions of a company's current Operating Plan or similar document. An outline for the creation of this document is also available, upon request, from the FHWA. In its application, the motor carrier would agree to abide by its Safety Control Plan. More detailed information regarding the Safety Control Plan is provided later in this document.

V. Applying for the Project

In the Notice of Final Determination published in the **Federal Register** on June 10, 1997, motor carriers were required to submit, in writing, their requests for admission to the Project within 180 days of the publication of the notice. The application deadline was extended to June 30, 1998 (See the December 16, 1997 issue of the **Federal Register**). The FHWA also made known that additional information clarifying the eligibility criteria and application process would be published at a later date. This notice is that clarifying document. To ensure a continuous opportunity for interested motor carriers to apply for the Project under the new criteria, the FHWA is further extending the application deadline until January 30, 1999.

There will be no change in the application process during this notice and comment period. Interested motor carriers should submit, in writing, to the FHWA, the following:

(1) A completed Motor Carrier Identification Report (Form MCS–150), which would provide updated information about the overall operation of the motor carrier;

(2) The following certification, duly executed by the Chief Operating Officer of the motor carrier:

I certify that (Name of motor carrier) operates CMVs having a GVWR between 10,001 pounds and 26,000 pounds in interstate commerce, on a year-round basis, and is not rated "Unsatisfactory" by the FHWA. I certify the company has approved the attached Safety Control Plan and will employ these controls throughout the Project. I certify that the motor carrier EITHER: (1) has an accident rate equal to or less than 0.5 accidents per million vehicle miles traveled (VMT), averaged over the most recent 36 months, based upon _____ accidents and _____ VMT, by CMVs having a GVWR between 10,001 pounds and 26,000 pounds, OR (2) has _____ actual VMT (less than one million) over the most recent 36 months and has experienced _____ (less than 2) accidents involving the subject vehicles over that period of time.

I hereby submit a roster of _____ company drivers for participation in the Project. The roster includes driver names, license numbers, State of licensure, and dates of employment. I certify that (1) each driver is eligible to participate in the Project, (2) each operates CMVs having a GVWR between 10,001 pounds and 26,000 pounds, and (3) I have independently verified that the driving record of each does not include any convictions within the past 3 years of any of the disqualifying offenses enumerated in the Project criteria. I have read and agree to be bound by the requirements for notification and submission of information to the FHWA outlined in the section entitled "The Agreement" in the Notice of Final Determination of this Project.

Signature: _____

Name: _____

Title: _____

Name of Motor Carrier: _____

(3) A Safety Control Plan;

(4) A driver roster containing drivers' names, driver license numbers, State of licensure, and dates of employment. This would enable the FHWA to advise enforcement officers of the identity of Project drivers and to monitor their driving performance.

Note: The motor carrier applicant would be required to submit the names of ALL drivers eligible for participation in the Project.

The FHWA is aware that some motor carriers with large operations may wish to volunteer a particular terminal, geographic region, or State operation for this Project. The FHWA anticipates no difficulty in affording motor carriers flexibility with this form of selection.

The FHWA would carefully scrutinize any suggested "subunits" to be certain they advance the congressional mandate, particularly the requirement that this Project examine a broad cross-section of the motor carrier industry. All of the above items should be assembled and submitted to: United States Department of Transportation, Federal Highway Administration, 10–26 Safety Demonstration Project, HMT–1, 400 Seventh Street, SW., Washington, D.C. 20590–0001.

VI. Safety Control Plans

Motor carriers interested in applying for the Project must submit a Safety Control Plan (SCP). Through outreach sessions with the industry, the FHWA has discovered there is some confusion regarding the content of such a plan. For the purposes of this Project, the SCP should provide the answers to the following:

During the Project, how will the motor carrier applicant ensure:

(1) Project drivers are qualified to operate commercial motor vehicles,

(2) Project vehicles are in safe operating condition,

(3) Project drivers are complying with the maximum hours-of-service requirements, and

(4) It will receive a timely warning if Project drivers are violating the FMCSRs or the Agreement of Participation.

The FHWA believes the preparation of the SCP should be straightforward for most motor carriers which have the exemplary safety record required to qualify for the Project. Experience has shown that the vast majority of motor carriers who have exemplary safety records also have a well-defined set of safety controls. For this Project, the FHWA proposes that an existing set of company operating instructions, whether currently included in a manual or are a set of policy documents, could be used to satisfy the SCP requirement, if the motor carrier applicant directed the FHWA to the sections which satisfy the SCP requirements.

Where an initial SCP must be created, the FHWA believes that an explanation of the day-to-day safety practices and controls which the motor carrier employs, or will employ, should suffice. Upon review of the motor carrier's SCP, the FHWA must be able to identify what safety controls are in place, and be able to evaluate them in terms of the level of safety they could be expected to produce. A model outline of an SCP is available from the FHWA upon request.

VII. Eligible Drivers

Drivers operating CMVs with a GVWR between 10,001 pounds and 26,000 pounds are eligible for the Project. The FHWA will, however, permit a Project motor carrier to direct Project drivers to operate vehicles outside of the Project weight class if: (1) the driver operates Project vehicles at least 25 percent of the time, and (2) the motor carrier can provide the FHWA with a reasonable calculation of the total number of VMT accrued outside the Project, and the total number of VMT accrued within the Project, for each such driver. The FHWA can take such information into account when conducting its evaluation of the Project, and thus preserve the integrity of that evaluation. Motor carriers and their drivers are advised to be alert to the fact that when activity is conducted outside the Project, that activity is subject to all provisions of the FMCSRs. For instance, a driver who operates a CMV with a GVWR in excess of 26,000 pounds must, in accordance with 49 CFR 395.8, account for his or her hours-of-service for the previous 8 consecutive days even though the driver, during the earlier period, was exempt from the requirements of 395.8 by virtue of being engaged in Project activity.

VIII. The Agreement of Participation

If the FHWA finds that a motor carrier applicant is qualified for admission to the Project, it will, by letter, admit the motor carrier to the Project. Participation in the Project may commence immediately upon receipt of the admission letter. A copy of this letter should be made available to each Project driver to serve as the credential authorizing his/her participation in the Project.

By agreement, Project motor carriers promise to report certain information to the FHWA. The reporting requirements have remained relatively the same as in the June 10, 1997 notice. The changes in the reporting criteria primarily relate to accident reporting and notification of changes to the Safety Control Plan. To assist motor carriers in better understanding these reporting criteria, the following additional guidance is being provided:

(1) Within 10 business days following the occurrence of a fatal accident, and within 30 business days following the occurrence of a non-fatal accident, involving a Project driver, the motor carrier would be required to submit details of that accident to the FHWA. The information would have to be sufficient enough to enable the FHWA to locate the corresponding police accident report. The actual police accident report will not be required to be submitted. Normally, it would be sufficient to provide the date and physical location of the accident, the vehicle number, and the driver's name and license number. If the FHWA needs nonconfidential insurance-related information, it would so advise the motor carrier.

Note: This information would have to be accompanied by a revised calculation of accidents per million VMT, indicating the figures used to make the calculation.

The motor carrier would be subject to removal from the Project (see below) should this accident rate exceed 0.5 accidents per million VMT for the most recent 36 month period. Project motor carriers with less than one million VMT in the most recent 36 months and having two or more accidents occur during the most recent 36 months would also be subject to removal.

(2) Immediately following the addition of a new driver eligible for the Project, the motor carrier would be required to submit an update to the roster of Project drivers, including the name, driver's license number, and date of employment of each driver added. A new and complete driver roster would not be required each time the motor carrier intends to use a new driver in the Project. This could be accomplished via facsimile (FAX) , the U.S. Mail, or E-Mail and will be explained in detail in the agreement letter. Without a complete and accurate roster of the drivers participating in the Project, the FHWA would be unable to offer real-time assistance to enforcement personnel at roadside inspection locations.

(3) Removal of Project drivers would call for a procedure similar to that described in (2) above.

(4) Within 10 business days, the motor carrier would be required to notify the FHWA when the motor carrier is sold, goes out of business, changes its name, ceases to operate, ceases to operate in interstate commerce, ceases to operate CMVs with GVWRs between 10,001 pounds and 26,000 pounds, or ceases to conduct operations on a year-round basis.

(5) Within 30 business days, the motor carrier would be required to notify the FHWA when the motor carrier chooses to amend its Safety Control Plan, or is unable, for any reason, to carry out the terms of the Safety Control Plan which it developed for this Project. A resubmission of the entire Safety Control Plan would not be necessary. Participating motor carriers would submit, in writing, an addendum to the plan which describes the changes made.

(6) Semi-annually, Project motor carriers would be required to provide the FHWA with a current calculation of

accidents per million VMT for the preceding 36 months and indicate the figures used to arrive at the calculation. The first calculation would be submitted upon the sixth-month anniversary of the date of admission to the Project. Subsequent calculations would be due every six months thereafter.

IX. Removal From the Project

The FHWA does not anticipate that any motor carrier which has satisfied the stringent admission criteria of this Project will experience any deterioration of its safety record. However, should this occur, the FHWA would, consistent with its duty under the NHS Act, take all steps necessary to protect the public interest, as well as the integrity of the Project. Participation in this Project is voluntary, and the FHWA would retain the right to revoke a motor carrier's privilege to participate in the Project if its safety performance poses a threat to highway safety. Participating motor carriers would not be exempt from roadside inspections, compliance reviews or enforcement actions pertaining to the remaining regulations from which they are not exempt, or on those portions of their operations which would not be a part of the Project. Also, Project drivers who pose a threat to highway safety would, at a minimum, be subject to immediate revocation of their privilege to participate in the Project.

Should the FHWA find the highway operations of a Project motor carrier have placed the safety of the public in jeopardy, the agency would remove the motor carrier from the Project. Should the three-year accident rate of a Project motor carrier exceed 0.5 per million VMT for the most recent 36 month period, the motor carrier would be subject to disqualification. Additionally, Project motor carriers that incur two or more accidents while accruing less than one million VMT in the most recent 36 months would also be subject to disqualification.

The FHWA would also immediately remove any Project driver convicted of any of the offenses enumerated under item 6 of the Criteria for Admission to the Project. Such driver convictions would not necessarily result in the Project motor carrier's removal. It could, however, result in more intensive scrutiny of the Project motor carrier's operation.

X. The Final Evaluation

At the conclusion of the Project, the FHWA would conduct an evaluation of the Project. The principal objective of the evaluation would be to provide input to the FHWA's ongoing zero-base regulatory review. Simply put, we would determine whether a group of exemplary motor carriers can operate a specific class of CMVs as safely without a lot of regulation as it could when subject to the entire body of the FMCSRs.

The evaluation will focus upon operational safety by comparing the collective experience of Project motor carriers and drivers during the Project with that prior to the Project. The evaluation will also compare the collective experience of Project motor carriers with the experience of motor carriers not participating in the Project. These comparisons will be accomplished through the use of motor carrier performance data obtained from Federal and State information systems, as well as Project data reported to the FHWA by the participating motor carriers.

The FHWA is cognizant of the economic realities which underlie the suggestion that it should assure motor carriers that the exemptions that would be allowed during this Project would continue beyond the three-year life of this pilot. It is possible that the exemptions would continue in some form. The case for permanent regulatory change, however, must be made by using valid supporting data. The agency recognizes that strong participation in this Project could generate data which may support meaningful, performance-based improvements of the current regulatory scheme. The FHWA cannot predict what the Project data will show, or what regulatory changes, if any, would be supported. After the first two years of the Project, the FHWA would analyze the Project data. Depending upon the data and its analyses, indications of possible regulatory changes could result.

XI. Preemption

In response to docket comments expressing concern about the possible enforcement of intrastate regulations that would not be compatible with the requirements of this Project, a supplemental notice was published on October 29, 1996 (61 FR 55835) seeking comment on the appropriate use of Federal preemption in this Project. Eight comments to the supplemental notice were received. Five were from trade groups, one from a motor carrier, one from a union, and one from a safety advocacy group. Four were in favor of the exercise of Federal preemption, two were opposed to it, and two offered no opinion. No comments were received from the States.

The FHWA will not pursue preemption with regard to this Project. For some time, however, through various Federal initiatives, foremost of which is the program of grants to States known as the Motor Carrier Safety Assistance Program (MCSAP), the States and the Federal government have been working together to achieve a high degree of uniformity between State and Federal motor carrier regulation and their enforcement. At the same time, the Federal-State partnership has resulted in a better understanding of regulatory and enforcement problems. Thus, a new Federal program, though it may necessitate corresponding changes in State enforcement activity, is more readily understood by State officials. The FHWA believes that the Federal-State partnership is capable of absorbing the changes which this Project requires.

Currently, 26 States and Territories automatically adopt revisions to the FMCSRs. It is reasonable to believe those States and Territories would accept the pilot Project and its attendant exemptions while permitting examination of the effect of performance-based standards on highway safety. The FHWA will renew it's dialogue with the various States to reaffirm their understanding of the Project and ensure proper coordination and communication is accomplished.

XII. Paperwork Reduction Act of 1995

The FHWA is aware that this Project would impose special recordkeeping and reporting requirements upon participating motor carriers. The FHWA believes the paperwork requirements proposed in this document are absolutely necessary to conduct this Project and to ensure the safety of the public on the highways. For instance, in the absence of a roster of drivers participating in the Project, the FHWA would be unable to assist roadside enforcement officials in the conduct of their duties. The FHWA also believes that most of the remaining records which would be required by this Project are routinely maintained by most motor carriers in the course of their day-to-day operations.

The voluntary participants in this program would be required to comply with information collection requirements which are subject to review by the OMB under the PRA. Persons are not required to respond to a collection of information unless it displays a valid OMB control number. The information collection requirements related to this Project have been approved by the OMB until November 30, 2000, and assigned OMB Control No. 2125–0575.

Generally, Federal Register concerning each collection of information. Comments on the information collections proposed in this notice will be considered by the FHWA in its request for long-term approval. With respect to the collections of information described below, the FHWA invites comments on: (1) Whether the proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the FHWA's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of these information collections upon those who are to respond, including the use of automated collection techniques, and other forms of information collections technology.

The title used to identify the information collections proposed in this notice and submitted for OMB's approval is "Motor Carrier Regulatory Relief and Safety Demonstration Project."

This **Federal Register** notice proposes a voluntary pilot Project. In return for receiving exemptions from certain requirements of the FMCSRs, each Project motor carrier would be required to develop and/or furnish certain information about its operations. It is anticipated that the initial application will require about one-half hour to complete. This document is necessary to identify those motor carriers that believe they are eligible to participate in the Project, and to indicate their desire to participate in the Project. The Safety Control Plan, outlining the safety management measures the motor carrier would have in place to ensure that it would achieve the appropriate level of operational safety during the Project, would require approximately one and one-half hours to prepare. This document would be subject to examination by the FHWA, and would be used to assist the FHWA in ensuring that Project participants did not neglect those aspects of motor carrier safety which are normally addressed by the regulations from which they are temporarily exempt. The Safety Control Plan would require approximately one and one-half hours to prepare. Further, participating motor carriers would be required to submit to the FHWA the name, driver's license number, and date of employment of each participating driver. The motor carrier would also be required to advise the FHWA immediately of any changes in this information. These collections and submissions of information are necessary in order to effectively grant Project exemption to identifiable operators of CMVs and to permit the performance of each to be monitored and evaluated. It is estimated that the reporting and recordkeeping burden for these items would be one hour.

It is also proposed that each accident involving Project drivers and/or Project vehicles would be reported to the FHWA as it occurs (within 10 or 30 business days, depending upon severity). Each Project motor carrier would also calculate and submit its accident rate per million VMT on a semi-annual basis, and advise the FHWA if that rate exceeds 0.5. This information is necessary in order to identify those motor carriers whose safety performance is declining during the Project and would also be used to assist in comparing the performance of the exempt motor carriers with the performance of those which remain subject to the FMCSRs. The annual reporting and recordkeeping burden for this information collection is estimated to be one-half hour.

The most likely respondents to this information collection will be motor carriers operating CMVs with a GVWR between 10,001 pounds and 26,000 pounds, operated in interstate commerce, have a satisfactory safety rating or is not rated, and have an accident rate less than 0.5 per million VMT. The approximate number of motor carriers currently eligible to participate in the Project is 33,000. Therefore, it is estimated that the total annual reporting and recordkeeping burden will be 275 hours.

XIII. Conclusion

The FHWA welcomes comment on any and all aspects of these proposed changes to the Project from all interested parties. Upon review of public comment, the FHWA intends to modify the project, authorize qualified motor carrier participation, and publish a supplemental notice of final determination.

(49 U.S.C. 31136 and 31141; 49 CFR 1.48)

Issued on: July 7, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–18539 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3983]

Mercedes-Benz of North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz of North America, Inc. (Mercedes-Benz) of Montvale, New Jersey has determined that some 1998 Mercedes-Benz M-class vehicles fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire selection and rims for vehicles other than passenger cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and noncompliance reports." Mercedes-Benz has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The purpose of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating; and rims of appropriate size and type designation. Paragraph S5.3, Label information, of FMVSS No. 120 states that each vehicle shall show the appropriate tire information (such as: recommended cold inflation pressure) and rim information (such as: size and type designations) in the English language. This information must appear either on the certification label or a tire information label, lettered in block capitals and numerals not less than 2.4 millimeters high, and in the prescribed format. In addition, FMVSS No.120 requires that the label be affixed to the hinge pillar, the door-latch post, the door edge that meets the latch post, or next to the driver's seating position. If these locations are impractical, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. However, if all of the preceding locations are not practical, the manufacturer can notified, in writing, NHTSA and request approval for an alternate location in the same general location.

Mercedes-Benz states that 35,357 vehicles were produced from the beginning of production in January 1997 through April 13, 1998 that do not meet the labeling requirements stated in the

FMVSS No. 120. Mercedes-Benz equipped the vehicles with tire information labels that specify the tire size, rim size, and cold inflation pressure on the fuel filler door. The information is formatted differently than as required by the FMVSS No. 120. The size of the letters and numerals are less than the required minimum of 2.4 millimeters.

Mercedes-Benz supports its application for inconsequential noncompliance with the following statements:

1. With regards to the content of the label, all the information required by the FMVSS No. 120 is contained in the label including, recommended tires size, rim size, and cold inflation pressure.

2. Although the height of the labeling is less than the required minimum of 2.4 mm, the letters in the labels are of sufficient size and color to be easily read.

3. With regards to the labeling format, Mercedes-Benz believes that placing the English units before the metric units is not a noncompliance that affects vehicle safety, because consumers in the U.S. are generally more familiar with English units of measurement than metric units.

4. Regarding the location of the tire information label, Mercedes-Benz believes that consumers interested in checking their tire pressure labels would likely perform this check at gas stations, convenience stores, or auto repair facilities. In some cases, this label's location serves as a reminder to check the tire pressure.

5. Based on the convenient location of the tire information label, the reference information in the owner's manual, and the maximum inflation pressure marked on the tire, Mercedes-Benz believes that the tire information label on the fuel filler door is an inconsequential noncompliance.

Interested persons are invited to submit written data, views, and arguments on the application of Mercedes-Benz described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 12, 1998.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 7, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–18537 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–548]

Tacoma Eastern Railway Company—Adverse Discontinuance of Operations Application—A Line of City of Tacoma, in Pierce, Thurston and Lewis Counties, WA

On June 23, 1998, the City of Tacoma, WA (City) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) find that the public convenience and necessity require and permit the discontinuance of the operations by Tacoma Eastern Railway Company (TE) [1] on 131.5 miles of City rail line in Pierce, Thurston, and Lewis Counties, WA: (1) between milepost 2192.0, at Tacoma, and milepost 17.7, at Chehalis; and (2) between milepost 2192.0, at Tacoma, and milepost 64.2, at Morton.[2] The line traverses United States Postal Service ZIP Codes 98235, 98304, 98328, 98330, 98338, 98344, 98355, 98356, 98371, 98373–98375, 98387, 98401–98405, 98408, 98421, 98424, 98443–98446, 98501, 98531, 98532 and 98576.

City states that it has terminated the contract pursuant to which TE has been operating on the line because TE has not satisfactorily performed its obligations under the contract.[3]

The line does not contain federally granted rights-of-way. Any documentation in City's possession will be made available promptly to those requesting it. City's entire case for discontinuance of service was filed with the application.

In addition, City has petitioned the Board to waive certain provisions of 49 CFR 1152.22 on the grounds that the information required by these provisions is not relevant to the merits of the application or is not available to the City because of the circumstances of the application. Requests for waivers are typically filed before the application drawn in reliance on those waivers is filed. By filing its application contemporaneously with the waivers, City has run the risk that the waivers will be denied in whole or part and City will have wasted time and effort in filing an application based on them. But, as City is no doubt aware, grants of waiver petitions in applications filed by third parties are customary. The waiver request as to information to be contained in the application will be granted in a separate decision to be served concurrently with this notice.

In an application by a third party for a determination that the public convenience and necessity permits a line to be discontinued or abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. By granting a third party application, the Board withdraws its primary jurisdiction over the line. Questions of the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are then left to state or local authorities; *Kansas City Pub. Ser. Frgt. Operation-Exempt.—Aban.*, 7 I.C.C.2d 216 (1990).

The interest of railroad employees will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed adverse discontinuance or protests (including the protestant's entire opposition case), by August 7, 1998. Because this discontinuance of service is the functional equivalent of a discontinuance of trackage rights rather than an abandonment, trail use/rail banking and public use requests are not appropriate. Likewise, no environmental or historical documents are required here under 49 CFR 1105.6(c)(6) and 1105.8(b)(3).

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest by August 7, 1998. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of

[1] TE was authorized to operate the line by lease in *Tacoma Eastern Railway Co.— Lease and Operation Exemption—City of Tacoma, Washington*, Finance Docket No. 32591 (ICC served Nov. 3, 1994).

[2] A discontinuance of a railroad's service sought by a party other than the railroad is called an "adverse" discontinuance.

[3] Once City receives Board approval, it intends to replace TE with the Belt Line Division of the City of Tacoma Department of Public Utilities (Belt Line). Beltline will file a notice of exemption pursuant to 49 CFR 1150.31 to enable it to commence operations without any interruption in service to shippers on the line.

witnesses containing detailed evidence should file comments by August 7, 1998. Parties seeking information concerning the filing of protests should refer to section 1152.25. The due date for City's reply is August 24, 1998.

Written comments and protests must indicate the proceeding designation STB Docket No. AB–548 and must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. A copy of each written comment or protest must be served upon the City's representative Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, NW, Suite 800, Washington, DC 20036 [Telephone (202) 331–8800]. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the adverse discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning the abandonment/discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 7, 1998.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–18567 Filed 7–10–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: .

DATES: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of International Financial Analysis within the Department of the Treasury is soliciting comments concerning Revisions to Foreign Currency Forms FC–1 (OMB No. 1505–0012) Weekly Consolidated Foreign Currency Report of Major Market Participants, FC–2 (OMB No. 1505–0010) Monthly Consolidated Foreign Currency Report of Major Market Participants, and FC–3 (OMB No. 1505–0014) Quarterly Consolidated Foreign Currency Report. The reports are mandatory.

DATES: Written comments should be received on or before September 11, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to T. Ashby McCown, Director, Office of International Financial Analysis, Department of the Treasury 1500 Pennsylvania Avenue, N.W., Room 5453, Washington, D.C. 20220, Telephone (202) 622–2250.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to T. Ashby McCown, director, Office of International Financial Analysis, Department of the Treasury, Washington, D.C. 20220. Telephone (202) 622–2250, FAX (202) 622–0607.

SUPPLEMENTARY INFORMATION:

Title: Weekly Consolidated Foreign Currency Report of major market Participants, Foreign Currency Form FC–1.

OMB Number: 1505–0012.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–2.

OMB Number: 1505–0010.

Title: Quarterly Consolidated Foreign Currency Report, Foreign Currency Form FC–3.

OMB Number: 1505–0014.

Abstract: Foreign Currency Forms FC–1, FC–2, and FC–3 are required by Public Law 93–110 (31 U.S.C. 5313 and 5321 (a)(3)), which directs the Secretary of the Treasury to prescribe regulations reports on foreign currency transactions conducted by a United States person or foreign person controlled by a United States person. The regulations governing forms FC–1, FC–2, and FC–3 are contained in Title 31 part 128 of the Code of Federal Regulations (31 CFR 128) which were published in the **Federal Register** on November 2, 1993 (58 FR 58494–58497).

Current Actions: The proposed revisions in the forms and instructions are prompted by the introduction of the new European currency, the Euro, on January 1, 1999, and by the anticipated discontinuation of the Federal Financial Institutions Examination Council (FFIEC) report 035, "Monthly Consolidated Foreign Currency Report of Banks in the United States," currently filed by banks and banking institutions in lieu of forms FC–2 and FC–3. Several modest changes and clarifications in the forms and instructions for reports FC–1, FC–2, and FC–3 are proposed as part of these revision requests.

1. An increase in the exemption level of the FC–3, from $1 billion to $5 billion equivalent in foreign exchange contracts on the last business day of any quarter of the previous year, is being proposed. It is estimated that the overall number of respondents filing FC–2, FC–3 or FFIEC 035 reports will decline by over 40%.

2. Columns for the U.S. dollar and Euro currencies have been added to the face of each form FC–1, FC–2, and FC–3; and to the Options Addenda on forms FC–2 and FC–3. Special instructions for reporting the Euro currency have been included in Section E. Definitions, *Specified Currencies* of FC–1, FC–2, and FC–3. We anticipate that the current high level of German mark contracts reported will be replaced by reported Euro contracts. The proposal to maintain a column on the forms for mark contracts gives respondents the option to report such contracts either as German marks or as Euros.

3. Columns for "All Other combined [currencies] (excludes US$ and currencies in columns 1–5) in US$ equivalent' have been removed from forms FC–2 and FC–3 and their Options Addenda.

4. The requirement to report the "Memorandum-Cross Currency Interest Rate Swaps" has been removed from forms FC–2 and FC–3.

5. The exemption level for reporting on the Options Addendum has been raised from $100 million to $500 million on forms FC–2 and FC–3. In addition, the exemption level for reporting "Net Options Position, Delta Equivalent Value Long or (Short)" has been raised from $100 million to $500 million on form FC–1.

6. The requirement to report the "Currency Code" and "Net Delta Equivalent Value" of the two largest currencies on the form FC–2 Options Addendum has been removed.

7. A requirement to report all foreign currency denominated assets and all foreign currency denominated liabilities has been added to forms FC–2 and FC–3. This replaces a requirement to report foreign currency denominated non-capital assets and non-capital liabilities on forms FC–2 and FC–3; and a requirement to report the foreign currency denominated "Net Capital Asset (Liability) Position" on form FC–2.

Type of Review: Revision.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents:

Foreign Currency Form FC–1: 35 respondents

Foreign Currency Form FC–2: 35 respondents

Foreign Currency Form FC–3: 66 respondents

Estimated Time Per Respondent:

Foreign Currency Form FC–1: One (1) hour per respondent per response

Foreign Currency Form FC–2: Four (4) hours per respondent per response

Foreign Currency Form FC–3: Eight (8) hours per respondent per response

Estimated Total Annual Burden Hours:

Foreign Currency Form FC–1: 1,820 hours, based on 52 reporting periods per year.

Foreign Currency Form FC–2: 1,680 hours, based on 12 reporting periods per year.

Foreign Currency Form FC–3: 2,112 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) Whether Foreign Currency Forms FC–1, FC–2, FC–3 are necessary for the proper performance of the functions of the Department of the Treasury, including whether the information has practical uses; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

T. Ashby McCown,

Director, Office of International Financial Anaysis.

[FR Doc. 98–18480 Filed 7–10–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 30, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 12, 1998 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0069.

Form Number: PD Fs 5178, 5179, 5179–1, 5180, 5181, 5182, 5188, 5189, 5191, 5201, 5235, 5236, 5261, 5365, and 5381.

Type of Review: Extension.

Title: Treasury Direct Forms.

Description: These forms are used to purchase and maintain Treasury Bills, Notes, and Bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 431,632.

Estimated Burden Hours Per Respondent:

Form	Response time (minutes)
PD F 5178	10
PD F 5179	10
PD F 5179–1	10
PD F 5180	10
PD F 5181	15
PD F 5182	10
PD F 5188	10
PD F 5189	10 to 30
PD F 5191	10 to 30
PD F 5201	10
PD F 5235	10
PD F 5236	30
PD F 5261	15
PD F 5365	10
PD F 5381	10

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 58,628 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–18478 Filed 7–10–98; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

July 1, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 12, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0301.

Form Number: IRS Letter 1117(c).

Type of Review: Extension.

Title: Confirmation Letter.

Description: It is necessary to directly communicate with taxpayers and/or other knowledgeable parties to obtain verification of information such as the correct amount of tax due, returns filed, etc. Response information is used to determine the accuracy of tax and ledger accounts, etc.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4,200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,050 hours.

OMB Number: 1545–0597.

Form Number: IRS Form 4598.

Type of Review: Extension.

Title: Form W–2, or 1099 Not Received or Incorrect.

Description: Employers and/or payers are required to furnish Forms W–2 or 1099 to employees and other payees. This three-part form is necessary for the resolution of taxpayer complaints concerning the non-receipt of or incorrect Forms W–2 or 1099.

Respondents: Individuals or households, Business or other for-profit, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 850,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 212,500 hours.

OMB Number: 1545–00806.
Regulation Project Number: EE–12–78 Final.
Type of Review: Extension.
Title: Nonbank Trustees.
Description: Internal Revenue Code (IRC) section 408(a)(2) permits an institution other than a bank to be the trustee of an Individual Retirement Account (IRA). To do so, an application needs to be filed and various qualifications need to be met. IRS uses the information to determine whether an institution qualifies to be a non-bank trustee.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 23.
Estimated Burden Hours Per Respondent/Recordkeeper: 34 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 13 hours.

OMB Number: 1545–0.
Regulation Project Number: LR 2013 (TD 7533) Final and EE–155–78 (TD 7896) Final.
Type of Review: Extension.
Title: DISC Rules on Procedure and Administration; Rules on Export Trade Corporations; and Income From Trade Shows (EE–155–78).
Description: Section 1.6071–1(b) requires that when a taxpayer files a late return for a short period, proof of unusual circumstances for late filing must be given to the District Director. Sections 1.6072(b), (c), (d), and (e) of the Internal Revenue Code (IRC) deals with the filing dates of certain corporate returns. Regulation section 1.6072–2 provides additional information concerning these filing dates. The information is used to insure timely filing of corporate income tax returns.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents: 12,417.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,104 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 98–18479 Filed 7–10–98; 8:45 am]
BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

July 6, 1998.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

DATES: Written comments should be received on or before August 12, 1998 to be assured of consideration.

OMB Number: 1550–0094.
Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Title: Financial Management Policies.
Description: This information collection requires institutions establish policies and procedures for managing interest rate risk. Institutions need to establish risk limits to determine the appropriate level of interest rate risk for that institution.
Respondents: Savings and Loan Associations and Savings Banks.
Estimated Number of Record keepers: 1,215.
Estimated Burden Hours Per Record keeper: 60.5 average hours.
Estimated Total Record keeping Burden: 73,540 hours.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.
OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,
Director, Records Management and Information Policy.
[FR Doc. 98–18467 Filed 7–10–98; 8:45 am]
BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Art Objects; Importation for Exhibition: Ancient West Mexico: Art and Archaeology of the Unknown Past

AGENCY: United States Information Agency.
SUBJECT: Culturally Significant Objects Imported for Exhibition Determinations.
SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985).
ACTION: I hereby determine that the objects to be included in the exhibit, "Ancient West Mexico: Art and Archaeology of the Unknown Past" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Art Institute of Chicago, Chicago, IL, from on or about September 5, 1998 through November 22, 1998, and Los Angeles County Museum of Art, Los Angeles, CA, from on or about December 20, 1998 to March 29, 1999 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**
FOR FURTHER INFORMATION CONTACT: Neila Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: July 7, 1998.
Les Jin,
General Counsel.
[FR Doc. 98–18560 Filed 7–10–98; 8:45 am]
BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Art Objects; Importation for Exhibition; Jade in Ancient Costa Rica

AGENCY: United States Information Agency.
SUBJECT: Culturally Significant Objects Imported for Exhibition Determinations.
SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of

October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1975).

ACTION: I hereby determine that the objects on the list specified below, to be included in the exhibit, "Jade in Ancient Costa Rica," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, in New York, New York, from on or about September 15, 1998, to on or about February 28, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: July 8, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–18559 Filed 7–10–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to process beneficiaries claim for payment of insurance proceeds.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 11, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0060" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5038.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers

a. Claim for Life Insurance Proceeds (NSLI & USGLI), VA Form 29–4125.
b. Claim for Monthly Installments (NSLI), VA Form 29–4125a.
c. Claim for One Sum Payment (NSLI & USGLI),VA Form 29–4125b.
d. Claim for Monthly Installments (USGLI), VA Form 29–4125k.
e. Invitation and Claim for One Sum Payment (NSLI & USGLI), VA Form Letter 29–764.

OMB Control Number: 2900–0060.

Type of Review: Extension of a currently approved collection.

Abstract: The forms and form letter are used by beneficiaries applying for proceeds of Government Insurance policies. The information is used by VA to process the beneficiaries claim for payment of the insurance proceeds.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,938 hours.
a. VA Form 29–4125—8,200 hours.
b. VA Form 29–4125a—463 hours.
c. VA Form 29–4125b—50 hours.
d. VA Form 4125k—125 hours.
e. FL 29–764—100 hours.

Total Estimated Average Burden Per Respondent: 6 minutes.
a. VA Form 29–4125—6 minutes.
b. VA Form 29–4125a—15 minutes.
c. VA Form 29–4125b—6 minutes.
d. VA Form 4125k—15 minutes.
e. FL 29–764—6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 85,850.
a. VA Form 29–4125—82,000.
b. VA Form 29–4125a—1,850.
c. VA Form 29–4125b—500.
d. VA Form 4125k—500.
e. FL 29–764—1,000.

Dated: May 1, 1998.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 98–18515 Filed 7–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0076]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's credit worthiness and ability to repay a loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 11, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of

Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0076" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5038.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Request to Creditor Regarding Applicant's Indebtedness, VA Form Letter 26–250.

OMB Control Number: 2900–0076.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to obtain credit information from landlords and creditors of veterans-applicants for guaranteed loans, prospective purchasers of VA-acquired properties and potential assumers of guaranteed loans in release of liability and substitution of entitlement cases.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 45,000.

Dated: May 1, 1998.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 98–18516 Filed 7–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0130]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Reinstatement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to securing information from holders of VA-guaranteed loans regarding a loan to be foreclosed.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 11, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0130" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5038.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520). Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Status of Loan Account—Foreclosure or Other Liquidation, Form Letter 26–567.

OMB Control Number: 2900–0130.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to obtain information from holders of VA-guaranteed loans regarding a loan to be foreclosed. The information is used to specify the amount, if any, to be bid at the foreclosure sale.

Affected Public: Business or other for-profit-Individuals or households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

Dated: May 1, 1998.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 98–18517 Filed 7–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the amounts of any deductible expenses paid by the claimant and/or commercial

life insurance received to calculate the appropriate rate of pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 11, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0138" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5038.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Details of Expenses, VA Form 21–8049.

OMB Control Number: 2900–0138.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8049 is used to determine the amounts of any deductible expenses paid by the claimant and/or commercial life insurance received to adjust the annual income, which determines the payable rate of pension. The information is needed for VA to administer the program.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 22,800.

Dated: May 1, 1998.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 98–18518 Filed 7–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Revision

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to ensure that the amount of benefits payable to a student who is pursuing flight training is correct.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 11, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0162" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Monthly Certification of Flight Training, VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–6553c is used by veterans and individuals on active duty training under 38 U.S.C. chapters 30 and 32 (including section 903 of Public Law 96–342), and reservists training under 10 U.S.C., chapter 1606, may receive benefits for enrolling in or pursuing approved vocational flight training. Benefits are not payable if the veterans and individuals on active duty or reservists terminates the training.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Annual Burden: 6,600 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,200.

Dated: May 1, 1998.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 98–18519 Filed 7–10–98; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 63, No. 133
Monday, July 13, 1998

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

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1998 - June 30, 1999

Correction

In notice document 98–17674 beginning on page 36205 in the issue of Thursday, July 2, 1998, make the following corrections:

1. On page 36206, in the first column, the table "All States Except Alaska And Hawaii" should read as set forth below:

ALL STATES EXCEPT ALASKA AND HAWAII

Meals Served in Centers—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts:	
Paid	$0.20
Free	1.0725
Reduced	0.7725
Lunches and Suppers:[1].	
Paid	$0.18
Free	1.9425
Reduced	1.5425
Supplements:	
Paid	$0.04
Free	0.5325
Reduced	0.2675

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the FEDERAL REGISTER.

	Tier I	Tier II
Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof:		
Breakfasts	$0.90	$0.34
Lunches and Suppers	1.65	1.00
Supplements	0.49	0.13

Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes-Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	$76
Next 150 day care homes	58
Next 800 day care homes	45
Additional day care homes	40

2. On the same page, in the first and second columns, the table for "Alaska" should read as set forth below:

ALASKA

Meals Served in Centers—Per Meals Rates in Dollars or Fractions thereof:	
Breakfasts:	
Paid	$0.29
Free	1.70
Reduced	1.40
Lunches and Suppers:[1]	
Paid	$0.30
Free	3.1450
Reduced	2.7450
Supplements:	
Paid	$0.07
Free	0.8625
Reduced	0.4325

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the FEDERAL REGISTER.

	Tier I	Tier II
Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof:		
Breakfasts	$1.42	$0.52
Lunches and Suppers	2.68	1.62
Supplements	0.80	0.22

Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	$123
Next 150 day care homes	94
Next 800 day care homes	73
Additional day care homes	65

3. On the same page, in the second and third columns, the table for "Hawaii" should read as set forth below:

HAWAII

Meals Served in Centers—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts:	
Paid	$0.23
Free	1.2450
Reduced	0.9450
Lunches and Suppers:[1]	
Paid	$0.21
Free	2.27
Reduced	1.87
Supplements:	
Paid	$0.05
Free	0.6225
Reduced	0.3125

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the FEDERAL REGISTER.

	Tier I	Tier II
Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof:		
Breakfasts	$1.04	$0.39
Lunches and Suppers	1.93	1.17
Supplements	0.57	0.16

Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	$89
Next 150 day care homes	68
Next 800 day care homes	53
Additional day care homes	47

BILLING CODE 1505-01-D

federal register

Monday
July 13, 1998

Part II

Federal Reserve System

12 CFR Part 208, et al.

Membership of State Banking Institutions in the Federal Reserve System; Miscellaneous Interpretations; Issue and Cancellation of Federal Reserve Bank Capital Stock; Security Procedures; Final Rules

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 250

[Regulation H; Docket No. R–0964]

Membership of State Banking Institutions in the Federal Reserve System; Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending Subpart A of Regulation H, regarding the general provisions for membership in the Federal Reserve System, and Subpart E of Regulation H, regarding Interpretations, in order to reduce regulatory burden, simplify and update requirements, and eliminate several obsolete interpretations. As part of the final rule the Board is reissuing prior Subparts B and C. Prior Subparts B and C have not been significantly amended but have been relettered (as Subparts D and E, respectively) to reflect the fact that prior Subpart A was broken into four new Subparts (Subparts A, B, C and F). Prior Subpart D, regarding safety and soundness standards, has been incorporated into new Subpart A. The final rule does not amend in any way Appendices A through E to Part 208. This final rule to modernize Subpart A of Regulation H is in accordance with the Board's policy of reviewing its regulations as well as the Board's review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Staff Attorney, Legal Division (202/452–3688), or Jean Anderson, Staff Attorney, Legal Division (202/452-3707). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The Board is adopting amendments to its Regulation H (12 CFR part 208), regarding the general provisions for state bank membership in the Federal Reserve System, as part of its policy of reviewing its regulations, and consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), Pub. L. 103–328. Section 303 of the Riegle Act requires each Federal banking agency to review and streamline its regulations and written policies to improve efficiency, reduce unnecessary costs, and remove inconsistencies and outmoded and duplicative requirements. The amendments are designed to reduce regulatory burden and simplify and update the regulation.

The principal amendments are described below. In general, the amendments serve to reorganize, clarify, and reduce the burden of compliance with Subpart A of Regulation H. The amendments modify the procedures for membership and branch applications, incorporate a new section designed to provide guidance to banks regarding permissible investments in securities, expand the circumstances under which the Board will consider waivers of conditions of membership, eliminate existing requirements regarding disclosure of financial condition, eliminate the requirement that banks obtain deposit insurance in order to become State member banks, and generally provide a definition of branch that is consistent with OCC regulations and decisions. The amendments also serve to eliminate a number of interpretations elsewhere; specifically, interpretations: 12 CFR 250.120, 250.121, 250.122, 250.123, 250.140, 250.161, 250.162, 250.300, 250.301 and 250.302. The amended Regulation H replaces the existing Regulation H in its entirety, except for the Appendices to Regulation H, which remain unchanged.

A red-lined version of the amendments to the regulation and commentary is available from the Board's Freedom of Information Office or by calling 202–452–3684.

The Board published Regulation H for comment in the **Federal Register** on March 31, 1997 (62 FR 15272). The Board received 14 comments to the proposed amendments from the following types of institutions:

Banks/thrifts—1

Community groups—1

Trade associations—4

Federal Reserve Banks—7

Clearinghouses—1

Twelve of the 14 comments generally supported the proposed amendments as serving to reduce regulatory burden on banks and as clarifying membership requirements. In addition, the comments addressed specific issues raised by the proposed amendments. These comments and issues are discussed below in the section-by-section analysis. Any sections of the regulation which are not discussed in the section-by-section analysis were adopted as originally proposed by the Board.

Section-by-Section Analysis

Subpart A—General Membership and Branching Requirements

Section 208.2 Definitions

Definition of Branch. The Board proposed to define a branch as any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money. The proposed rule also stated that a branch may include a temporary, seasonal, or mobile facility. In addition to defining what constitutes a branch, the proposed rule specified certain arrangements that do not constitute a branch. The Board proposed that a branch not include a loan origination facility where the proceeds of loans are not disbursed, automated teller machines, remote service units, offices of an affiliated depository institution that provide services to customers of a State member bank on behalf of the State member bank, or a facility that would otherwise qualify as a branch because it engages in one or more branching functions (receipt of deposits, payment of withdrawals, or making loans) but which prohibits access to members of the public for purposes of conducting one or more branching functions.

In this regard the proposed rule requested comment on whether a branch should include offices of an *unaffiliated* depository institution that provide services to customers of a State member bank on behalf of the State member bank. Six commenters, the Federal Reserve Banks of Minneapolis, Atlanta, Philadelphia and San Francisco, the America's Community Bankers, and the American Bankers Association, supported excluding unaffiliated depository institutions that provide services to a State member bank from the definition of a branch. In light of these comments, and in light of current case law and consistent with Office of the Comptroller of the Currency (OCC) decisions,[1] the Board is excluding from the definition of branch arrangements where either affiliated or unaffiliated institutions provide services to customers of a State member bank. The final rule provides that a branch does not include an office of an affiliated or unaffiliated institution that provides services to customers of the member bank on behalf of the member

[1] *See Cades* versus *H & R Block, Inc.*, 43 F.3d 869, 874 (4th Cir. 1994) and OCC letter of October 5, 1993 from William P. Bowden, Jr., Chief Counsel at page 4, which state that institutions that are not affiliated with a bank, but provide services to customers of the bank, do not constitute branches so long as the bank does not "establish or operate" the institution providing the services.

bank so long as the bank does not "establish or operate" the office providing the services. For example, a bank could contract with an unaffiliated or affiliated institution to receive deposits, cash and issue checks, drafts, and money orders, change money and receive payments of existing indebtedness without becoming a branch of that bank so long as that bank: (a) has no ownership or leasehold interest in the institution's offices; (b) has no employees who work for the institution; and (c) exercises no authority or control over the institution's employees or methods of operation.[2]

With respect to the statement in the proposed rule that a branch does not include a "remote service unit," one commenter requested that the Board define the term "remote service unit." The Board is adopting the term "remote service unit" as proposed and without further definition. The Board believes that "remote service units" may take a variety of forms, and that defining the term at this time would be premature. The Board notes that the OCC has determined that a "remote service unit" includes an automated loan machine and believes that "remote service units" may include automated loan machines as well as other arrangements.

Definition of Capital Stock and Surplus. The Board proposed to define *capital stock and surplus* in Regulation H to mean Tier 1 and Tier 2 capital, as calculated under the risk-based capital guidelines, plus any allowance for loan and lease losses not already included in Tier 2 capital. The Board proposed applying this definition to all references to capital stock and surplus in the Federal Reserve Act and Regulation H, unless otherwise noted. The Board received one comment that Regulation H should incorporate the term "capital" rather than *capital stock and surplus* because it would help to reduce the historical reference to the more narrow meaning of *capital stock and surplus,* which related only to part of shareholders' equity accounts. Use of the term *capital stock and surplus* is appropriate and consistent with the terms of the Federal Reserve Act. Use of the term *capital stock and surplus* should make it easier for banks to comply with the Board's regulations since the term *capital stock and surplus,* as defined in the proposal, has been adopted for purposes of section 23A of the Federal Reserve Act (12 U.S.C. 371c) which governs transactions between insured depository institutions) and Regulation O (12 CFR 215) (which governs insider lending). All other commenters supported the proposed definition of *capital stock and surplus,* as well as the use of the term itself, and the Board is adopting the definition and term as proposed.

Definition of Eligible Bank. The Board proposed a new definition, *eligible bank,* to serve as the qualification for expedited treatment of membership and branch applications. The Board proposed that eligible bank be defined as a bank that: (a) is well capitalized; (b) has a Uniform Financial Institutions Rating System (CAMELS) rating of 1 or 2 (copies are available at the address specified in § 216.6 of this chapter); (c) has a Community Reinvestment Act (CRA) rating of "Outstanding" or "Satisfactory;" (d) has a compliance rating of 1 or 2; and (e) has no major unresolved supervisory issues outstanding as determined by the Board or the appropriate Federal Reserve Bank.

The Board received one comment that the definition should require a CRA rating of "Outstanding" rather than a rating of "Outstanding" or "Satisfactory." The commenter opposed allowing banks with "Satisfactory" ratings to receive eligible bank status because the commenter stated most banks receive "Satisfactory" ratings and because CRA ratings are not a reliable indicator of the bank's CRA performance. The remainder of the commenters supported the definition of *eligible bank* with one commenter requesting clarification as to whether the Board intended to preclude banks with a compliance rating of three from qualifying as an eligible bank.

The Board is adopting the definition of *eligible bank* as proposed. Allowing membership or branch applications from banks with "Satisfactory" CRA ratings to qualify for expedited treatment continues prior Board policies and provides for consistency with the OCC's standards for determining whether membership or branch applications should receive expedited treatment. The Board has modified its previous standard for receiving expedited treatment by requiring a compliance rating of 1 or 2 rather than 1, 2, or 3. This change provides consistency with the OCC's definition of eligible bank and is being adopted as proposed.

If a bank has not yet received compliance or CRA ratings from a bank regulatory authority, which would be necessary for determining whether it is an eligible bank, the Board will look to the bank's holding company for purposes of determining whether the bank's application should receive expedited processing. If the bank's holding company meets the criteria for expedited processing under § 225.14(c) of Regulation Y (12 CFR 225.14(c)), the bank's membership or branch application will be eligible for expedited processing.

Banks that have not yet received compliance or CRA ratings and that either are not owned by a bank holding company or are owned by a bank holding company that does not meet the criteria for expedited processing under § 225.14(c) of Regulation Y, are not eligible for expedited treatment.

Definition of Mutual Savings Bank. The Board proposed deleting the definition of mutual savings bank as unnecessary. One commenter opposed deletion of the definition on the basis that deletion "indirectly suggest[s] that companies should abandon the traditional mutual charter." The Board does not believe that removal of the definition carries this implication and is adopting the proposal. The status of mutual savings banks continues to be addressed in § 208.3(a) of Regulation H, concerning applications for membership and stock, as well as in the Board's Regulation I (12 CFR 209), published elsewhere in today's **Federal Register,** for purposes of determining the amount of Reserve Bank stock mutual savings banks are required to purchase (or in certain special cases the amount of money they must deposit with a Reserve Bank). *See* 12 CFR 209.4(c).

Section 208.3 Application and Conditions for Membership

Publication of Membership Applications. The proposal stated that public comment on membership applications (including conversions) is not expressly required by statute but that publication might allow the Board to obtain additional information or views relevant to a membership application. The Board requested comment as to whether it should require publication for membership applications.

The Board received comments both supporting and opposing eliminating the publication requirement for membership applications. The majority of commenters favored eliminating the requirement. These commenters stated that no significant information is gained through publication that would

[2] *See, e.g., Cades,* 43 F.3d at 874. Although the bank would be permitted, in contracting with the institution, to control the terms of the services provided by the institution. For example, the bank's contractual relationship with the institution could include such issues as which institution would bear the risk of loss for items in transit or when accounts would be credited with deposits or charged with withdrawals.

outweigh the burden it places on banks. Those opposing eliminating the requirement stated that comments may provide useful information in the context of *de novo* membership applications or that the burden it places on banks is minimal in light of the fact that many banks seek FDIC insurance, which requires a public comment period. The Board is eliminating the requirement that banks seeking to become members of the Federal Reserve System publish notice of membership applications.

Because membership applications no longer confer deposit insurance, the requirement currently contained in the Board's Rules of Procedure (12 CFR 262.3), which states that banks must publish notice of their membership applications, no longer applies. The Board's Rules of Procedure (12 CFR 262.3) will be amended in the future to reflect the fact that membership no longer automatically confers deposit insurance and to reflect the change that banks no longer need to publish notice of membership applications.

Processing Time Frames for Expedited Membership Applications. The proposed rule provided that if public comment on membership applications were eliminated, expedited membership applications would be acted on 30 days after receipt of the application. One commenter requested that the Board act on expedited membership applications within 15 days because, under existing guidelines, non-expedited membership applications are acted on within 30 days and expedited membership applications should be acted on sooner than non-expedited membership applications. The Board is adopting a rule under which expedited membership applications will be acted on within 15 days of receipt of the application. Non-expedited membership applications will be acted on promptly, however, in limited situations processing times may be longer if the application involves unusual facts or raises novel policy issues.

Membership Exams. The proposed rule did not include information concerning the time frame or conditions under which the Federal Reserve will examine banks seeking membership in the Federal Reserve System. One commenter requested that guidance be provided in Regulation H regarding the time frames for, and necessity of, pre-membership examinations of banks. Another commenter requested that the exam guidelines in SR 95–30 be updated. The Board has decided not to incorporate pre-membership examination guidelines into Regulation H because the necessity for, and duration of, examinations depends on the individual circumstances of each bank.

Conditions of Membership. The proposed rule incorporated a new § 208.3(d) which combined and condensed former §§ 208.6 and 208.7 concerning the general conditions and requirements of membership. The former requirement that the capital and surplus of a State member bank be adequate in relation to its existing and prospective deposit liabilities was modified and placed in proposed § 208.4. Proposed § 208.3(d) also incorporated the provisions of existing Subpart D, "Standards for Safety and Soundness."

In addition, the Board proposed to eliminate existing § 208.6(a), which points out that State member banks retain all charter and statutory rights under state law not preempted by Federal law, and § 208.6(b), which states that State member banks are entitled to all the privileges of membership afforded them under the Federal Reserve Act and other acts of Congress, and must observe all requirements of Federal law. One commenter stated that eliminating existing § 208.6(a) and (b) would create confusion because the sections state important concepts. The Board continues to believe, however, that these propositions are self-evident and do not need to be explicitly stated. Therefore, existing § 208.6(a) and (b) are not included in the final Regulation H.

Another commenter requested that the term "general character of a bank's business" (§ 208.3(d)(2)) be defined. The Board believes that providing a definition of the term could result in an unduly restrictive or inflexible definition and, therefore, has not incorporated such a definition in Regulation H.

Section 208.5 Dividends and Other Distributions

Proposed § 208.5 revised the existing provisions concerning payment of dividends and withdrawal of capital, previously located at § 208.19. Proposed § 208.5 also incorporated interpretations previously located at § 208.125 through § 208.127. The final rule retains § 208.5 as proposed, however, in the case of dividends in excess of net income for the year, the final rule clarifies that banks generally are not required to carry forward negative amounts resulting from such excess.[3] The final rule also contains a cross reference to § 208.45 of Subpart D for purposes of determining restrictions on the payment of capital distributions.

Section 208.6 Establishment and Maintenance of Branches

Duration of Comment Period. The Board's proposal requested comment on whether it should shorten the public comment period applicable to branch applications from the 30 days that is currently required to 15 days. Those commenters favoring shortening the comment period stated that comments on branch applications rarely raise substantive issues and that shortening the period would serve to reduce regulatory burden on banks. Commenters opposing shortening the comment period stated that shortening the comment period to 15 days would make it difficult for commenters to provide substantive comments to the Board on branch applications. The Board is reducing the public comment period on branch applications from 30 to 15 days but will allow, in its discretion, an extension of the comment period for an additional 15 days.[4] Sections 208.6(a)(3) and (a)(4) describe the new procedural rules for public comment on branch applications, including the new 15 day comment period and the potential 15 day extension. The Board's Rules of Procedure (12 CFR 262.3) will continue to describe the form and location for public notices and will be amended in the future to reflect the 15 day comment period applicable to branch applications.

Processing Time Frames for Expedited Branch Applications. The proposed rule provided procedures for processing expedited branch applications that were modified slightly from the Board's existing procedures, located in Administrative Letter 92–82 (November 5, 1992). The proposed rule provided that a branch application by an eligible bank would be deemed approved by the Board or the appropriate Reserve Bank five business days after the close of the public comment period, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date or that the bank is not eligible for expedited processing because: (a) it is not an eligible bank; (b) the application contains a material error or is otherwise deficient; or (c) the application or notice

[3] This clarification addresses only earnings deficits that result from dividends declared in excess of net income for the year and does not apply to other types of current earnings deficits. It is consistent with the OCC's letter dated December 22, 1997, and published as Interpretive Letter #816.

[4] The OCC, in revising its branch application procedures, retained a 30 day comment period for all branch applications other than those involving "short-distance" relocations (which relocations, if within the same neighborhood, would not require a branch application under the Board's final rule).

required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. In addition, the preamble to the proposed rule stated that in no case would an expedited branch application be approved prior to the third day after the close of the public comment period.

In the final rule, the Board is including in the text of the regulation an express statement that expedited branch applications will not be approved prior to the third day after the close of the public comment period. Waiting until the third day enables the Board, or appropriate Reserve Bank, to determine whether it has received any public comments on the application. In all other respects the processing time frames for expedited branch applications remain the same as proposed. The Board will be amending its Rules of Procedure to incorporate the changes adopted in the final rule.

Non-expedited branch applications will be processed in accordance with the Board's *Applications Procedures Manual*.

Processing Procedures. The proposed rule required branch applications to be filed in accordance with the Board's Rules of Procedure (12 CFR 262.3). One commenter raised a question as to whether eligible banks must file a "full" branch application. Both eligible and non-eligible banks must comply with the Board's Rules of Procedure. More in-depth review is expected in non-eligible bank branch applications. Accordingly, the Board may require more extensive information regarding non-eligible bank branch applications than eligible bank branch applications. In particular, the Board pays close attention to areas that have caused the bank to become non-eligible.

Notification of Branch Opening. Section 208.6(d) of the proposed rule explicitly authorized a single consolidated application for branches that a State member bank plans to establish in a one-year period, provided the bank meets the existing requirement that it notify the appropriate Reserve Bank one week prior to opening any branch covered by the approval. One commenter raised a question as to whether it was necessary for banks to provide prior notification of opening a branch. The Board has reviewed this policy further and concurs with the commenter that prior approval is unnecessary, therefore, § 208.6(d) of the final rule provides for a more flexible time for notification, merely requiring notice within 30 days after opening the branch.

Branch Closings. The proposed rule established a new § 208.6(e) regarding branch closings, which requires branch closings to comply with section 42 of the FDI Act (12 U.S.C. 1831r–1). Section 42(e) requires notice to both customers and, in the case of insured State member banks, the Board, of proposed branch closings. The proposed rule also clarified that a branch relocation is not a closing for purposes of section 42(e) of the FDI Act. Under section 42(e) of the FDI Act, a branch relocation is a movement that occurs within the immediate neighborhood and that does not substantially affect the nature of the business or customers served.

One commenter requested that § 208.6(e) refer to the Interagency Policy Statement on Branch Closings. The Board believes that referring to the policy statement in § 208.6(e) would reduce the flexibility inherent in policy statements and, therefore, is not referring to it in Regulation H.

Section 208.7 Prohibition Against Use of Interstate Branches Primarily for Deposit Production

The final rule includes the text of existing § 208.28, as issued in final by the Board on September 10, 1997 (62 FR 47727) with an effective date of October 10, 1997. Existing § 208.28 remains unchanged except that it is being renumbered from § 208.28 to § 208.7.

Subpart B—Investments and Loans

Section 208.21 Investments in Premises and Securities

Investments in Premises. Section 208.21(a) of the proposed rule provided new investment limitations on banks' investments in premises. These new limitations were incorporated into Regulation H as a result of amendments to section 24A of the Federal Reserve Act made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104–208, 110 Stat. 3009, (Economic Growth Act). The Economic Growth Act provides that banks may make investments in bank premises if they either: (a) obtain prior approval from the Board; (b) invest less than or equal to the bank's capital stock; or (c) invest less than or equal to 150 percent of the bank's capital and surplus so long as the bank is well-rated and well capitalized and provides the Board with notice no later than 30 days after making the investment. The Economic Growth Act creates investment in premises limits based on banks' "capital stock" or "capital and surplus." The proposed rule based the investment limits on the basis of banks' *capital stock and surplus*, as defined by § 208.2(d) of Regulation H. One commenter stated that limitations on investments in premises for non-well rated and non-well capitalized banks should be based on banks' "capital stock" rather than the banks' *capital stock and surplus* as defined by Regulation H. The commenter stated that liberalizing the investment limit for non-well rated and non-well capitalized banks could result in supervisory concerns, particularly with respect to problem banks.

The Board believes that basing investment in premises limits on *capital stock and surplus* could present supervisory problems, therefore, the Board is basing the investment in premises limits on a bank's perpetual preferred stock and related surplus plus common stock plus surplus, as those terms are defined in the FFIEC Consolidated Reports of Condition and Income. If a well rated and well capitalized bank chooses to invest an amount above 150% of its perpetual preferred stock and related surplus plus common stock plus surplus (or, for a non-well-rated and well-capitalized bank, 100% of its perpetual preferred stock and related surplus plus common stock plus surplus) the bank may do so as long as it provides the appropriate Reserve Bank at least 15 days notice prior to making such investments and has not received notice that the investment is subject to further review by the end of the fifteen day notice period.

Another commenter raised a question as to whether it was necessary for the Board to receive after-the-fact notice of investments in premises that are less than or equal to 150% of banks' perpetual preferred stock and related surplus plus common stock plus surplus as required by § 208.21(a)(3)(ii)(C). The commenter questioned the usefulness of after-the-fact notice of such investments. The Board has concluded that such after-the-fact notice is unnecessary. The Economic Growth Act provides that banks with a CAMELS rating of 1 or 2, as of the most recent examination of the bank, and that are, and continue to be, well capitalized, may make investments in bank premises of less than or equal to 150 percent of the bank's capital and surplus so long as they provide the Board with after-the-fact notice of such investments. Under section 24A the Board also has the authority to grant banks prior approval to make investments in premises. Pursuant to this authority the Board is granting prior approval for state member banks with a CAMELS rating of 1 or 2, as of the most

recent examination of the bank, and that are, and continue to be, well capitalized, to make investments in bank premises of less than or equal to 150 percent of the bank's perpetual preferred stock and related surplus plus common stock plus surplus without providing the Board with after-the-fact notice of such investments.

Investments in Securities. The proposal incorporated a new § 208.21(b) which provided guidance to banks regarding permissible investments in securities. For the reasons outlined below under the discussion of the Board's interpretation on Investments in Shares of an Investment Company, the Board is amending § 208.21(b) to clarify generally that, with respect to certain investment company shares and investment securities, a State member bank may look to the OCC's Part 1 rules and interpretations to determine whether a security qualifies as an investment security for the purpose of section 24, paragraph 7th, and for the calculations of the limitations applicable to such investments. Section 208.21(b) is also being amended to clarify that a State member bank should consult the Board for determinations with respect to issues concerning investment securities that have not been addressed by the OCC rules and interpretations.

Voting Stock in a Fiduciary Capacity. The proposed rule contained a footnote, footnote four, which several commenters stated would prevent banks from voting shares of stock in a fiduciary capacity. Footnote four was derived from, and was intended to update, a Board interpretation located at 12 CFR 250.220, which was to be removed. The Board is not including footnote four in the final rule and is retaining the Board interpretation found at 12 CFR 250.220 which states that banks may vote shares of stock if they are acting in a fiduciary capacity.

Subpart C—Bank Securities and Securities-Related Activities

Section 208.34 Recordkeeping and Confirmation of Certain Securities Transactions

Effected by State Member Banks. The final rule includes the text of existing § 208.24, as issued in final by the Board on March 5, 1997 (62 FR 9909), with an effective date of April 1, 1997. Existing § 208.24 remains unchanged except that it is being renumbered from § 208.24 to § 208.34.

Section 208.35 Qualification Requirements for the Recommendation or Sale of Certain Securities

The final rule includes a place holder for proposed new § 208.35. The Board is seeking public comment on proposed § 208.35 separately.

Section 208.37 Government Securities Sales Practices

The final rule includes the text of existing § 208.25, as issued in final by the Board on March 19, 1997 (62 FR 13275) with an effective date of July 1, 1997. Existing § 208.25 remains unchanged except that it is being renumbered from § 208.25 to § 208.37.

Subpart D—Prompt Corrective Action

The proposed rule did not significantly amend the terms of prior Subpart B other than to redesignate it as Subpart D and to amend § 208.41 to provide the Federal Reserve with the option of using period-end total assets rather than average total assets for purposes of defining *total assets.* The Board received two comments regarding Subpart D. The first commenter inquired as to whether other governmental agencies allow the option of using period-end total assets rather than average total assets for purposes of defining *total assets.* In this regard the Board notes that the OCC's definition of total assets, for purposes of its prompt corrective action rule, is the same as the Board's.[5]

The second commenter stated that § 208.43(c)(2) should be updated to reflect all applicable CAMELS components. The Board has added "sensitivity to market risk" as the final CAMELS component.

Subpart F—Miscellaneous Requirements

Section 208.61 Bank Security Procedures

Regulation P (12 CFR part 216), as amended by the Board on May 1, 1991, is being incorporated into Regulation H at § 208.61. A final rule removing 12 CFR part 216 is found elsewhere in today's **Federal Register**.

Section 208.64 Frequency of Examination

The final rule includes the text of existing § 208.26, as issued in final by the Board on April 2, 1998 (63 FR 16378), also effective on April 2, 1998). Existing § 208.26 remains unchanged except that it is being renumbered from § 208.26 to § 208.64.

[5] 12 CFR 6.2(j).

Subpart G—Interpretations

Proposed § 208.101 Investments in Federal Agricultural Mortgage Corporation (Farmer Mac) Stock

This proposed interpretation restated an existing staff opinion [6] regarding the permissibility of banks investing in the stock of the Federal Agricultural Mortgage Corporation (Farmer Mac), which is a government agency. One commenter stated that the Board should either provide a complete list of permissible investments in stocks of governmental agencies or provide no list.

In general, banks are prohibited from owning stock pursuant to paragraph seventh of section 5136 of the Revised Statutes (12 U.S.C. 24 ¶ 7th), which was made applicable to State member banks under paragraph 20 of § 9 of the Federal Reserve Act (12 U.S.C. 335). Although State member banks are generally prohibited from owning stock, the Board has, in the past, allowed banks to own the stock of certain governmental agencies where Congress has evidenced a clear intention that banks be allowed to hold such stock in order to achieve a legislative purpose. Since decisions regarding permissible stock investments in governmental agencies must be made on a case-by-case basis, the Board has decided not to include proposed § 208.101 in the final rule. However, the Board will retain the existing staff opinion regarding investments in Farmer Mac stock in the Federal Reserve Regulatory Service.

Proposed Section 208.102 Investments in Shares of an Investment Company

The Board proposed to retain its existing interpretation, entitled "Purchase of investment company stock by a State member bank," and rename it "Investments in Shares of an Investment Company," and renumber it from § 208.124 to § 208.102. In addition, the Board requested comment as to whether the existing interpretation should be amended to provide an alternative limit for certain diversified investment companies. Under the alternative limit, a bank could elect not to combine its pro rata interest in a particular security held by an investment company with the bank's direct holdings of the security where: (a) the investment company's holdings of the securities of any one issuer do not exceed 5 percent of its total portfolio; and (b) the bank's total holdings of the investment company's shares do not exceed the most stringent limit applicable to any of the securities in the

[6] F.R.R.S. 3–447.13 (July 26, 1988).

company's portfolio if those securities were purchased directly by the bank. This alternative limit is currently available to national banks under OCC rules.

Several commenters pointed to conflicts between the Board's interpretation and the provisions of the OCC's Part 1 concerning investment company shares and recommended that the Board withdraw its interpretation in order to avoid a conflict with the OCC rules. Alternatively, these commenters supported efforts to conform the Board's interpretation to the OCC's current provisions concerning investment companies, including adoption of the alternative limit and other conforming amendments.

In addition to differences concerning calculation of limits, the commenters pointed out that the Board's interpretation generally permits investment only in investment companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933, while the OCC rule provides for case-by-case consideration of investment companies that are exempt from registration where the portfolio of the investment companies consist entirely of assets that a national bank may purchase and sell for its own account. Commenters also pointed out that the OCC's rule requires only that the portfolio of the investment company consist exclusively of assets that a national bank could purchase directly. The Board's interpretation, on the other hand, requires that limits on the investment company's authority be included in the investment company's prospectus, which one commenter argued prevented State member banks from being able to "seed" start-up investment companies where funds were initially invested only in bank eligible securities. The Board's interpretation also differs from the OCC rule in other technical respects and includes requirements that relate to safety and soundness, rather than investment authority.

The Board believes that State member banks should be permitted to use the alternative method of calculating investment limits available under the OCC's rules for diversified investment companies. Additionally, although the circumstances under which a State member bank may provide funds to "seed" an investment company are limited, the Board believes that State member banks should be permitted to do so where the activity is consistent with the Glass-Steagall Act. The Board also notes that its interpretation was not intended to preclude the consideration on a case-by-case basis of investments not covered by its interpretation, including unregistered investment companies.

With respect to the provisions of the interpretation concerning internal procedures for approval and management of investments in investment companies, guidance issued by Board staff concerning risk management practices related to investment and end-user activities provides more thorough guidance concerning appropriate risk management practices than was available at the time the interpretation was adopted.[7] Further, internal procedures and practices discussed in current guidance cover the bank's investment activities generally and are not limited to a particular area. The Board therefore believes that the specific internal procedures required under the Board's interpretation are no longer necessary.

Based on the above considerations, the Board has concluded that its existing interpretation, § 208.124 (proposed § 208.102), no longer serves a useful purpose and is rescinding it. The Board is adding language to the § 208.21(b) on investments in securities to clarify generally that, with respect to certain investment company shares and investment securities, a State member bank may look to the OCC's Part 1 rules and interpretations to determine whether a security qualifies as an investment security for the purpose of section 24, paragraph 7th, and for the calculations of the limitations applicable to such investments. Regulation H also is being amended to clarify that a State member bank should consult the Board for determinations with respect to issues concerning investment securities that have not been addressed by the OCC rules and interpretations.

Section 208.101 Obligations Concerning Institutional Customers

The final rule includes the text of existing § 208.129, as issued in final by the Board on March 19, 1997 (62 FR 13275). Existing § 208.129 remains unchanged except that it is being renumbered from § 208.129 to § 208.101.

Investments in operating subsidiaries. Several commenters recommended that the Board rescind its 1968 interpretation concerning "operations subsidiaries," published at 12 CFR 250.141, noting that this interpretation was obsolete. The interpretation states that a State member bank may invest in the shares of a wholly owned "operations subsidiary" without violating the provisions of the Glass-Steagall Act concerning the purchase of stock by member banks. At the present time the Board is retaining the existing interpretation regarding "operations subsidiaries."

Miscellaneous. Financial Condition. The Board proposed eliminating existing § 208.17, entitled Disclosure of Financial Information by State member banks, from the proposed Regulation H on the basis that call report information for banks is now available through the internet. In response to this proposal the Board received three comments from Federal Reserve Banks which stated that it was premature to eliminate § 208.17 because a large segment of the public does not have access to the internet. The Board has decided to rescind § 208.17 despite these objections. The Board believes that § 208.17 places a burden on banks by requiring them to make available a potentially unlimited number of copies of statements regarding their financial condition to the public. This burden has been justified in the past because it was the only effective means for the public to obtain information concerning a bank's financial condition. However, now that many private institutions, as well as many public institutions, such as public libraries, offer access to the internet, where such financial information concerning banks can be obtained, the Board does not believe the burden on banks of providing such information continues to be justified, and therefore, is removing existing § 208.17 from the final rule.

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The final amendments will apply to all State member banks, which numbered approximately 997 as of February 1998, regardless of size, and represent changes to the existing rules that should reduce burden for those institutions by reducing regulatory filings, reducing the paperwork burden

[7] *See* SR 95–17 (SUP), March 28, 1995.

and processing time associated with regulatory filings, reducing the costs associated with complying with regulation, and improving the ability of banks to conduct business on a more cost-efficient basis. For example, the rule is generally designed to reduce burden by removing out-dated material and by re-organizing the remaining material so it is easier to locate and to read.

The rule also seeks to reduce burden by incorporating expedited procedures for membership and branch applications for certain banks and by reducing the processing period for expedited applications from 5 to 3 days after the close of the public comment period. In addition, the rule expands the circumstances under which the Board will consider waivers of conditions of membership, eliminates existing requirements regarding disclosure of financial condition, and eliminates the requirement that banks obtain deposit insurance in order to become State member banks. The rule also provides for an alternate definition of total assets for institutions with rapidly declining asset bases.

The amendments should not have a negative economic effect on small institutions, and, therefore, there were no significant alternatives that would have minimized the economic impact on those institutions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display a currently valid OMB control number. The OMB control numbers for the affected information collections are 7100–0097, 7100–0278, 7100–0046, and 7100–0139.

The sections of the regulation pertaining to the revised information collections are found in 12 CFR 208.2, 208.3, 208.6, 208.21, and 208.22. This information is needed in order for the Federal Reserve System to conduct its supervisory responsibility for state member banks. The respondents and recordkeepers are state member banks. Individual respondent data generally are not regarded as confidential.

No comments specifically addressing the burden estimate were received. Four existing information collections covered by Regulation H are affected by the changes to the regulation. Fewer Domestic Branch Notifications (FR 4001; OMB No. 7100–0097), which are mandatory, will be submitted resulting from the elimination of the notification requirement for ATMs and certain other offices and from the broadening of the interpretation of "location." The proposed rule also had provided that depository institutions be permitted to file a single notification for prior approval of multiple branches to be established within a year following the notification. The requirement for prior approval was eliminated in the final rule, which only requires notification within thirty days after each branch is opened. Further study, based on an analysis of the types of notifications received in the past, has led the Federal Reserve to increase its initial estimate of the effect of these changes on the annual burden from a decrease of 20 percent to more than 50 percent, from 415 to 201 hours.

The revisions to Regulation H are expected to affect the relative distribution of two of the types of Reports Related to Public Welfare Investments of State Member Banks (OMB No. 7100–0278) that are submitted to the Federal Reserve. The Board is eliminating the requirement that, to avoid applying for Board approval, the investment must be smaller than 2 percent of capital and surplus. This should result in fewer applications and more notices of investments not requiring Board approval. A requirement has been added to the applications for Board approval: if the bank is not permitted to make the investment without Board approval, the institution must explain the reason or reasons why the investment is ineligible. This is expected to increase the burden per response from two and one-half hours to two and three-quarters hours. The estimated burden per response for a notice of investment not requiring Board approval is two hours. There were twenty notices and fourteen applications received during 1997. It is estimated that following the revision there will be twenty-seven notices and seven applications submitted annually. There is estimated to be no effect on the divestiture notice requirements, one of which is expected to be submitted annually. The burden per response for the divestiture notice is estimated to be five hours. Altogether the total amount of annual burden is estimated to be reduced 3 percent from eighty hours to seventy-eight. There is estimated to be no annual cost burden over the annual hour burden and no capital or start-up costs associated with the changes.

The burden for the Membership Application (FR 2083; OMB No. 7100–0046) will experience a minimal reduction in the current annual burden of 3,450 hours, resulting from the elimination of the publication requirement, the broadened authority of the Board to waive the application, and the reduction in the processing time for expedited applications from thirty to fifteen days.

The final rule contains changes that affect another existing information collection. The proposed rule provided that the Investment in Bank Premises Notification (FR 4014; OMB No. 7100–0139) must be filed by a state member bank whenever it proposes to make an investment in bank premises that results in its total bank premises investment exceeding its capital stock and surplus, or if the bank is well capitalized and in good condition, exceeding 150 percent of its capital stock and surplus. In the final rule, the Board decided to base its analysis on the bank's perpetual preferred stock and related surplus plus common stock plus surplus, which is a more conservative measure than the capital stock and surplus proposed initially. In addition, after-the-fact notification is no longer required from banks for investments within the limits. The net effect of these changes is expected to have a minimal effect on the annual respondent burden for this information collection of eight hours.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of these collections of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0097, 7100–0278, 7100–0046, or 7100–0139), Washington, DC 20503.

Derivation Table

This table directs readers to the provision(s) of existing Regulation H, if any, upon which the proposed provision is based.

Revised provision	Original provision
208.1	None
208.2	208.1
208.3(a)	208.2
208.3(b)	208.4, 208.5
208.3(c)	208.5
208.3(d)	added
208.3(e)	208.7
208.3(f)	208.10
208.3(g)	208.11
208.4	208.13
208.5	208.19

Revised provision	Original provision
208.6(a)	208.9
208.6(b)	None
208.6(c)	None
208.6(d)	None
208.6(e)	208.9(b)(7)
208.6(f)	None
208.7	208.28
208.20	None
208.21	None
208.22	208.21
208.23	208.15
208.24	208.8(d)
208.25	208.23
208.30	None
208.31	208.8(f)
208.32	208.8(h), 208.8(i)
208.33	208.8(g)
208.34	208.24
208.35	None
208.36	208.16
208.37	208.25
208.40	208.30
208.41	208.31
208.42	208.32
208.43	208.33
208.44	208.34
208.45	208.35
208.50	208.51
208.51	208.52
208.60	None
208.61	None
208.62	208.20
208.63	208.14
208.64	208.26
208.100	208.116
208.101	208.129

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1823(j), 1828(o), 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. The table of contents to part 208 is revised to read as follows:

3. Subparts A through E are revised and Subparts F and G are added to read as follows:

Subpart A—General Membership and Branching Requirements

§ 208.1 Authority, purpose, and scope.

(a) *Authority.* Subpart A of Regulation H (12 CFR part 208, Subpart A) is issued by the Board of Governors of the Federal Reserve System (Board) under 12 U.S.C. 24, 36; sections 9, 11, 21, 25 and 25A of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), 481–486, 601 and 611); sections 1814, 1816, 1818, 1831o, 1831p–1, 1831r–1 and 1835a of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p–1, 1831r–1, and 1835); and 12 U.S.C. 3906–3909.

(b) *Purpose and scope of Part 208.* The requirements of this part 208 govern State member banks and state banks applying for admission to membership in the Federal Reserve System (System) under section 9 of the Federal Reserve Act (Act), except for § 208.7, which also applies to certain foreign banks licensed by a State. This part 208 does not govern banks eligible for membership under section 2 or 19 of the Act.[1] Any bank desiring to be admitted to the System under the provisions of section 2 or 19 should communicate with the Federal Reserve

[1] Under section 2 of the Federal Reserve Act, every national bank in any state shall, upon commencing business, or within 90 days after admission into the Union of the State in which it is located, become a member of the System. Under section 19 of the Federal Reserve Act, national banks and banks organized under local laws, located in a dependency or insular possession or any part of the United States outside of the States of the United States and the District of Columbia, are not required to become members of the System but may, with the consent of the board, become members of the System.

Bank with which it would like to become a member.

(c) *Purpose and scope of Subpart A.* This Subpart A describes the eligibility requirements for membership of state-chartered banking institutions in the System, the general conditions imposed upon members, including capital and dividend requirements, as well as the requirements for establishing and maintaining branches.

§ 208.2 Definitions.

For the purposes of this part:

(a) *Board of Directors* means the governing board of any institution performing the usual functions of a board of directors.

(b) *Board* means the Board of Governors of the Federal Reserve System.

(c) *Branch.* (1) Branch means any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money. A branch may include a temporary, seasonal, or mobile facility that meets these criteria.

(2) *Branch* does not include:

(i) A loan origination facility where the proceeds of loans are not disbursed;

(ii) An office of an affiliated or unaffiliated institution that provides services to customers of the member bank on behalf of the member bank so long as the institution is not established or operated by the bank;

(iii) An automated teller machine;

(iv) A remote service unit;

(v) A facility to which the bank does not permit members of the public to have physical access for purposes of making deposits, paying checks, or borrowing money (such as an office established by the bank that receives deposits only through the mail); or

(vi) A facility that is located at the site of, or is an extension of, an approved main office or branch. The Board determines whether a facility is an extension of an existing main or branch office on a case-by-case basis.

(d) *Capital stock and surplus* means, unless otherwise provided in this part, or by statute, Tier 1 and Tier 2 capital included in a member bank's risk-based capital (under the guidelines in appendix A of this part) and the balance of a member bank's allowance for loan and lease losses not included in its Tier 2 capital for calculation of risk-based capital, based on the bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 324.

(e) *Eligible bank* means a member bank that:

(1) Is well capitalized as defined in subpart D of this part;

(2) Has a composite Uniform Financial Institutions Rating System (CAMELS) rating of 1 or 2;

(3) Has a Community Reinvestment Act (CRA) (12 U.S.C. 2906) rating of "Outstanding" or "Satisfactory;"

(4) Has a compliance rating of 1 or 2; and

(5) Has no major unresolved supervisory issues outstanding (as determined by the Board or appropriate Federal Reserve Bank in its discretion).

(f) *State bank* means any bank incorporated by special law of any State, or organized under the general laws of any State, or of the United States, including a Morris Plan bank, or other incorporated banking institution engaged in a similar business.

(g) *State member bank or member bank* means a state bank that is a member of the Federal Reserve System.

§ 208.3 Application and conditions for membership in the Federal Reserve System.

(a) *Applications for membership and stock.* (1) State banks applying for membership in the Federal Reserve System shall file with the appropriate Federal Reserve Bank an application for membership in the Federal Reserve System and for stock in the Reserve Bank,[2] in accordance with this part and § 262.3 of the Rules of Procedure, located at 12 CFR 262.3.

(2) *Board approval.* If an applying bank conforms to all the requirements of the Federal Reserve Act and this section, and is otherwise qualified for membership, the Board may approve its application subject to such conditions as the Board may prescribe.

(3) *Effective date of membership.* A State bank becomes a member of the Federal Reserve System on the date its Federal Reserve Bank stock is credited to its account (or its deposit is accepted, if it is a mutual savings bank not authorized to purchase Reserve Bank stock) in accordance with the Board's Regulation I (12 CFR part 209).

(b) *Factors considered in approving applications for membership.* Factors given special consideration by the Board in passing upon an application are:

(1) *Financial condition and management.* The financial history and condition of the applying bank and the general character of its management.

(2) *Capital.* The adequacy of the bank's capital in accordance with § 208.4, and its future earnings prospects.

(3) *Convenience and needs.* The convenience and needs of the community.

(4) *Corporate powers.* Whether the bank's corporate powers are consistent with the purposes of the Federal Reserve Act.

(c) *Expedited approval for eligible banks and bank holding companies.* (1) *Availability of expedited treatment.* The expedited membership procedures described in paragraph (c)(2) of this section are available to:

(i) An eligible bank; and

(ii) A bank that cannot be determined to be an eligible bank because it has not received compliance or CRA ratings from a bank regulatory authority, if it is controlled by a bank holding company that meets the criteria for expedited processing under § 225.14(c) of Regulation Y (12 CFR 225.14(c)).

(2) *Expedited procedures.* A completed membership application filed with the appropriate Reserve Bank will be deemed approved on the fifteenth day after receipt of the complete application by the Board or appropriate Reserve Bank, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date or the Board or the appropriate Federal Reserve Bank notifies the bank that the application is not eligible for expedited review for any reason, including, without limitation, that:

(i) The bank will offer banking services that are materially different from those currently offered by the bank, or by the affiliates of the proposed bank;

(ii) The bank or bank holding company does not meet the criteria under § 208.3(c)(1);

(iii) The application contains a material error or is otherwise deficient; or

(iv) The application raises significant supervisory, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. A comment will be considered substantive unless it involves individual complaints, or raises frivolous, previously considered, or wholly unsubstantiated claims or irrelevant issues.

(d) *Conditions of membership.* (1) *Safety and soundness.* Each member bank shall at all times conduct its business and exercise its powers with due regard to safety and soundness. (The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the FDI Act (12 U.S.C.

[2] A mutual savings bank not authorized to purchase Federal Reserve Bank stock may apply for membership evidenced initially by a deposit, but if the laws under which the bank is organized are not amended at the first session of the legislature after its admission to authorize the purchase, or if the bank fails to purchase the stock within six months of the amendment, its membership shall be terminated.

1831p–1), as set forth as appendix D to this part apply to all member banks.)

(2) *General character of bank's business.* A member bank may not, without the permission of the Board, cause or permit any change in the general character of its business or in the scope of the corporate powers it exercises at the time of admission to membership.

(3) *Compliance with conditions of membership.* Each member bank shall comply at all times with this Regulation H (12 CFR part 208) and any other conditions of membership prescribed by the Board.

(e) *Waivers.* (1) *Conditions of membership.* A member bank may petition the Board to waive a condition of membership. The Board may grant a waiver of a condition of membership upon a showing of good cause and, in its discretion, may limit, among other items, the scope, duration, and timing of the waiver.

(2) *Reports of affiliates.* Pursuant to section 21 of the Federal Reserve Act (12 U.S.C. 486), the Board waives the requirement for the submission of reports of affiliates of member banks, unless such reports are specifically requested by the Board.

(f) *Voluntary withdrawal from membership.* Voluntary withdrawal from membership becomes effective upon cancellation of the Federal Reserve Bank stock held by the member bank, and after the bank has made due provision to pay any indebtedness due or to become due to the Federal Reserve Bank in accordance with the Board's Regulation I (12 CFR part 209).

§ 208.4 Capital adequacy.

(a) *Adequacy.* A member bank's capital, as defined in appendix A to this part, shall be at all times adequate in relation to the character and condition of its assets and to its existing and prospective liabilities and other corporate responsibilities. If at any time, in light of all the circumstances, the bank's capital appears inadequate in relation to its assets, liabilities, and responsibilities, the bank shall increase the amount of its capital, within such period as the Board deems reasonable, to an amount which, in the judgment of the Board, shall be adequate.

(b) *Standards for evaluating capital adequacy.* Standards and guidelines by which the Board evaluates the capital adequacy of member banks include those in appendices A and E to this part for risk-based capital purposes and appendix B to this part for leverage measurement purposes.

§ 208.5 Dividends and other distributions.

(a) *Definitions.* For the purposes of this section:

(1) *Capital surplus* means the total of surplus as reportable in the bank's Reports of Condition and Income and surplus on perpetual preferred stock.

(2) *Permanent capital* means the total of the bank's perpetual preferred stock and related surplus, common stock and surplus, and minority interest in consolidated subsidiaries, as reportable in the Reports of Condition and Income.

(b) *Limitations.* The limitations in this section on the payment of dividends and withdrawal of capital apply to all cash and property dividends or distributions on common or preferred stock. The limitations do not apply to dividends paid in the form of common stock.

(c) *Earnings limitations on payment of dividends.* (1) A member bank may not declare or pay a dividend if the total of all dividends declared during the calendar year, including the proposed dividend, exceeds the sum of the bank's net income (as reportable in its Reports of Condition and Income) during the current calendar year and the retained net income of the prior two calendar years, unless the dividend has been approved by the Board.

(2) "Retained net income" in a calendar year is equal to the bank's net income (as reported in its Report of Condition and Income for such year), less any dividends declared during such year.[3] The bank's net income during the current year and its retained net income from the prior two calendar years is reduced by any net losses incurred in the current or prior two years and any required transfers to surplus or to a fund for the retirement of preferred stock.[4]

[3] In the case of dividends in excess of net income for the year, a bank generally is not required to carry forward negative amounts resulting from such excess. Instead, the bank may attribute the excess to the prior two years, attributing the excess first to the earlier year and then to the immediately preceding year. If the excess is greater than the bank's previously undistributed net income for the preceding two years, prior Board approval of the dividend is required and a negative amount would be carried forward in future dividend calculations. However, in determining any such request for approval, the Board could consider any request for different treatment of such negative amount, including advance waivers for future periods. This applies only to earnings deficits that result from dividends declared in excess of net income for the year and does not apply to other types of current earnings deficits.

[4] State member banks are required to comply with state law provisions concerning the maintenance of surplus funds in addition to common capital. Where the surplus of a State member bank is less than what applicable state law requires the bank to maintain relative to its capital stock account, the bank may be required to transfer amounts from its undivided profits account to surplus.

(d) *Limitation on withdrawal of capital by dividend or otherwise.* (1) A member bank may not declare or pay a dividend if the dividend would exceed the bank's undivided profits as reportable on its Reports of Condition and Income, unless the bank has received the prior approval of the Board and of at least two-thirds of the shareholders of each class of stock outstanding.

(2) A member bank may not permit any portion of its permanent capital to be withdrawn unless the withdrawal has been approved by the Board and by at least two-thirds of the shareholders of each class of stock outstanding.

(3) If a member bank has capital surplus in excess of that required by law, the excess amount may be transferred to the bank's undivided profits account and be available for the payment of dividends if:

(i) The amount transferred came from the earnings of prior periods, excluding earnings transferred as a result of stock dividends;

(ii) The bank's board of directors approves the transfer of funds; and

(iii) The transfer has been approved by the Board.

(e) *Payment of capital distributions.* All member banks also are subject to the restrictions on payment of capital distributions contained in § 208.45 of subpart D of this part implementing section 38 of the FDI Act (12 U.S.C. 1831o).

(f) *Compliance.* A member bank shall use the date a dividend is declared to determine compliance with this section.

§ 208.6 Establishment and maintenance of branches.

(a) *Branching.* (1) To the extent authorized by state law, a member bank may establish and maintain branches (including interstate branches) subject to the same limitations and restrictions that apply to the establishment and maintenance of national bank branches (12 U.S.C. 36 and 1831u), except that approval of such branches shall be obtained from the Board rather than from the Comptroller of the Currency.

(2) *Branch applications.* A State member bank wishing to establish a branch in the United States or its territories must file an application in accordance with the Board's Rules of Procedure, located at 12 CFR 262.3, and must comply with the public notice and comment rules contained in paragraphs (a)(3) and (a)(4) of this section. Branches of member banks located in foreign nations, in the overseas territories, dependencies, and insular possessions of those nations and of the United States, and in the Commonwealth of

Puerto Rico, are subject to the Board's Regulation K (12 CFR part 211).

(3) *Public notice of branch applications.* (i) *Location of publication.* A State member bank wishing to establish a branch in the United States or its territories must publish notice in a newspaper of general circulation in the form and at the locations specified in § 262.3 of the Rules of Procedure (12 CFR 262.3).

(ii) *Contents of notice.* The newspaper notice referred to in paragraph (a)(3) of this section shall provide an opportunity for interested persons to comment on the application for a period of at least 15 days.

(iii) *Timing of publication.* Each newspaper notice shall be published no more than 7 calendar days before and no later than the calendar day on which an application is filed with the appropriate Reserve Bank.

(4) *Public comment.* (i) *Timely comments.* Interested persons may submit information and comments regarding a branch application under § 208.6. A comment shall be considered timely for purposes of this subpart if the comment, together with all supplemental information, is submitted in writing in accordance with the Board's Rules of Procedure (12 CFR 262.3) and received by the Board or the appropriate Reserve Bank prior to the expiration of the public comment period provided in paragraph (a)(3)(ii) of this section.

(ii) *Extension of comment period.* The Board may, in its discretion, extend the public comment period regarding any application under § 208.6. In the event that an interested person requests a copy of an application submitted under § 208.6, the Board may, in its discretion and based on the facts and circumstances, grant such person an extension of the comment period for up to 15 calendar days.

(b) *Factors considered in approving domestic branch applications.* Factors given special consideration by the Board in passing upon a branch application are:

(1) *Financial condition and management.* The financial history and condition of the applying bank and the general character of its management;

(2) *Capital.* The adequacy of the bank's capital in accordance with § 208.4, and its future earnings prospects;

(3) *Convenience and needs.* The convenience and needs of the community to be served by the branch;

(4) *CRA performance.* In the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) and Regulation BB (12 CFR part 228); and

(5) *Investment in bank premises.* Whether the bank's investment in bank premises in establishing the branch is consistent with § 208.21.

(c) *Expedited approval for eligible banks and bank holding companies.* (1) *Availability of expedited treatment.* The expedited branch application procedures described in paragraph (c)(2) of this section are available to:

(i) An eligible bank; and

(ii) A bank that cannot be determined to be an eligible bank because it has not received compliance or CRA ratings from a bank regulatory authority, if it is controlled by a bank holding company that meets the criteria for expedited processing under § 225.14(c) of Regulation Y (12 CFR 225.14(c)).

(2) *Expedited procedures.* A completed domestic branch application filed with the appropriate Reserve Bank will be deemed approved on the fifth day after the close of the comment period, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date (but in no case will an application be approved before the third day after the close of the public comment period) or the Board or the appropriate Federal Reserve Bank notifies the bank that the application is not eligible for expedited review for any reason, including, without limitation, that:

(i) The bank or bank holding company does not meet the criteria under § 208.6(c)(1);

(ii) The application contains a material error or is otherwise deficient; or

(iii) The application or the notice required under paragraph (a)(3) of this section, raises significant supervisory, Community Reinvestment Act, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. A comment will be considered substantive unless it involves individual complaints, or raises frivolous, previously considered, or wholly unsubstantiated claims or irrelevant issues.

(d) *Consolidated Applications.* (1) *Proposed branches; notice of branch opening.* A member bank may seek approval in a single application or notice for any branches that it proposes to establish within one year after the approval date. The bank shall, unless notification is waived, notify the appropriate Reserve Bank not later than 30 days after opening any branch approved under a consolidated application. A bank is not required to open a branch approved under either a consolidated or single branch application.

(2) *Duration of branch approval.* Branch approvals remain valid for one year unless the Board or the appropriate Reserve Bank notifies the bank that in its judgment, based on reports of condition, examinations, or other information, there has been a change in the bank's condition, financial or otherwise, that warrants reconsideration of the approval.

(e) *Branch closings.* A member bank shall comply with section 42 of the FDI Act (FDI Act), 12 U.S.C. 1831r–1, with regard to branch closings.

(f) *Branch relocations.* A relocation of an existing branch does not require filing a branch application. A relocation of an existing branch, for purposes of determining whether to file a branch application, is a movement that does not substantially affect the nature of the branch's business or customers served.

§ 208.7 Prohibition against use of interstate branches primarily for deposit production.

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(2) *Scope.* (i) This section applies to any State member bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch licensed by a State for a period of at least one year.

(ii) This section describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Bank* means, unless the context indicates otherwise:

(i) A State member bank as that term is defined in 12 U.S.C. 1813(d)(2); and

(ii) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 211.21.

(2) *Covered interstate branch* means any branch of a State member bank, and any uninsured branch of a foreign bank licensed by a State, that:

(i) Is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home state but for the establishment or acquisition of a branch described in paragraph (b)(2)(i) of this section.

(3) *Home state* means:

(i) With respect to a state bank, the state that chartered the bank;

(ii) With respect to a national bank, the state in which the main office of the bank is located; and

(iii) With respect to a foreign bank, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 211.22.

(4) *Host state* means a state in which a bank establishes or acquires a covered interstate branch.

(5) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of "bank" in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(6) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(7) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the Board.

(c) *Loan-to-deposit ratio screen*—(1) *Application of screen.* Beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the Board will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host state loan-to-deposit ratio.

(2) *Results of screen.* (i) If the Board determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this section is required.

(ii) If the Board determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the Board will make a credit needs determination for the bank as provided in paragraph (d) of this section.

(d) *Credit needs determination*—(1) *In general.* The Board will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(2) *Guidelines.* The Board will use the following considerations as guidelines when making the determination pursuant to paragraph (d)(1) of this section:

(i) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(ii) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(iii) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(iv) The Community Reinvestment Act ratings received by the bank, if any, under 12 U.S.C. 2901 *et seq.*;

(v) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(vi) The safe and sound operation and condition of the bank; and

(vii) The Board's Regulation BB—Community Reinvestment (12 CFR part 228) and interpretations of that regulation.

(e) *Sanctions*—(1) *In general.* If the Board determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the Board:

(i) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the Board, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(ii) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the Board, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(2) *Notice prior to closure of a covered interstate branch.* Before exercising the Board's authority to order the bank to close a covered interstate branch, the Board will issue to the bank a notice of the Board's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(3) *Hearing.* The Board will conduct a hearing scheduled under paragraph (e)(2) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 263.

Subpart B—Investments and Loans

§ 208.20 Authority, purpose, and scope.

(a) *Authority.* Subpart B of Regulation H (12 CFR part 208, subpart B) is issued by the Board of Governors of the Federal Reserve System under 12 U.S.C. 24; sections 9, 11 and 21 of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), and 481–486); sections 1814, 1816, 1818, 1823(j), 1831o, 1831p–1 and 1831r–1 of the FDI Act (12 U.S.C. 1814, 1816, 1818, 1823(j), 1831o, 1831p–1 and 1831r–1); and the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Purpose and scope.* This subpart B describes certain investment limitations on member banks, statutory requirements for amortizing losses on agricultural loans and extending credit in areas having special flood hazards, as well as the requirements for issuing letters of credit and acceptances.

§ 208.21 Investments in premises and securities.

(a) *Investment in bank premises.* No state member bank shall invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or make loans to or upon the security of any such corporation unless:

(1) The bank notifies the appropriate Reserve Bank at least fifteen days prior to such investment and has not received notice that the investment is subject to further review by the end of the fifteen day notice period;

(2) The aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank (as defined in section 2 of the Banking Act of 1933, as amended, 12 U.S.C. 221a), is less than or equal to the bank's perpetual preferred stock and related surplus plus common stock plus surplus, as those terms are defined in the FFIEC Consolidated Reports of Condition and Income; or

(3)(i) The aggregate of all such investments and loans, together with the

amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to 150 percent of the bank's perpetual preferred stock and related surplus plus common stock plus surplus, as those terms are defined in the FFIEC Consolidated Reports of Condition and Income; and

(ii) The bank:

(A) Has a CAMELS composite rating of 1 or 2 under the Uniform Interagency Bank Rating System [5] (or an equivalent rating under a comparable rating system) as of the most recent examination of the bank; and

(B) Is well capitalized and will continue to be well capitalized, in accordance with subpart D of this part, after the investment or loan.

(b) *Investments in securities.* Member banks are subject to the same limitations and conditions with respect to purchasing, selling, underwriting, and holding investment securities and stocks as are national banks under 12 U.S.C. 24, ¶ 7th. To determine whether an obligation qualifies as an investment security for the purposes of 12 U.S.C. 24, ¶ 7th, and to calculate the limits with respect to the purchase of such obligations, a state member bank may look to part 1 of the rules of the Comptroller of the Currency (12 CFR part 1) and interpretations thereunder. A state member bank may consult the Board for a determination with respect to the application of 12 U.S.C. 24, ¶ 7th, with respect to issues not addressed in 12 CFR part 1. The provisions of 12 CFR part 1 do not provide authority for a state member bank to purchase securities of a type or amount that the bank is not authorized to purchase under applicable state law.

§ 208.22 Community development and public welfare investments.

(a) *Definitions.* For purposes of this section:

(1) *Low- or moderate-income area* means:

(i) One or more census tracts in a Metropolitan Statistical Area where the median family income adjusted for family size in each census tract is less than 80 percent of the median family income adjusted for family size of the Metropolitan Statistical Area; or

(ii) If not in a Metropolitan Statistical Area, one or more census tracts or block-numbered areas where the median family income adjusted for family size in each census tract or block-numbered area is less than 80 percent of the median family income adjusted for family size of the State.

(2) *Low- and moderate-income persons* has the same meaning as low- and moderate-income persons as defined in 42 U.S.C. 5302(a)(20)(A).

(3) *Small business* means a business that meets the size-eligibility standards of 13 CFR 121.802(a)(2).

(b) *Investments not requiring prior Board approval.* Notwithstanding the provisions of section 5136 of the Revised Statutes (12 U.S.C. 24, ¶ 7th) made applicable to member banks by paragraph 20 of section 9 of the Federal Reserve Act (12 U.S.C. 335), a member bank may make an investment, without prior Board approval, if the following conditions are met:

(1) The investment is in a corporation, limited partnership, or other entity, and:

(i) The Board has determined that an investment in that entity or class of entities is a public welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), or a community development investment under Regulation Y (12 CFR 225.25(b)(6)); or

(ii) The Comptroller of the Currency has determined, by order or regulation, that an investment in that entity by a national bank is a public welfare investment under section 5136 of the Revised Statutes (12 U.S.C. 24 (Eleventh)); or

(iii) The entity is a community development financial institution as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)); or

(iv) The entity, directly or indirectly, engages solely in or makes loans solely for the purposes of one or more of the following community development activities:

(A) Investing in, developing, rehabilitating, managing, selling, or renting residential property if a majority of the units will be occupied by low- and moderate-income persons, or if the property is a "qualified low-income building" as defined in section 42(c)(2) of the Internal Revenue Code (26 U.S.C. 42(c)(2));

(B) Investing in, developing, rehabilitating, managing, selling, or renting nonresidential real property or other assets located in a low- or moderate-income area and targeted towards low- and moderate-income persons;

(C) Investing in one or more small businesses located in a low- or moderate-income area to stimulate economic development;

(D) Investing in, developing, or otherwise assisting job training or placement facilities or programs that will be targeted towards low- and moderate-income persons;

(E) Investing in an entity located in a low- or moderate-income area if the entity creates long-term employment opportunities, a majority of which (based on full-time equivalent positions) will be held by low- and moderate-income persons; and

(F) Providing technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development;

(2) The investment is permitted by state law;

(3) The investment will not expose the member bank to liability beyond the amount of the investment;

(4) The aggregate of all such investments of the member bank does not exceed the sum of five percent of its capital stock and surplus;

(5) The member bank is well capitalized or adequately capitalized under §§ 208.43(b) (1) and (2);

(6) The member bank received a composite CAMELS rating of "1" or "2" under the Uniform Financial Institutions Rating System as of its most recent examination and an overall rating of "1" or "2" as of its most recent consumer compliance examination; and

(7) The member bank is not subject to any written agreement, cease-and-desist order, capital directive, prompt-corrective-action directive, or memorandum of understanding issued by the Board or a Federal Reserve Bank.

(c) *Notice to Federal Reserve Bank.* Not more than 30 days after making an investment under paragraph (b) of this section, the member bank shall advise its Federal Reserve Bank of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

(d) *Investments requiring Board approval.* (1) With prior Board approval, a member bank may make public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), other than those specified in paragraph (b) of this section.

(2) Requests for Board approval under this paragraph (d) shall include, at a minimum:

(i) The amount of the proposed investment;

(ii) A description of the entity in which the investment is to be made;

(iii) An explanation of why the investment is a public welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a);

[5] *See* FRRS 3–1575 for an explanation of the Uniform Interagency Bank Rating System. (For availability, see 12 CFR 261.10(f).)

(iv) A description of the member bank's potential liability under the proposed investment;

(v) The amount of the member bank's aggregate outstanding public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act;

(vi) The amount of the member bank's capital stock and surplus; and

(vii) If the bank investment is not eligible under paragraph (b) of this section, explain the reason or reasons why it is ineligible.

(3) The Board shall act on a request under this paragraph (d) within 60 calendar days of receipt of a request that meets the requirements of paragraph (d)(2) of this section, unless the Board notifies the requesting member bank that a longer time period will be required.

(e) *Divestiture of investments.* A member bank shall divest itself of an investment made under paragraph (b) or (d) of this section to the extent that the investment exceeds the scope of, or ceases to meet, the requirements of paragraphs (b)(1) through (b)(4) or paragraph (d) of this section. The divestiture shall be made in the manner specified in 12 CFR 225.140, Regulation Y, for interests acquired by a lending subsidiary of a bank holding company or the bank holding company itself in satisfaction of a debt previously contracted.

§ 208.23 Agricultural loan loss amortization.

(a) *Definitions.* For purposes of this section:

(1) *Accepting official* means:

(i) The Reserve Bank in whose district the bank is located; or

(ii) The Director of the Division of Banking Supervision and Regulation in cases in which the Reserve Bank cannot determine that the bank qualifies.

(2) *Agriculturally related other property* means any property, real or personal, that the bank owned on January 1, 1983, and any additional property that it acquired prior to January 1, 1992, in connection with a qualified agricultural loan. For the purposes of paragraph (d) of this section, the value of such property shall include the amount previously charged off as a loss.

(3) *Participating bank* means an agricultural bank (as defined in 12 U.S.C. 1823(j)(4)(A)) that, as of January 1, 1992, had a proposal for a capital restoration plan accepted by an accepting official and received permission from the accepting official, subject to paragraphs (d) and (e) of this section, to amortize losses in accordance with paragraphs (b) and (c) of this section.

(4) *Qualified agricultural loan* means:

(i) Loans that finance agricultural production or are secured by farm land for purposes of Schedule RC–C of the FFIEC Consolidated Report of Condition or such other comparable schedule;

(ii) Loans secured by farm machinery;

(iii) Other loans that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Board; and

(iv) The remaining unpaid balance of any loans described in paragraphs (a)(4)(i), (ii) and (iii) of this section that have been charged off since January 1, 1984, and that qualify for deferral under this section.

(b)(1) Provided there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, the officers, directors, or principal shareholders, a participating bank may amortize in its Reports of Condition and Income:

(i) Any loss on a qualified agricultural loan that the bank would be required to reflect in its financial statements for any period between and including 1984 and 1991; or

(ii) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally-related other property.

(2) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998.

(c) *Accounting for amortization.* Any bank that is permitted to amortize losses in accordance with paragraph (b) of this section may restate its capital and other relevant accounts and account for future authorized deferrals and authorizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in qualifying capital pursuant to appendix A of this part.

(d) *Conditions of participation.* In order for a bank to maintain its status as a participating bank, it shall:

(1) Adhere to the approved capital plan and obtain the prior approval of the accepting official before making any modifications to the plan;

(2) Maintain accounting records for each asset subject to loss deferral under the program that document the amount and timing of the deferrals, repayments, and authorizations;

(3) Maintain the financial condition of the bank so that it does not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(4) Make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans, including agriculturally-related other property, not less than the percentage of such loans in its loan portfolio on January 1, 1986; and

(5) Provide the accepting official, upon request, with any information the accepting official deems necessary to monitor the bank's amortization, its compliance with the conditions of participation, and its continued eligibility.

(e) *Revocation of eligibility for loss amortization.* The failure to comply with any condition in an acceptance, with the capital restoration plan, or with the conditions stated in paragraph (d) of this section, is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). In addition, acceptance of a bank for loss amortization shall not foreclose any administrative action against the bank that the Board may deem appropriate.

(f) *Expiration date.* The terms of this section will no longer be in effect as of January 1, 1999.

§ 208.24 Letters of credit and acceptances.

(a) *Standby letters of credit.* For the purpose of this section, standby letters of credit include every letter of credit (or similar arrangement however named or designated) that represents an obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by or advanced to or for the account of the account party; or

(2) To make payment on account of any evidence of indebtedness undertaken by the account party; or

(3) To make payment on account of any default by the party procuring the issuance of the letter of credit in the performance of an obligation.[6]

(b) *Ineligible acceptance.* An ineligible acceptance is a time draft accepted by a bank, which does not meet the requirements for discount with a Federal Reserve Bank.

(c) *Bank's lending limits.* Standby letters of credit and ineligible

[6] A standby letter of credit does not include: (1) Commercial letters of credit and similar instruments, where the issuing bank expects the beneficiary to draw upon the issuer, and which do not guaranty payment of a money obligation; or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of 12 CFR part 211 (Regulation K).

acceptances count toward member banks' lending limits imposed by state law.

(d) *Exceptions.* A standby letter of credit or ineligible acceptance is not subject to the restrictions set forth in paragraph (c) of this section if prior to or at the time of issuance of the credit:

(1) The issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit; or

(2) The party procuring the issuance of a letter of credit or ineligible acceptance has set aside sufficient funds in a segregated, clearly earmarked deposit account to cover the bank's maximum liability under the standby letter of credit or ineligible acceptance.

§ 208.25 Loans in areas having special flood hazards.

(a) *Purpose and scope.* (1) *Purpose.* The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope.* This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions.* For purposes of this section:

(1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(2) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(3) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(4) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(5) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the National Flood Insurance Program.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

(8) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(9) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(10) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(11) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) *Requirement to purchase flood insurance where available.* (1) *In general.* A member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(2) *Table funded loans.* A member bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

(e) *Escrow requirement.* If a member bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed after October 1, 1996, the member bank shall also require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section. The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(f) *Required use of standard flood hazard determination form.* (1) *Use of form.* A member bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(2) *Retention of form.* A member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Forced placement of flood insurance.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered

by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the member bank or its servicer shall purchase insurance on the borrower's behalf. The member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(h) *Determination fees.* (1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Director of FEMA's revision or updating of flood plain areas or flood-risk zones;

(iii) Reflects the Director of FEMA's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area;

(iv) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* When a member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(1) *Contents of notice.* The written notice must include the following information:

(i) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(iv) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(2) *Timing of notice.* The member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(3) *Record of receipt.* The member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(4) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(5) *Use of prescribed form of notice.* A member bank will be considered to be in compliance with the requirement for notice to the borrower of this paragraph (i) by providing written notice to the borrower containing the language presented in appendix A of this section within a reasonable time before the completion of the transaction. The notice presented in appendix A of this section satisfies the borrower notice requirements of the Act.

(j) *Notice of servicer's identity.* (1) *Notice requirement.* When a member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(2) *Transfer of servicing rights.* The member bank shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) shall transfer to the transferee servicer.

Appendix A to § 208.25 Sample Form of Notice

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood

insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of*:

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

Subpart C—Bank Securities and Securities-Related Activities

§ 208.30 Authority, purpose, and scope.

(a) *Authority.* Subpart C of Regulation H (12 CFR part 208, subpart C) is issued by the Board of Governors of the Federal Reserve System under 12 U.S.C. 24, 92a, 93a; sections 1818 and 1831p–1(a)(2) of the FDI Act (12 U.S.C. 1818, 1831p–1(a)(2)); and sections 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78o–5, 78q, 78q–1, and 78w of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78o–5, 78q, 78q–1, 78w).

(b) *Purpose and scope.* This subpart C describes the requirements imposed upon member banks acting as transfer agents, registered clearing agencies, or sellers of securities under the Securities Exchange Act of 1934. This subpart C also describes the reporting requirements imposed on member banks whose securities are subject to registration under the Securities Exchange Act of 1934.

§ 208.31 State member banks as transfer agents.

(a) The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–l) prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2–1) apply to member bank transfer agents. References to the "Commission" are deemed to refer to the Board.

(b) The rules adopted by the SEC pursuant to section 17A prescribing operational and reporting requirements for transfer agents (17 CFR 240.17Ac2–2 and 240.17Ad–1 through 240.17Ad–16) apply to member bank transfer agents.

§ 208.32 Notice of disciplinary sanctions imposed by registered clearing agency.

(a) *Notice requirement.* Any member bank or any of its subsidiaries that is a registered clearing agency pursuant to section 17A(b) of the Securities Exchange Act of 1934 (the Act), and that:

(1) Imposes any final disciplinary sanction on any participant therein;

(2) Denies participation to any applicant; or

(3) Prohibits or limits any person in respect to access to services offered by the clearing agency, shall file with the Board (and the appropriate regulatory agency, if other than the Board, for a participant or applicant) notice thereof in the manner prescribed in this section.

(b) *Notice of final disciplinary actions.* (1) Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final disciplinary action with respect to any participant shall promptly file a notice thereof with the Board in accordance with paragraph (c) of this section. For the purposes of this paragraph (b), *final disciplinary action* means the imposition of any disciplinary sanction pursuant to section 17A(b)(3)(G) of the Act, or other action of a registered clearing agency which, after notice and opportunity for hearing, results in final disposition of charges of:

(i) One or more violations of the rules of the registered clearing agency; or

(ii) Acts or practices constituting a statutory disqualification of a type defined in paragraph (iv) or (v) (except prior convictions) of section 3(a)(39) of the Act.

(2) However, if a registered clearing agency fee schedule specifies certain charges for errors made by its participants in giving instructions to the registered clearing agency which are *de minimis* on a per error basis, and whose purpose is, in part, to provide revenues to the clearing agency to compensate it for effort expended in beginning to process an erroneous instruction, such error charges shall not be considered a final disciplinary action for purposes of this paragraph (b).

(c) *Contents of final disciplinary action notice.* Any notice filed pursuant to paragraph (b) of this section shall consist of the following, as appropriate:

(1) The name of the respondent and the respondent's last known address, as reflected on the records of the clearing agency, and the name of the person, committee, or other organizational unit, that brought the charges. However, identifying information as to any respondent found not to have violated a provision covered by a charge may be deleted insofar as the notice reports the disposition of that charge and, prior to the filing of the notice, the respondent does not request that identifying information be included in the notice;

(2) A statement describing the investigative or other origin of the action;

(3) As charged in the proceeding, the specific provision or provisions of the rules of the clearing agency violated by the respondent, or the statutory disqualification referred to in paragraph (b)(2) of this section, and a statement describing the answer of the respondent to the charges;

(4) A statement setting forth findings of fact with respect to any act or practice in which the respondent was charged with having engaged in or omitted; the conclusion of the clearing agency as to whether the respondent violated any rule or was subject to a statutory disqualification as charged; and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceedings;

(5) A statement describing any sanction imposed, the reasons therefor, and the date upon which the sanction became or will become effective; and

(6) Such other matters as the clearing agency may deem relevant.

(d) *Notice of final denial, prohibition, termination or limitation based on qualification or administrative rules.* (1) Any registered clearing agency, for which the Board is the appropriate regulatory agency, that takes any final action that denies or conditions the participation of any person, or prohibits or limits access, to services offered by the clearing agency, shall promptly file notice thereof with the Board (and the appropriate regulatory agency, if other than the Board, for the affected person) in accordance with paragraph (e) of this section; but such action shall not be

considered a final disciplinary action for purposes of paragraph (b) of this section where the action is based on an alleged failure of such person to:

(i) Comply with the qualification standards prescribed by the rules of the registered clearing agency pursuant to section 17A(b)(4)(B) of the Act; or

(ii) Comply with any administrative requirements of the registered clearing agency (including failure to pay entry or other dues or fees, or to file prescribed forms or reports) not involving charges of violations that may lead to a disciplinary sanction.

(2) However, no such action shall be considered final pursuant to this paragraph (d) that results merely from a notice of such failure to comply to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted the administrative remedies within the registered clearing agency with respect to such a matter.

(e) *Contents of notice required by paragraph (d) of this section.* Any notice filed pursuant to paragraph (d) of this section shall consist of the following, as appropriate:

(1) The name of each person concerned and each person's last known address, as reflected in the records of the clearing agency;

(2) The specific grounds upon which the action of the clearing agency was based, and a statement describing the answer of the person concerned;

(3) A statement setting forth findings of fact and conclusions as to each alleged failure of the person to comply with qualification standards or administrative obligations, and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceeding;

(4) The date upon which such action became or will become effective; and

(5) Such other matters as the clearing agency deems relevant.

(f) *Notice of final action based on prior adjudicated statutory disqualifications.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action shall promptly file notice thereof with the Board (and the appropriate regulatory agency, if other than the Board, for the affected person) in accordance with paragraph (g) of this section, where the final action:

(1) Denies or conditions participation to any person, or prohibits or limits access to services offered by the clearing agency; and

(2) Is based upon a statutory disqualification of a type defined in paragraph (A), (B) or (C) of section 3(a)(39) of the Act, consisting of a prior conviction, as described in subparagraph (E) of section 3(a)(39) of the Act. However, no such action shall be considered final pursuant to this paragraph (f) that results merely from a notice of such disqualification to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted the administrative remedies within the clearing agency with respect to such a matter.

(g) *Contents of notice required by paragraph (f) of this section.* Any notice filed pursuant to paragraph (f) of this section shall consist of the following, as appropriate:

(1) The name of each person concerned and each person's last known address, as reflected in the records of the clearing agency;

(2) A statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the clearing agency in support of its resolution of the principal issues raised in the proceeding;

(3) Any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;

(4) A copy of the order or decision of the court, appropriate regulatory agency, or self-regulatory organization that adjudicated the matter giving rise to the statutory disqualification;

(5) The nature of the action taken and the date upon which such action is to be made effective; and

(6) Such other matters as the clearing agency deems relevant.

(h) *Notice of summary suspension of participation.* Any registered clearing agency for which the Board is the appropriate regulatory agency that summarily suspends or closes the accounts of a participant pursuant to the provisions of section 17A(b)(5)(C) of the Act shall, within one business day after such action becomes effective, file notice thereof with the Board and the appropriate regulatory agency for the participant, if other than the Board, of such action in accordance with paragraph (i) of this section.

(i) *Contents of notice of summary suspension.* Any notice pursuant to paragraph (h) of this section shall contain at least the following information, as appropriate:

(1) The name of the participant concerned and the participant's last known address, as reflected in the records of the clearing agency;

(2) The date upon which the summary action became or will become effective;

(3) If the summary action is based upon the provisions of section 17A(b)(5)(C)(i) of the Act, a copy of the relevant order or decision of the self-regulatory organization, if available to the clearing agency;

(4) If the summary action is based upon the provisions of section 17A(b)(5)(C)(ii) of the Act, a statement describing the default of any delivery of funds or securities to the clearing agency;

(5) If the summary action is based upon the provisions of section 17A(b)(5)(C)(iii) of the Act, a statement describing the financial or operating difficulty of the participant based upon which the clearing agency determined that the suspension and closing of accounts was necessary for the protection of the clearing agency, its participants, creditors, or investors;

(6) The nature and effective date of the suspension; and

(7) Such other matters as the clearing agency deems relevant.

§ 208.33 Application for stay or review of disciplinary sanctions imposed by registered clearing agency.

(a) *Stays.* The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays of disciplinary sanctions or summary suspensions imposed by registered clearing agencies (17 CFR 240.19d–2) apply to applications by member banks. References to the "Commission" are deemed to refer to the Board.

(b) *Reviews.* The regulations adopted by the Securities and Exchange Commission pursuant to section 19 of the Securities and Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for reviews of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by registered clearing agencies (17 CFR 240.19d–3(a)–(f)) apply to applications by member banks. References to the "Commission" are deemed to refer to the Board. The Board's Uniform Rules of Practice and Procedure (12 CFR part 263) apply to review proceedings under this § 208.33 to the extent not inconsistent with this § 208.33.

§ 208.34 Recordkeeping and confirmation of certain securities transactions effected by State member banks.

(a) *Exceptions and safe and sound operations.* (1) A State member bank may be excepted from one or more of the requirements of this section if it

meets one of the following conditions of paragraphs (a)(1)(i) through (a)(1)(iv) of this section:

(i) *De minimis transactions.* The requirements of paragraphs (c)(2) through (c)(4) and paragraphs (e)(1) through (e)(3) of this section shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in government securities;

(ii) *Government securities.* The recordkeeping requirements of paragraph (c) of this section shall not apply to banks effecting fewer than 500 government securities brokerage transactions per year; provided that this exception shall not apply to government securities transactions by a State member bank that has filed a written notice, or is required to file notice, with the Federal Reserve Board that it acts as a government securities broker or a government securities dealer;

(iii) *Municipal securities.* The municipal securities activities of a State member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this section; and

(iv) *Foreign branches.* The requirements of this section shall not apply to the activities of foreign branches of a State member bank.

(2) Every State member bank qualifying for an exemption under paragraph (a)(1) of this section that conducts securities transactions for customers shall, to ensure safe and sound operations, maintain effective systems of records and controls regarding its customer securities transactions that clearly and accurately reflect appropriate information and provide an adequate basis for an audit of the information.

(b) *Definitions.* For purposes of this section:

(1) *Asset-backed security* shall mean a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(2) *Collective investment fund* shall mean funds held by a State member bank as fiduciary and, consistent with local law, invested collectively as follows:

(i) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(ii) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).

(3) *Completion of the transaction* effected by or through a state member bank shall mean:

(i) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price if applicable); however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(ii) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank; however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the banks makes payment into the account of the customer.

(4) *Crossing of buy and sell orders* shall mean a security transaction in which the same bank acts as agent for both the buyer and the seller.

(5) *Customer* shall mean any person or account, including any agency, trust, estate, guardianship, or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, bank acting as a broker or dealer, municipal securities broker or dealer, or issuer of the securities which are the subject of the transactions.

(6) *Debt security* as used in paragraph (c) of this section shall mean any security, such as a bond, debenture, note or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, shall not be included in this definition.

(7) *Government security* shall mean:

(i) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(ii) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(iii) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(iv) Any put, call, straddle, option, or privilege on a security as described in paragraphs (b)(7) (i), (ii), or (iii) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated though an automated quotation system operated by a registered securities association.

(8) *Investment discretion* with respect to an account shall mean if the State member bank, directly or indirectly, is authorized to determine what securities or other property shall be purchased or sold by or for the account, or makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

(9) *Municipal security* shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2) the interest on which is excludable from gross income under 26 U.S.C. 103(a)(1), by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c)), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security.

(10) *Periodic plan* shall mean:

(i) A written authorization for a State member bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them (including

dividend reinvestment plans, automatic investment plans, and employee stock purchase plans); or

(ii) Any prearranged, automatic transfer or sweep of funds from a deposit account to purchase a security, or any prearranged, automatic redemption or sale of a security with the funds being transferred into a deposit account (including cash management sweep services).

(11) *Security* shall mean:

(i) Any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, for a security, any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(ii) But does not include a deposit or share account in a federally or state insured depository institution, a loan participation, a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, currency, any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, units of a collective investment fund, interests in a variable amount (master) note of a borrower of prime credit, or U.S. Savings Bonds.

(c) *Recordkeeping.* Except as provided in paragraph (a) of this section, every State member bank effecting securities transactions for customers, including transactions in government securities, and municipal securities transactions by banks not subject to registration as municipal securities dealers, shall maintain the following records with respect to such transactions for at least three years. Nothing contained in this section shall require a bank to maintain the records required by this paragraph in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. Records may be maintained in hard copy, automated, or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third party service providers, including broker/dealers, to maintain records required under this part.

(1) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(2) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;

(3) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or canceled), which shall include:

(i) The account(s) for which the transaction was effected;

(ii) Whether the transaction was a market order, limit order, or subject to special instructions;

(iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or canceled;

(v) The price at which the order was executed; and

(vi) The broker/dealer utilized;

(4) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year; and

(5) A copy of the written notification required by paragraphs (d) and (e) of this section.

(d) *Content and time of notification.* Every State member bank effecting a securities transaction for a customer shall give or send to such customer either of the following types of notifications at or before completion of the transaction or; if the bank uses a broker/dealer's confirmation, within one business day from the bank's receipt of the broker/dealer's confirmation:

(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(2) A written notification disclosing:

(i) The name of the bank;

(ii) The name of the customer;

(iii) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(iv) The date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer specifying the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such customer;

(v) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(vi) The amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of Government securities and municipal securities, this paragraph (d)(2)(vi) shall apply only with respect to remuneration received by the bank in an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to this paragraph (d)(2)(vi), the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or with respect to a sale, the bank was participating in a tender offer for that security;

(vii) The name of the broker/dealer utilized; or, where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request;

(viii) In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect

that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available on request;

(ix) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(A) The dollar price at which the transaction was effected;

(B) The yield to maturity calculated from the dollar price; provided, however, that this paragraph (c)(2)(ix)(B) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(x) In the case of a transaction in a debt security effected on the basis of yield:

(A) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date, and the call price; and

(B) The dollar price calculated from the yield at which the transaction was effected; and

(C) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided, however, that this paragraph (c)(2)(x)(C) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(xi) In the case of a transaction in a debt security that is an asset-backed security which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of such asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum, the estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such customer; and

(xii) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

(e) *Notification by agreement; alternative forms and times of notification.* A State member bank may elect to use the following alternative procedures if a transaction is effected for:

(1) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification pursuant to paragraph (c) of this section at no additional cost to the customer;

(2) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information;

(3) Accounts, where the bank exercises investment discretion in an agency capacity, in which instance:

(i) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(ii) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in paragraph (c) of this section. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section;

(4) A collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank;

(5) A periodic plan, in which instance the bank:

(i) Shall (except for a cash management sweep service) give or send to the customer a written statement not less than every three months if there are no securities transactions in the account, showing the customer's funds and securities in the custody or possession of the bank; all service charges and commissions paid by the customer in connection with the transaction; and all other debits and credits of the customer's account involved in the transaction; or

(ii) Shall for a cash management sweep service or similar periodic plan as defined in § 208.34(b)(10)(ii) give or send its customer a written statement in the same form as prescribed in paragraph (e)(3) above for each month in which a purchase or sale of a security takes place in a deposit account and not less than once every three months if there are no securities transactions in the account subject to any other applicable laws or regulations;

(6) Upon the written request of the customer the bank shall furnish the information described in paragraph (d) of this section, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in paragraph (d) of this section.

(f) *Settlement of securities transactions.* All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker dealers in the United States unless otherwise agreed to by the parties at the time of the transaction.

(g) *Securities trading policies and procedures.* Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers;

(ii) Execute transactions in securities for customers; or

(iii) Process orders for notification and/or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers; provided that procedures established under this paragraph

(g)(1)(iii) should provide for supervision and reporting lines that are separate from supervision of personnel under paragraphs (g)(1)(i) and (g)(1)(ii) of this section;

(2) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(3) Where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(4) That bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate $10,000 or less during the calendar quarter. For purposes of this paragraph (g)(4), the term securities does not include government securities.

§ 208.35 Qualification requirements for transactions in certain securities. [Reserved]

§ 208.36 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.

(a) *Filing requirements.* Except as otherwise provided in this section, a member bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 78l (b) and (g)) shall comply with the rules, regulations, and forms adopted by the Securities and Exchange Commission (Commission) pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78l, 78m, 78n(a), (c), (d), (f) and 78p). The term "Commission" as used in those rules and regulations shall with respect to securities issued by member banks be deemed to refer to the Board unless the context otherwise requires.

(b) *Elections permitted for member banks with total assets of $150 million or less.* (1) Notwithstanding paragraph (a) of this section or the rules and regulations promulgated by the Commission pursuant to the 1934 Act a member bank that has total assets of $150 million or less as of the end of its most recent fiscal year, and no foreign offices, may elect to substitute for the financial statements required by the Commission's Form 10–Q, the balance sheet and income statement from the quarterly report of condition required to be filed by the bank with the Board under section 9 of the Federal Reserve Act (12 U.S.C. 324) (Federal Financial Institutions Examination Council Form 033 or 034).

(2) A member bank qualifying for and electing to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section in its form 10–Q shall include earnings per share or net loss per share data prepared in accordance with GAAP and disclose any material contingencies, as required by Article 10 of the Commission's Regulation S–X (17 CFR 210.10–01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10–Q.

(c) *Required filings.* (1) *Place and timing of filing.* All papers required to be filed with the Board, pursuant to the 1934 Act or regulations thereunder, shall be submitted to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(2) *Filing fees.* No filing fees specified by the Commission's rules shall be paid to the Board.

(3) *Public inspection.* Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this section (exclusive of exhibits) shall be available for public inspection at the Board's offices in Washington, DC, as well as at the Federal Reserve Banks of New York, Chicago, and San Francisco and at the Reserve Bank in the district in which the reporting bank is located.

(d) *Confidentiality of filing.* Any person filing any statement, report, or document under the 1934 Act may make written objection to the public disclosure of any information contained therein in accordance with the following procedure:

(1) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that the person desires to keep undisclosed (hereinafter called the confidential portion). The person shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been omitted and filed separately with the Board.

(2) The person shall file the following with the copies of the statement, report, or document filed with the Board:

(i) As many copies of the confidential portion, each clearly marked "CONFIDENTIAL TREATMENT," as there are copies of the statement, report, or document filed with the Board. Each copy of the confidential portion shall contain the complete text of the item and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in case the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document; and

(ii) An application making objection to the disclosure of the confidential portion. The application shall be on a sheet or sheets separate from the confidential portion, and shall:

(A) Identify the portion of the statement, report, or document that has been omitted;

(B) Include a statement of the grounds of objection; and

(C) Include the name of each exchange, if any, with which the statement, report, or document is filed.

(3) The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "CONFIDENTIAL TREATMENT," and addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551.

(4) Pending determination by the Board on the objection filed in accordance with this paragraph, the confidential portion shall not be disclosed by the Board.

(5) If the Board determines to sustain the objection, a notation to that effect shall be made at the appropriate place in the statement, report, or document.

(6) If the Board determines not to sustain the objection because disclosure of the confidential portion is in the

public interest, a finding and determination to that effect shall be entered and notice of the finding and determination sent by registered or certified mail to the person.

(7) If the Board determines not to sustain the objection, pursuant to paragraph (d)(6) of this section, the confidential portion shall be made available to the public:

(i) 15 days after notice of the Board's determination not to sustain the objection has been given, as required by paragraph (d)(6) of this section, provided that the person filing the objection has not previously filed with the Board a written statement that he intends, in good faith, to seek judicial review of the finding and determination; or

(ii) 60 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (d)(6) of this section and the person filing the objection has filed with the Board a written statement of intent to seek judicial review of the finding and determination, but has failed to file a petition for judicial review of the Board's determination; or

(iii) Upon final judicial determination, if adverse to the party filing the objection.

(8) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the Board.

§ 208.37 Government securities sales practices.

(a) *Scope.* This subpart is applicable to state member banks that have filed notice as, or are required to file notice as, government securities brokers or dealers pursuant to section 15C of the Securities Exchange Act (15 U.S.C. 78o-5) and Department of the Treasury rules under section 15C (17 CFR 400.1(d) and part 401).

(b) *Definitions.* For purposes of this section:

(1) *Bank that is a government securities broker or dealer* means a state member bank that has filed notice, or is required to file notice, as a government securities broker or dealer pursuant to section 15C of the Securities Exchange Act (15 U.S.C. 78o-5) and Department of the Treasury rules under section 15C (17 CFR 400.1(d) and Part 401).

(2) *Customer* does not include a broker or dealer or a government securities broker or dealer.

(3) *Government security* has the same meaning as this term has in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).

(4) *Non-institutional customer* means any customer other than:

(i) A bank, savings association, insurance company, or registered investment company;

(ii) An investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3); or

(iii) Any entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

(c) *Business conduct.* A bank that is a government securities broker or dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business as a government securities broker or dealer.

(d) *Recommendations to customers.* In recommending to a customer the purchase, sale or exchange of a government security, a bank that is a government securities broker or dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to the customer's other security holdings and as to the customer's financial situation and needs.

(e) *Customer information.* Prior to the execution of a transaction recommended to a non-institutional customer, a bank that is a government securities broker or dealer shall make reasonable efforts to obtain information concerning:

(1) The customer's financial status;

(2) The customer's tax status;

(3) The customer's investment objectives; and

(4) Such other information used or considered to be reasonable by the bank in making recommendations to the customer.

Subpart D—Prompt Corrective Action

§ 208.40 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* Subpart D of Regulation H (12 CFR part 208, Subpart D) is issued by the Board of Governors of the Federal Reserve System (Board) under section 38 (section 38) of the FDI Act as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose and scope.* This subpart D defines the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. (Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized.) This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38. Certain of the provisions of this subpart apply to officers, directors, and employees of state member banks. Other provisions apply to any company that controls a member bank and to the affiliates of the member bank.

(c) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the Board under any other provision of law to take supervisory actions to address unsafe or unsound practices or conditions, deficient capital levels, violations of law, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(d) *Disclosure of capital categories.* The assignment of a bank under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the Board or otherwise required by law, no bank may state in any advertisement or promotional material its capital category under this subpart or that the Board or any other Federal banking agency has assigned the bank to a particular capital category.

§ 208.41 Definitions for purposes of this subpart.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) *Control*—(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term *controlled* shall be construed consistently with the term *control.*

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary

authority to exercise voting rights with respect to the shares.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate Federal banking agency for up to three one-year periods.

(b) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(c) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure (Appendix B to this part).

(d) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, or related overhead expenses, including payments related to supervisory, executive, managerial, or policy making functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

(e) *Risk-weighted assets* means total weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(f) *Tangible equity* means the amount of core capital elements in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except mortgage servicing rights to the extent that the Board determines that mortgage servicing rights may be included in calculating the bank's Tier 1 capital.

(g) *Tier 1 capital* means the amount of Tier 1 capital as defined in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(h) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(i) *Total assets* means quarterly average total assets as reported in a bank's Report of Condition and Income (Call Report), minus intangible assets as provided in the definition of tangible equity. At its discretion the Federal Reserve may calculate total assets using a bank's period-end assets rather than quarterly average assets.

(j) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

§ 208.42 Notice of capital category.

(a) *Effective date of determination of capital category.* A member bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A member bank shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Report of Condition and Income (Call Report) is required to be filed with the Board;

(2) A final report of examination is delivered to the bank; or

(3) Written notice is provided by the Board to the bank of its capital category for purposes of section 38 of the FDI Act and this subpart or that the bank's capital category has changed as provided in paragraph (c) of this section or § 208.43(c).

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by bank.* A member bank shall provide the Board with written notice that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date that any material event occurred that would cause the bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination.

(2) *Determination by Board to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the Board shall determine whether to change the capital category of the bank and shall notify the bank of the Board's determination.

§ 208.43 Capital measures and capital category definitions.

(a) Capital measures. For purposes of section 38 and this subpart, the relevant capital measures are:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of section 38 and this subpart, a member bank is deemed to be:

(1) "Well capitalized" if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) "Adequately capitalized" if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth; and

(iv) Does not meet the definition of a "well capitalized" bank.

(3) "Undercapitalized" if the bank has:

(i) A total risk-based capital ratio that is less than 8.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) Except as provided in paragraph (b)(2)(iii)(B) of this section, has a leverage ratio that is less than 4.0 percent; or

(iv) A leverage ratio that is less than 3.0 percent, if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(4) "Significantly undercapitalized" if the bank has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) "Critically undercapitalized" if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Reclassification based on supervisory criteria other than capital.* The Board may reclassify a well capitalized member bank as adequately capitalized and may require an adequately-capitalized or an undercapitalized member bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the Board may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as "reclassifications") in the following circumstances:

(1) *Unsafe or unsound condition.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that, in the most recent examination of the bank, the bank received and has not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, liquidity, or sensitivity to market risk.

§ 208.44 Capital restoration plans.

(a) *Schedule for filing plan.* (1) *In general.* A member bank shall file a written capital restoration plan with the appropriate Reserve Bank within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the Board notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required, pursuant to § 208.43(c), to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 208.43(c), unless the Board notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate Reserve Bank within 45 days of receiving such notice, unless the Board notifies the bank in writing that the plan is to be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the Board instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital restoration plan as the result of a reclassification of the bank pursuant to § 208.43(c) shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the bank.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the Board shall provide written notice to the bank of whether the plan has been approved. The Board may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If the Board does not approve a capital restoration plan, the bank shall submit a revised capital restoration plan within the time specified by the Board. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized member bank (as defined in § 208.43(b)(3)) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as the Board approves a new or revised capital restoration plan submitted by the bank.

(e) *Failure to submit capital restoration plan.* A member bank that is undercapitalized (as defined in § 208.43(b)(3)) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement capital restoration plan.* Any undercapitalized member bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A bank that has filed an approved capital restoration plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of Board approval of a capital restoration plan, or any amendment to a capital restoration plan, the Board shall provide a copy of the plan or amendment to the Federal Deposit Insurance Corporation.

(i) *Performance guarantee by companies that control a bank.* (1) *Limitation on Liability.* (i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific member bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the Board notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the Board may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by a company submits a capital

restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

§ 208.45 Mandatory and discretionary supervisory actions under section 38.

(a) *Mandatory supervisory actions.* (1) *Provisions applicable to all banks.* All member banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in § 208.42 or § 208.44, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the Board monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 3(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.42 or § 208.44, that the bank is significantly undercapitalized, or critically undercapitalized, or that the bank is subject to the provisions applicable to institutions that are significantly undercapitalized because the bank failed to submit or implement in any material respect an acceptable capital restoration plan, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.32, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting the activities of the bank (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the bank (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the Board's discretion to take in connection with: A member bank that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; an officer or director of such bank; or a company that controls such bank, the Board shall follow the procedures for issuing directives under 12 CFR 263.202 and 263.204, unless otherwise provided in section 38 or this subpart.

Subpart E—Real Estate Lending and Appraisal Standards

§ 208.50 Authority, purpose, and scope.

(a) *Authority.* Subpart E of Regulation H (12 CFR part 208, subpart E) is issued by the Board of Governors of the Federal Reserve System under section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o) and Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331–3351).

(b) *Purpose and scope.* This subpart E prescribes standards for real estate lending to be used by member banks in adopting internal real estate lending policies. The standards applicable to appraisals rendered in connection with federally related transactions entered into by member banks are set forth in 12 CFR part 225, subpart G (Regulation Y).

§ 208.51 Real estate lending standards.

(a) *Adoption of written policies.* Each state bank that is a member of the Federal Reserve System shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b) *Requirements of lending policies.* (1) Real estate lending policies adopted pursuant to this section shall be:

(i) Consistent with safe and sound banking practices;

(ii) Appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Reviewed and approved by the bank's board of directors at least annually.

(2) The lending policies shall establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the bank's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the bank's real estate lending policies.

(c) *Monitoring conditions.* Each member bank shall monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) *Interagency guidelines.* The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies (contained in appendix C of this part) established by the Federal bank and thrift supervisory agencies.

Subpart F—Miscellaneous Requirements

§ 208.60 Authority, purpose, and scope.

(a) *Authority.* Subpart F of Regulation H (12 CFR part 208, subpart F) is issued by the Board of Governors of the Federal Reserve System under sections 9, 11, 21, 25 and 25A of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), 481–486, 601 and 611), section 7 of the International Banking Act (12 U.S.C. 3105), section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), sections 1814, 1816, 1818, 1831o, 1831p–1 and 1831r–1 of the FDI Act (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p–1 and 1831r–1), and the Bank Secrecy Act (31 U.S.C. 5318).

(b) *Purpose and scope.* This subpart F describes a member bank's obligation to implement security procedures to discourage certain crimes, to file suspicious activity reports, and to comply with the Bank Secrecy Act's

requirements for reporting and recordkeeping of currency and foreign transactions. It also describes the examination schedule for certain small insured member banks.

§ 208.61 Bank security procedures.

(a) *Authority, purpose, and scope.* Pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), member banks are required to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies, and to assist in the identification and prosecution of persons who commit such acts. It is the responsibility of the member bank's board of directors to comply with the provisions of this section and ensure that a written security program for the bank's main office and branches is developed and implemented.

(b) *Designation of security officer.* Upon becoming a member of the Federal Reserve System, a member bank's board of directors shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time, but no later than 180 days, and to administer a written security program for each banking office.

(c) *Security program.* (1) The security program shall:

(i) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(ii) Establish procedures that will assist in identifying persons committing crimes against the institution and that will preserve evidence that may aid in their identification and prosecution. Such procedures may include, but are not limited to: maintaining a camera that records activity in the banking office; using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices; and retaining a record of any robbery, burglary, or larceny committed against the bank;

(iii) Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny; and

(iv) Provide for selecting, testing, operating, and maintaining appropriate security devices, as specified in paragraph (c)(2) of this section.

(2) *Security devices.* Each member bank shall have, at a minimum, the following security devices:

(i) A means of protecting cash and other liquid assets, such as a vault, safe, or other secure space;

(ii) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(iii) Tamper-resistant locks on exterior doors and exterior windows that may be opened;

(iv) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(v) Such other devices as the security officer determines to be appropriate, taking into consideration: the incidence of crimes against financial institutions in the area; the amount of currency and other valuables exposed to robbery, burglary, or larceny; the distance of the banking office from the nearest responsible law enforcement officers; the cost of the security devices; other security measures in effect at the banking office; and the physical characteristics of the structure of the banking office and its surroundings.

(d) *Annual reports.* The security officer for each member bank shall report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the security program.

(e) *Reserve Banks.* Each Reserve Bank shall develop and maintain a written security program for its main office and branches subject to review and approval of the Board.

§ 208.62 Suspicious activity reports.

(a) *Purpose.* This section ensures that a member bank files a Suspicious Activity Report when it detects a known or suspected violation of Federal law, or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. This section applies to all member banks.

(b) *Definitions.* For the purposes of this section:

(1) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(2) *Institution-affiliated* party means any institution-affiliated party as that term is defined in 12 U.S.C. 1786(r), or 1813(u) and 1818(b) (3), (4) or (5).

(3) *SAR* means a Suspicious Activity Report on the form prescribed by the Board.

(c) *SARs required.* A member bank shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury in accordance with the form's instructions by sending a completed SAR to FinCEN in the following circumstances:

(1) *Insider abuse involving any amount.* Whenever the member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

(2) *Violations aggregating $5,000 or more where a suspect can be identified.* Whenever the member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $5,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.

(3) *Violations aggregating $25,000 or more regardless of a potential suspect.* Whenever the member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $25,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(4) *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (c)(4) means

a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the member bank and involving or aggregating $5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under federal law;

(ii) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(d) *Time for reporting.* A member bank is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a member bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is on-going, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and the Board in addition to filing a timely SAR.

(e) *Reports to state and local authorities.* Member banks are encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(f) *Exceptions.* (1) A member bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(2) A member bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Retention of records.* A member bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A member bank must make all supporting documentation available to appropriate law enforcement agencies upon request.

(h) *Notification to board of directors.* The management of a member bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section.

(i) *Compliance.* Failure to file a SAR in accordance with this section and the instructions may subject the member bank, its directors, officers, employees, agents, or other institution affiliated parties to supervisory action.

(j) *Confidentiality of SARs.* SARs are confidential. Any member bank subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed citing this section, applicable law (e.g., 31 U.S.C. 5318(g)), or both, and notify the Board.

(k) *Safe harbor.* The safe harbor provisions of 31 U.S.C. 5318(g), which exempts any member bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this section or are filed on a voluntary basis.

§ 208.63 Procedures for monitoring Bank Secrecy Act compliance.

(a) *Purpose.* This section is issued to assure that all state member banks establish and maintain procedures reasonably designed to assure and monitor their compliance with the provisions of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103, requiring recordkeeping and reporting of currency transactions.

(b) *Establishment of compliance program.* On or before April 27, 1987, each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

§ 208.64 Frequency of examination.

(a) *General.* The Federal Reserve examines insured member banks pursuant to authority conferred by 12 U.S.C. 325 and the requirements of 12 U.S.C. 1820(d). The Federal Reserve is required to conduct a full-scope, on-site examination of every insured member bank at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The Federal Reserve may conduct a full-scope, on-site examination of an insured member bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The bank has total assets of $250 million or less;

(2) The bank is well capitalized as defined in subpart D of this part (§ 208.43);

(3) At the most recent examination conducted by either the Federal Reserve or applicable State banking agency, the Federal Reserve found the bank to be well managed;

(4) At the most recent examination conducted by either the Federal Reserve or applicable State banking agency, the Federal Reserve assigned the bank a CAMELS rating of 1 or 2;

(5) The bank currently is not subject to a formal enforcement proceeding or

order by the FDIC, OCC, or Federal Reserve System; and

(6) No person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the Federal Reserve to examine any member bank as frequently as the agency deems necessary.

Subpart G—Interpretations

§ 208.100 Sale of bank's money orders off premises as establishment of branch office.

(a) The Board of Governors has been asked to consider whether the appointment by a member bank of an agent to sell the bank's money orders, at a location other than the premises of the bank, constitutes the establishment of a branch office.

(b) Section 5155 of the Revised Statutes (12 U.S.C. 36), which is also applicable to member banks, defines the term branch as including "any branch bank, branch office, branch agency, additional office, or any branch place of business * * * at which deposits are received, or checks paid, or money lent." The basic question is whether the sale of a bank's money orders by an agent amounts to the receipt of deposits at a branch place of business within the meaning of this statute.

(c) Money orders are classified as deposits for certain purposes. However, they bear a strong resemblance to traveler's checks that are issued by banks and sold off premises. In both cases, the purchaser does not intend to establish a deposit account in the bank, although a liability on the bank's part is created. Even though they result in a deposit liability, the Board is of the opinion that the issuance of a bank's money orders by an authorized agent does not involve the receipt of deposits at a "branch place of business" and accordingly does not require the Board's permission to establish a branch.

§ 208.101 Obligations concerning institutional customers.

(a) As a result of broadened authority provided by the Government Securities Act Amendments of 1993 (15 U.S.C. 78o–3 and 78o–5), the Board is adopting sales practice rules for the government securities market, a market with a particularly broad institutional component. Accordingly, the Board believes it is appropriate to provide further guidance to banks on their suitability obligations when making recommendations to institutional customers.

(b) The Board's Suitability Rule, § 208.37(d), is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Banks' responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Banks are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer.

(c) In recommending to a customer the purchase, sale, or exchange of any government security, the bank shall have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to the customer's other security holdings and financial situation and needs.

(d) The interpretation in this section concerns only the manner in which a bank determines that a recommendation is suitable for a particular institutional customer. The manner in which a bank fulfills this suitability obligation will vary, depending on the nature of the customer and the specific transaction. Accordingly, the interpretation in this section deals only with guidance regarding how a bank may fulfill customer-specific suitability obligations under § 208.37(d).[7]

(e) While it is difficult to define in advance the scope of a bank's suitability obligation with respect to a specific institutional customer transaction recommended by a bank, the Board has identified certain factors that may be relevant when considering compliance with § 208.37(d). These factors are not intended to be requirements or the only factors to be considered but are offered merely as guidance in determining the scope of a bank's suitability obligations.

(f) The two most important considerations in determining the scope of a bank's suitability obligations in making recommendations to an institutional customer are the customer's capability to evaluate investment risk independently and the extent to which the customer is exercising independent judgement in evaluating a bank's recommendation. A bank must determine, based on the information available to it, the customer's capability to evaluate investment risk. In some cases, the bank may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may not be able to understand a particular type of instrument or its risk. This is more likely to arise with relatively new types of instruments, or those with significantly different risk or volatility characteristics than other investments generally made by the institution. If a customer is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular product, the scope of a bank's customer-specific obligations under § 208.37(d) would not be diminished by the fact that the bank was dealing with an institutional customer. On the other hand, the fact that a customer initially needed help understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent investment decision.

(g) A bank may conclude that a customer is exercising independent judgement if the customer's investment decision will be based on its own independent assessment of the opportunities and risks presented by a potential investment, market factors and other investment considerations. Where the bank has reasonable grounds for concluding that the institutional customer is making independent investment decisions and is capable of independently evaluating investment risk, then a bank's obligations under § 208.25(d) for a particular customer are fulfilled.[8] Where a customer has delegated decision-making authority to an agent, such as an investment advisor or a bank trust department. the interpretation in this section shall be applied to the agent.

(h) A determination of capability to evaluate investment risk independently will depend on an examination of the customer's capability to make its own investment decisions, including the resources available to the customer to make informed decisions. Relevant considerations could include:

(1) The use of one or more consultants, investment advisers, or bank trust departments;

(2) The general level of experience of the institutional customer in financial markets and specific experience with the type of instruments under consideration;

[7] The interpretation in this section does not address the obligation related to suitability that requires that a bank have "* * * a 'reasonable basis' to believe that the recommendation could be suitable for at least some customers." In the Matter of the Application of F.J. Kaufman and Company of Virginia and Frederick J. Kaufman, Jr., 50 SEC 164 (1989).

[8] *See* footnote 7 in paragraph (d) of this section.

(3) The customer's ability to understand the economic features of the security involved;

(4) The customer's ability to independently evaluate how market developments would affect the security; and

(5) The complexity of the security or securities involved.

(i) A determination that a customer is making independent investment decisions will depend on the nature of the relationship that exists between the bank and the customer. Relevant considerations could include:

(1) Any written or oral understanding that exists between the bank and the customer regarding the nature of the relationship between the bank and the customer and the services to be rendered by the bank;

(2) The presence or absence of a pattern of acceptance of the bank's recommendations;

(3) The use by the customer of ideas, suggestions, market views and information obtained from other government securities brokers or dealers or market professionals, particularly those relating to the same type of securities; and

(4) The extent to which the bank has received from the customer current comprehensive portfolio information in connection with discussing recommended transactions or has not been provided important information regarding its portfolio or investment objectives.

(j) Banks are reminded that these factors are merely guidelines that will be utilized to determine whether a bank has fulfilled its suitability obligation with respect to a specific institutional customer transaction and that the inclusion or absence of any of these factors is not dispositive of the determination of suitability. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular bank/customer relationship, assessed in the context of a particular transaction.

(k) For purposes of the interpretation in this section, an institutional customer shall be any entity other than a natural person. In determining the applicability of the interpretation in this section to an institutional customer, the Board will consider the dollar value of the securities that the institutional customer has in its portfolio and/or under management. While the interpretation in this section is potentially applicable to any institutional customer, the guidance contained in this section is more appropriately applied to an institutional customer with at least $10 million invested in securities in the aggregate in its portfolio and/or under management.

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

§§ 250.120 through 250.123, 250.140, 250.161, 250.162 [Removed]

2. Sections 250.120, 250.121, 250.122, 250.123, 250.140, 250.161, 250.162 are removed.

§§ 250.300 through 250.302 [Removed]

3. The undesignated center heading preceding § 250.300 and §§ 250.300 through 250.302 are removed.

By order of the Board of Governors of the Federal Reserve System, July 6, 1998

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–18274 Filed 7–10–98; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 209

[Regulation I; Docket No. R–0966]

Issue and Cancellation of Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending its Regulation I regarding the issue and cancellation of Federal Reserve Bank Capital Stock in order to reduce regulatory burden and simplify and update requirements. The amendments modernize Regulation I in accordance with the Board's policy of regular review of its regulations and the Board's review of its regulations pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Staff Attorney (202/452–3688), Legal Division, Board of Governors; Bill Pullen, Accountant (202/736–1947, Division of Reserve Bank Operations and Payment Systems, Board of Governors; or Anthony Scafide, Manager (215/574–6546), Wholesale Payments Division, Federal Reserve Bank of Philadelphia. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

As part of its policy of regular review of its regulations, and consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), the Board of Governors of the Federal Reserve System (Board) is amending its Regulation I regarding issue and cancellation of Federal Reserve Bank capital stock (12 CFR part 209). Section 303 of the Riegle Act requires each federal banking agency to review and streamline its regulations and written policies to improve efficiency, reduce unnecessary costs, and remove inconsistencies and outmoded and duplicative requirements. The amendments are designed to reduce regulatory burden and simplify and update the Regulation.

The Board published a notice of proposed rulemaking in the **Federal Register** on March 31, 1997 (62 FR 15297) that solicited comments on the proposed amendments described below. In general, the amendments simplified, modernized, and condensed the Regulation, and reflected the replacement of share certificates by a book-entry system. The amendments also codified Board and staff interpretations. In addition, the amendments deleted the many references to specific forms. Many of these references are incorrect because the forms no longer exist or no longer have the same identification numbers. Finally, the proposal sought comment on the method of computing accrued dividends on Reserve Bank capital stock and on deferring changes in Reserve Bank capital stock positions to reflect small changes in member bank capital stock and surplus.

The Board received nine comments on its proposal, five from Federal Reserve Banks, three from banking organizations, and one from a trade association. The comments were generally supportive of the proposal overall, and especially of the shift to book entry electronic recordkeeping.

Final Rule

The Board is adopting the revised Regulation I substantially as proposed. In addition, in response to comments, the final Regulation makes clear that Reserve Bank stock is issued to member banks in organization as of their opening for business and not before, incorporates the Board's final rule on relocation of member banks and makes appropriate adjustments to the section on Cancellation of Reserve Bank Stock, carries over adjustments in Reserve

Bank stock positions that do not exceed the lesser of 15 percent or 100 shares until the year-end report of condition, clarifies the treatment of gains or losses on securities available for sale and foreign exchange translation adjustments, and adopts a 360-day year of 30-day months for dividend accruals.

An section-by-section discussion follows.

Banks Desiring to Become Member Banks

Proposed § 209.2 combined and condensed existing §§ 209.1 and 209.2 regarding national and state bank applications. Existing § 209.1 also specified the amount of Reserve Bank stock for which national banks should apply, but the proposal combined all references to amount in proposed § 209.4 and deleted repetitive explanations. The Board received no specific comments on subsection (a) as proposed and the final rule adopts the subsection as proposed.

Subsection (b) specified procedures for issuance of Reserve Bank stock. The proposal provided for issuance of such stock when all applicable requirements had been complied with in the case of a state bank approved for membership. One commenter suggested that the Regulation clarify that the issuance of the stock to a state member bank may not precede its opening for business. National banks in organization are issued stock in their Reserve Banks as of the date upon which they open for business. The Board is modifying § 209.2(b) in the final rule to require that in the case of a state member bank in organization, assuming all applicable requirements have been complied with, its Reserve Bank shares shall likewise be issued as of the date it opens for business.

Proposed § 209.2 also included a subsection (c) that would specify the Reserve Bank of which a bank may become a member and that was the subject of a separate request for comment. *See* 62 FR 11117 (March 11, 1997). That rule was separately approved by the Board and is incorporated herein. See 62 FR 34613 (June 27, 1997).

Cessation of Membership

Proposed § 209.3 combined and simplified existing §§ 209.5(b) (merger of a member bank into a state nonmember bank), 209.6 (conversion of a national bank into a state nonmember bank), 209.7 (insolvency), 209.8 (voluntary liquidation), 209.9(b) (national bank in the hands of a conservator to be liquidated), 209.10 (closed state member banks not in liquidation), 209.11 (voluntary withdrawal from membership by state bank), and 209.12 (involuntary termination of state bank membership).

The existing Regulation distinguishes between insolvency and voluntary liquidation (where the bank or receiver was required to file for cancellation of Reserve Bank stock within three months), other cessation of business by state member banks (where failure by the bank to file for cancellation within 60 days commenced a process whereby the Board might order termination of membership), and other cases such as voluntary withdrawal, merger into a nonmember bank, or conversion of a national bank into a nonmember state bank (where the regulation imposed no specific timing requirement for filing an application for cancellation of Reserve Bank stock). Proposed 209.3(a) provided instead that all such banks (or receivers) shall file promptly for cancellation of Reserve Bank stock, failing which the Board may order the membership of the bank terminated under 209.3(b).

The Federal Reserve Act (the Act) provides in section 6(2) (12 U.S.C. 288) that the Comptroller of the Currency may appoint a receiver for a national bank that has discontinued banking operations for 60 days but has not gone into liquidation, if the Comptroller deems it advisable. The existing regulation includes in § 209.9(a) a provision for the appropriate Reserve Bank to notify the Office of the Comptroller of the Currency in the event a national bank has ceased business for 60 days but has not gone into liquidation, together with a statement of reasons why a receiver should be appointed. The proposal omitted this provision. The appropriate procedures for communication among the Board, the Reserve Bank, and the Comptroller's office in such a case would depend on the facts and circumstances of the particular case.

Subsection (c) of the proposal sets forth the effective date of cancellation in whole of Reserve Bank stock held by member banks. One commenter inquired about dividend accruals between the effective date of cancellation and the date of actual cancellation. While this question does not arise in the case of a member bank all of whose Reserve Bank shares are maintained in an electronic register at the Reserve Bank, it could arise in the case of a member bank holding certificates. In that case, dividends cease to accrue on the effective date of cancellation.[1]

Subsection (d) of the proposal condensed and simplified the existing procedures for dealing with mergers of member banks. In light of the adoption of the change in location provisions discussed above and included in this final rule at § 209.2(c), and because changes in location and mergers of member banks located in different Federal Reserve Districts involve similar procedures, the final rule modifies the proposal to distinguish between mergers of member banks in the same District, discussed in paragraph (d)(1), and changes in location and mergers of member banks located in different districts, discussed in paragraph (d)(2). In the former case, the Reserve Bank cancels the shares of the nonsurviving bank and credits the appropriate number of shares to the surviving bank. In the latter case, the Reserve Bank where the nonsurviving bank is located (or from whose District the member bank's location is being changed) cancels the shares of the nonsurviving (or relocating) bank and transfers the amount paid in for those shares to the Reserve Bank where the surviving bank is located (or to whose District the member bank's location is being changed), which credits the appropriate number of shares to the surviving (or relocated) bank.

Subsection (e) of the proposal required six months notice of voluntary withdrawal unless waived by the Board. A Reserve Bank suggested the period should be shortened to three months. The Act permits withdrawal by state member banks upon six months written notice but authorizes the Board to waive both the notice requirement and a related requirement that no Reserve Bank cancel more than 25 percent of its stock in a calendar year. The Regulation tracks the statutory language and the Board believes that the waiver mechanism should continue to prevent any hardship for withdrawing banks without creating the possibility of instability in Reserve Bank capital stock.

The Board received no other specific comments on § 209.3. Other than the procedural changes to reflect inter-District mergers and relocations and conforming changes for intra-District mergers, the final rule adopts proposed § 209.3 as proposed.

Amounts and Payments; Frequency of Adjustment

Proposed § 209.4(a) combined in one section the requirement for amount of total subscription for Reserve Bank stock (other than for a mutual savings

[1] The Reserve Bank will pay for the stock on the effective date unless the former member bank has not made timely application as required under subsection (a).

bank) on becoming a member or on a change in capital stock and surplus. The Act requires member banks (other than mutual savings banks) to subscribe for Reserve Bank capital stock in an amount equal to 6 percent of their capital stock and surplus. Member banks are required to pay in half this amount and half is subject to call by the Reserve Bank.

Section 5 of the Act provides that Federal Reserve Bank stock shall be adjusted from time to time as member banks increase or decrease capital stock and surplus. The Act does not specify whether this adjustment must be done immediately or can be done periodically after a number of changes in a member bank's capital stock and surplus have occurred or when such changes become in the aggregate significant. There is a burden associated with adjusting banks' Reserve Stock positions to reflect small changes in the banks' capital accounts. The Board sought comment on how frequently, or after how much cumulative dollar or percentage change, member banks should be required to adjust their Reserve Bank capital stock holdings.

The Board received comments on this issue from five Reserve Banks, three banking organizations, and a trade association. All commenters suggested some form of carryover. Recommendations ranged from carrying over changes of less than 100 shares ($5,000 of investment in Reserve Bank stock or $166,600 of change in member bank capital stock and surplus) to carrying over changes of less than 25%. One Reserve Bank suggested that the Board carry over changes that do not exceed either a specified dollar amount or a percentage, on the grounds that smaller community banks' ownership of Reserve Bank stock need not be changed unless the change would amount to, say, 15 percent but larger banks would need to change their Reserve Bank stock positions to reflect significant dollar amounts even though these amounts would represent smaller percentage changes. Several commenters suggested a quarterly, semi-annual, or annual adjustment either in lieu of or in addition to adjustments occasioned by changes in excess of the permitted carryover. In addition, a number of commenters suggested that member banks be given from 30 days to six months to make any required adjustments. The comments also made clear a lack of consistency in this matter among Reserve Banks, and one commenter urged adoption of a consistent policy across the System.

In light of the comments and the System's experience, the Board has decided in the final rule to carry over changes within a calendar year until the cumulative change exceeds the lesser of 15 percent or 100 shares of Reserve Bank capital stock. Required changes must be made promptly after filing the call report which reflects a change in capital stock and paid-in surplus in excess of the amount permitted to be deferred. In addition, every member bank shall file to eliminate any carryover promptly after its report of condition as of December 31 of each year.

The Board received no other comments on § 209.4(a), and the final rule otherwise adopts proposed § 209.4(a) as proposed. One commenter suggested that an item be added to the call report form showing the difference between the amount of Reserve Bank stock a member bank holds and three percent of the member bank's capital and surplus. Since the call report form already requires sufficient information for the calculation, the Board is not adopting this suggestion.

Preferred Stock, Retained Earnings, Securities Available for Sale, and Translation Gains and Losses

Proposed § 209.4(b) defined member bank capital stock and surplus as capital stock and paid-in surplus. One commenter asked if capital stock includes preferred stock; the Board believes that both common stock and preferred stock are included in the term capital stock. A Reserve Bank suggested utilizing "permanent capital," defined to include minority interests and perpetual preferred stocks, but exclude sinking fund preferred stocks, with a view to making the definition more consistent with definitions used elsewhere in the Board's Regulations. Three commenters strongly supported continuing to omit retained earnings from the capital base for purposes of Reserve Bank stock ownership requirements, and no commenter opposed the proposal in this regard.

The definition of capital stock and surplus in Regulation I has always excluded retained earnings or undivided profits. This exclusion does not conform to definitions used elsewhere in the Board's regulations. The exclusion of retained earnings from the definition of capital stock and surplus minimizes member banks' adjustments in their Reserve Bank stock holdings. The Federal Reserve System experienced approximately 1500 adjustments in Reserve Bank capital stock as a result of changes in member bank capital stock and surplus in 1992. The Board estimates that this number would increase substantially if it were necessary to adjust for changes in retained earnings of member banks.

Although retained earnings were generally excluded from the definition, the proposal incorporated previous guidance requiring a deficit in retained earnings to be subtracted from capital stock and surplus. The proposal also continued an exception for cases where the deficit was relatively small and the appropriate Reserve Bank was satisfied that the deficit would be extinguished by accumulation of earnings or formal reduction of surplus, in which case the adjustment of Reserve Bank stock might be deferred until the end of the quarter in which the deficit arose.

Because the final rule only requires adjustment of member bank Reserve Bank stock positions to reflect changes in member bank capital as shown on the bank's call report as of the end of the quarter, the provision in the proposal to defer a deficit until the end of the quarter in which it arose is no longer necessary and has been deleted from the final rule.

Two commenters raised the issue of gains and losses on securities available for sale, and one of them also raised the issue of unrealized foreign exchange losses. The Board believes that these should be treated in the same manner as retained earnings. Thus, in the event that the aggregate, as shown on a member bank's call report as of the end of the quarter, of its retained earnings, gains (losses) on securities available for sale, and foreign currency translation gains or losses is a deficit, the deficit should be subtracted from capital and surplus. The amendments therefore modify the proposal to treat this aggregate in the same manner as the proposal treated retained earnings.

The Board received no other specific comments on § 209.4(b). Other than deleting the deferral of deficits to the end of the quarter and clarifying the status of gains (losses) on securities available for sale and translation adjustments, the final rule adopts proposed § 209.4(b) as proposed.

Savings Banks

Proposed § 209.4(c) was a condensed version of existing § 209.4 specifying that mutual savings banks are required to subscribe for Reserve Bank stock in an amount equal to 0.6 percent of total deposits rather than 6 percent of capital and surplus. Mutual savings banks not permitted to hold Reserve Bank stock are required to maintain a deposit at the Reserve Bank in the same amount pending a change in state law to permit purchase of the stock. The Board received no specific comments on this section and, other than the carryover of

adjustments not exceeding 15 percent or 100 shares discussed above, the final rule adopts proposed § 209.4(c) as proposed.

Accrued Dividends

Proposed §§ 209.4(d) and (e)(1) specified that transactions in Reserve Bank capital stock between member banks and the Reserve Bank take place at the subscription price plus accrued dividends at the rate of one-half of one percent per month (provided that the total price paid on redemption of Reserve Bank stock does not exceed the book value of such stock). Under section 5 of the Act (12 U.S.C. 287), banks applying for Reserve Bank capital stock are required to pay the subscription price plus accrued dividends for such stock. Under sections 5, 6, and 9(10) of the Act (12 U.S.C. 287, 288 and 328), Reserve Banks redeeming their capital stock from member banks that are in voluntary liquidation, or which have been declared insolvent and for which a receiver has been appointed, or from state member banks on voluntary withdrawal from or involuntary termination of membership, are required to pay a price equal to the cash subscription price originally paid plus accrued dividends, but may not pay a price exceeding the book value of the Reserve Bank stock. The Act is silent on whether accrued dividends are payable by Reserve Banks in other cases such as merger into nonmember banks. In practice, Reserve Banks have included accrued dividends in both purchases and redemptions, including intra-month accrued dividends, and the amendments applied the concept of accrued dividends to all transactions in Reserve Bank capital stock.[2] In cases where the Act requires accrued dividends, it specifies that they shall accrue at the rate of one-half percent per month.

The Board sought comment on the appropriate method of computing accrued dividends. Generally the Reserve Banks have accrued intra-month dividends on the basis of the actual number of days elapsed within a month divided by the number of actual days in the month. This method results in different daily accruals depending on the number of days in the month for which intra-month accrued dividends are calculated. The Board requested comment on whether adopting another method, such as use of a standard 30-day month, would simplify the computation.

The Board received nine comments on this issue. Three of the Reserve Banks and all three banking organizations that commented favored adopting a 360 day year of twelve 30-day months, generally citing simplicity, general industry practice, and consequent lack of confusion. One Reserve Bank reported that member banks are frequently calling for an explanation of the method currently used, and another pointed out that the use of a standard 30-day month would avoid the need to override automated systems. Two Reserve Banks and one trade association supported the existing practice. The Board has adopted a 360-day year of twelve 30-day months for purposes of calculating accruals on Reserve Bank stock in the final rule and has otherwise adopted proposed §§ 209.4(d) and (e)(1) as proposed.

Cancellation Payments

Proposed § 209.4(e)(2) specified that in the case of any cancellation of Reserve Bank stock under Regulation I, the Reserve Bank may first apply the proceeds to any liability of the member bank to the Reserve Bank, and pay over the remainder to the bank or receiver as appropriate. This replaced a similar requirement in existing § 209.5(b), and clarified that the principle may apply to partial as well as total cancellations. The Board received no specific comments on this issue and the final rule adopts proposed § 209.4 (e)(2) as proposed.

The Share Register

Proposed § 209.5 revised the share register provision of the Regulation to reflect the modern book-entry and electronic records systems the Reserve Banks have implemented. This change permits eliminating the numerous provisions of the existing Regulation that deal with the circumstances under which share certificates may be retained or must be submitted for reissue. For example, existing § 209.13(a) requires a member bank to surrender its certificate in the event of a change in name and for the Reserve Bank to issue a new certificate in the new name. Existing § 209.5(a) includes a lengthy footnote explaining the difference between transfer of Reserve Bank stock certificates by purchase and by operation of law, because a new certificate is not required in the case of transfer by operation of law. Under the proposal, the Reserve Bank in each case need merely change the name of the stockholder in its records.

Several of the comments that generally supported the proposed changes made specific favorable reference to the change to an electronic book-entry recordkeeping system, and the Board received no adverse comments on this section. The final rule adopts proposed § 209.5 as proposed.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish a final regulatory flexibility analysis with any notice of a final rule. One of the requirements of a final regulatory flexibility analysis (5 U.S.C. 604(a))—a statement of the need for, and the objectives of, the rule—is set forth above. The amendments require no additional reporting or recordkeeping requirements and do not overlap with other federal rules.

A second requirement for the final regulatory flexibility analysis is a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis included in the notice of proposed rulemaking. The Board received no comments specifically related to the initial regulatory flexibility analysis.

The third requirement for the final regulatory flexibility analysis is a description of any significant alternatives to the rule consistent with the stated objectives of the applicable statutes and designed to minimize any significant impact of the rule on small entities. The rule will apply to all member banks regardless of size.

The amendments are burden-reducing. Therefore, the Board believes that the amendments will not have a significant adverse economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule contains no collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR Part 1320, Appendix A.1).

List of Subjects in 12 CFR Part 209

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board revises part 209 of chapter II of title 12 to read as follows:

[2] Under sections 6 and 9(10) of the Act, a Reserve Bank is under no obligation to pay unearned accrued dividends on redemption of its capital stock from an insolvent member bank for which a receiver has been appointed or from state member banks on voluntary withdrawal from or involuntary termination of membership. *See, e.g.*, former Board Interpretation of April 17, 1925, X–4322, and related note, formerly published in the Federal Reserve Regulatory Service at 3–500.

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

Sec.
209.1 Authority, purpose, and scope.
209.2 Banks desiring to become member banks.
209.3 Cancellation of Reserve Bank stock.
209.4 Amounts and payments.
209.5 The share register.

Authority: 12 U.S.C. 222, 248, 282, 286–288, 321, 323, 327–328, 333, 466.

§ 209.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 222, 248, 282, 286–288, 321, 323, 327–328, and 466.

(b) *Purpose.* The purpose of this part is to implement the provisions of the Federal Reserve Act relating to the issuance and cancellation of Federal Reserve Bank stock upon becoming or ceasing to be a member bank, or upon changes in the capital and surplus of a member bank, of the Federal Reserve System.

(c) *Scope.* This part applies to member banks of the Federal Reserve System, to national banks in process of organization, and to state banks applying for membership. National banks and locally-incorporated banks located in United States dependencies and possessions are eligible (with the consent of the Board) but not required to apply for membership under section 19(h) of the Federal Reserve Act, 12 U.S.C. 466.[1]

§ 209.2 Banks desiring to become member banks.

(a) *Application for stock or deposit.* Each national bank in process of organization,[2] each nonmember state bank converting into a national bank, and each nonmember state bank applying for membership in the Federal Reserve System under Regulation H, 12 CFR part 208, shall file with the Federal Reserve Bank (Reserve Bank) in whose district it is located an application for stock (or deposit in the case of mutual savings banks not authorized to purchase Reserve Bank stock[3]) in the Reserve Bank. The bank shall pay for the stock (or deposit) in accordance with § 209.4 of this regulation.

(b) *Issuance of stock; acceptance of deposit.* Upon authorization to commence business by the Comptroller of the Currency in the case of a national bank in organization or upon approval of conversion by the Comptroller of the Currency in the case of a state nonmember bank converting to a national bank, or when all applicable requirements have been complied with in the case of a state bank approved for membership, the Reserve Bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books. In the case of a national or state member bank in organization, such issuance shall be as of the date the bank opens for business. In the case of a mutual savings bank not authorized to purchase Reserve Bank shares, the Reserve Bank shall accept the deposit in place of issuing shares. The bank's membership shall become effective on the date of such issuance or acceptance.

(c) *Location of bank.* (1) *General rule.* For purposes of this part, a national bank or a state bank is located in the Federal Reserve District that contains the location specified in the bank's charter or organizing certificate, or, if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (c)(2) of this section.

(2) *Board determination.* If the location of a bank as specified in paragraph (c)(1) of this section, in the judgment of the Board of Governors of the Federal Reserve System (Board), is ambiguous, would impede the ability of the Board or the Reserve Banks to perform their functions under the Federal Reserve Act, or would impede the ability of the bank to operate efficiently, the Board will determine the Federal Reserve District in which the bank is located, after consultation with the bank and the relevant Reserve Banks. The relevant Reserve Banks are the Reserve Bank whose District contains the location specified in paragraph (c)(1) of this section and the Reserve Bank in whose District the bank is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the bank, the location of the bank's head office, the locations where the bank performs its business, and the locations that would allow the bank, the Board, and the Reserve Banks to perform their functions efficiently and effectively.

§ 209.3 Cancellation of Reserve Bank stock.

(a) *Application for cancellation.* Any bank that desires to withdraw from membership in the Federal Reserve System, voluntarily liquidates or ceases business, is merged or consolidated into a nonmember bank, or is involuntarily liquidated by a receiver or conservator or otherwise, shall promptly file with its Reserve Bank an application for cancellation of all its Reserve Bank stock (or withdrawal of its deposit, as the case may be) and payment therefor in accordance with § 209.4.

(b) *Involuntary termination of membership.* If an application is not filed promptly after a cessation of business by a state member bank, a vote to place a member bank in voluntary liquidation, or the appointment of a receiver for (or a determination to liquidate the bank by a conservator of) a member bank, the Board may, after notice and an opportunity for hearing where required under Section 9(9) of the Federal Reserve Act (12 U.S.C. 327), order the membership of the bank terminated and all of its Reserve Bank stock canceled.

(c) *Effective date of cancellation.* Cancellation in whole of a bank's Reserve Bank capital stock shall be effective, in the case of:

(1) Voluntary withdrawal from membership by a state bank, as of the date of such withdrawal;

(2) Merger into, consolidation with, or (for a national bank) conversion into, a State nonmember bank, as of the effective date of the merger, consolidation, or conversion; and

(3) Involuntary termination of membership, as of the date the Board issues the order of termination.

(d) *Exchange of stock on merger or change in location.* (1) *Merger of member banks in the same Federal Reserve District.* Upon a merger or consolidation of member banks located in the same Federal Reserve District, the Reserve Bank shall cancel the shares of the nonsurviving bank (or in the case of a mutual savings bank not authorized to purchase Reserve Bank stock, shall credit the deposit to the account of the surviving bank) and shall credit the appropriate number of shares on its books to (or in the case of a mutual savings bank not authorized to purchase Reserve Bank stock, shall accept an appropriate increase in the deposit of)

[1] If such a bank desires to become a member bank under the provisions of § 19(h) of the Federal Reserve Act, it should communicate with the Federal Reserve Bank with which it desires to do business.

[2] A new national bank organized by the Federal Deposit Insurance Corporation under § 11(n) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)) should not apply until in the process of issuing stock pursuant to § 11(n)(15) of that act. Reserve Bank approval of such an application shall not be effective until the issuance of a certificate by the Comptroller of the Currency pursuant to § 11(n)(16) of that act.

[3] A mutual savings bank not authorized to purchase Federal Reserve Bank stock may apply for membership evidenced initially by a deposit. (*See* § 208.3(a) of Regulation H, 12 CFR part 208.) The membership of the savings bank shall be terminated if the laws under which it is organized are not amended to authorize such purchase at the first session of the legislature after its admission, or if it fails to purchase such stock within six months after such an amendment.

the surviving bank, subject to paragraph (e)(2) of § 209.4.

(2) *Change of location or merger of member banks in different Federal Reserve Districts.* Upon a determination under paragraph (c)(2) of § 209.2 that a member bank is located in a Federal Reserve District other than the District of the Reserve Bank of which it is a member, or upon a merger or consolidation of member banks located in different Federal Reserve Districts,—

(i) The Reserve Bank of the member bank's former District, or of the nonsurviving member bank, shall cancel the bank's shares and transfer the amount paid in for those shares, plus accrued dividends (at the rate specified in paragraph (d) of § 209.4) and subject to paragraph (e)(2) of § 209.4 (or, in the case of a mutual savings bank member not authorized to purchase Federal Reserve Bank stock, the amount of its deposit, adjusted in a like manner), to the Reserve Bank of the bank's new District or of the surviving bank; and (ii) The Reserve Bank of the member bank's new District or of the surviving bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books (or, in the case of a mutual savings bank, by accepting the deposit or an appropriate increase in the deposit).

(e) *Voluntary withdrawal.* Any bank withdrawing voluntarily from membership shall give 6 months written notice, and shall not cause the withdrawal of more than 25 percent of any Reserve Bank's capital stock in any calendar year, unless the Board waives these requirements.

§ 209.4 Amounts and payments.

(a) *Amount of subscription.* The total subscription of a member bank (other than a mutual savings bank) shall equal six percent of its capital and surplus. Whenever any member bank (other than a mutual savings bank) experiences a cumulative increase or decrease in capital and surplus requiring a change in excess of the lesser of 15 percent or 100 shares of its Reserve Bank capital stock, it shall file with the appropriate Reserve Bank an application for issue or cancellation of Reserve Bank capital stock in order to adjust its Reserve Bank capital stock subscription to equal six percent of the member bank's capital and surplus. Such application shall be filed promptly after the first report of condition that reflects the increase or decrease occasioning the adjustment. In addition, every member bank shall file an application for issue or cancellation of Reserve Bank capital stock if needed in order to adjust its Reserve Bank capital stock subscription to equal six percent of the member bank's capital and surplus as shown on its report of condition as of December 31 of each year promptly after filing such report.

(b) *Capital Stock and Surplus defined.* Capital stock and surplus of a member bank means the paid-in capital stock [4] and paid-in surplus of the bank, less any deficit in the aggregate of its retained earnings, gains (losses) on available for sale securities, and foreign currency translation accounts, all as shown on the bank's most recent report of condition. Paid-in capital stock and paid-in surplus of a bank in organization means the amount which is to be paid in at the time the bank commences business.

(c) *Mutual savings banks.* The total subscription of a member bank that is a mutual savings bank shall equal six-tenths of 1 percent of its total deposit liabilities as shown on its most recent report of condition. Whenever any member bank that is a mutual savings bank experiences a cumulative increase or decrease in total deposit liabilities as shown on its most recent report of condition requiring a change in its holding of Reserve Bank stock in excess of the lesser of 15 percent or 100 shares, it shall file with the appropriate Reserve Bank an application for issue or cancellation of Reserve Bank capital stock in order to adjust its Reserve Bank capital stock subscription to equal six-tenths of 1 percent of the member bank's total deposit liabilities. Such application shall be filed promptly after the first report of condition that reflects the increase or decrease occasioning the adjustment. In addition, every member bank that is a mutual savings bank shall file an application for issue or cancellation of Reserve Bank capital stock if needed in order to adjust its Reserve Bank capital stock subscription to equal six-tenths of 1 percent of its total deposit liabilities as shown on its report of condition as of December 31 of each year promptly after filing such report. A mutual savings bank that is applying for or has a deposit with the appropriate Reserve Bank in lieu of Reserve Bank capital stock shall file for acceptance or adjustment of its deposit in a like manner.

(d) *Payment for subscriptions.* Upon approval by the Reserve Bank of an application for capital stock (or for a deposit in lieu thereof), the applying bank shall pay the Reserve Bank one-half of the subscription amount plus accrued dividends. For purposes of this part, dividends shall accrue at the rate of one half of one percent per month calculated on the basis of a 360-day year of twelve 30-day months. Upon payment (and in the case of a national banks in organization or state nonmember bank converting into a national bank, upon authorization or approval by the Comptroller of the Currency), the Reserve Bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books. In the case of a mutual savings bank not authorized to purchase Reserve Bank stock, the Reserve Bank will accept the deposit or addition to the deposit in place of issuing shares. The remaining half of the subscription or additional subscription (including subscriptions for deposits or additions to deposits) shall be subject to call by the Board.

(e) *Payment for cancellations.* (1) Upon approval of an application for cancellation of Reserve Bank capital stock, or (in the case of involuntary termination of membership) upon the effective date of cancellation specified in § 209.3(c)(3), the Reserve Bank shall reduce the bank's shareholding on the Reserve Bank's books by the number of shares required to be canceled and shall pay therefor a sum equal to the cash subscription paid on the canceled stock plus accrued dividends (at the rate specified in paragraph (d) of this section), such sum not to exceed the book value of the stock.[5]

(2) In the case of any cancellation of Reserve Bank stock under this Part, the Reserve Bank may first apply such sum to any liability of the bank to the Reserve Bank and pay over the remainder to the bank (or receiver or conservator, as appropriate).

§ 209.5 The share register.

(a) *Electronic or written record.* A member bank's holding of Reserve Bank capital stock shall be represented by one (or at the option of the Reserve Bank, more than one) notation on the Reserve Bank's books. Such books may be electronic or in writing. Upon any issue or cancellation of Reserve Bank capital stock, the Reserve Bank shall record the member bank's new share position in its books (or eliminate the bank's share position from its books, as the case may be).

(b) *Certification.* A Reserve Bank may certify on request as to the number of

[4] Capital stock includes common stock and preferred stock (including sinking fund preferred stock).

[5] Under sections 6 and 9(10) of the Act, a Reserve Bank is under no obligation to pay unearned accrued dividends on redemption of its capital stock from an insolvent member bank for which a receiver has been appointed or from state member banks on voluntary withdrawal from or involuntary termination of membership.

shares held by a member bank and purchased before March 28, 1942, or as to the purchase and cancellation dates and prices of shares cancelled, as the case may be.

By order of the Board of Governors of the Federal Reserve System, July 6, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–18275 Filed 7–10–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 216

[Regulation P; Docket No. R–0965]

Security Procedures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is rescinding Regulation P, which is no longer necessary since its provisions have been incorporated into Regulation H (Membership of State Banking Institutions in the Federal Reserve System), as issued by the Board elsewhere in today's **Federal Register**. Regulation P requires each bank to adopt appropriate security procedures.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jean Anderson, Staff Attorney, Legal Division (202/452–3707). For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION: Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board reviewed its Regulation P with this purpose in mind and has adopted its proposal to rescind Regulation P in order to meet the goals of section 303(a).

Regulation P implements the requirements of the Bank Protection Act of 1968 (BPA). The BPA requires the federal financial institution supervisory agencies to establish minimum standards for bank security devices and procedures to discourage bank crime and to assist in the identification of persons who commit such crimes. 12 U.S.C. 1882. To implement this statute a uniform regulation (Regulation P) was adopted in 1969 by each of the supervisory agencies—Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (now known as the Office of Thrift Supervision), and the Board. As originally proposed, Regulation P included a list of security devices that banks were required to adopt. On March 1, 1991, (55 FR 13069) (1991 Amendments), the supervisory agencies amended their rules to incorporate amendments made to the BPA by the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA) and to address the fact that many of the required security devices had been rendered obsolete by virtue of technological advances.

Discussion

The Board's action to rescind Regulation P and incorporate its provisions into Regulation H (12 CFR part 208—Membership of State Banking Institutions in the Federal Reserve System) as published elsewhere in today's **Federal Register**, would not substantively change the requirements of Regulation P. The Board's action to incorporate Regulation P into Regulation H is designed to simplify compliance for State member banks by consolidating regulatory requirements applying to State member banks into one regulation.

The Board published its proposal to rescind Regulation P for comment in the **Federal Register** on March 31, 1997 (61 FR 15299). The Board received 4 comments on the proposal from the following types of institutions:

Trade associations—2
Federal Reserve Banks—2

Three of the 4 comments received generally supported, or did not object to, rescinding Regulation P. However, one commenter opposed incorporating Regulation P into Regulation H on the basis that Regulation H relates solely to state member banks and Regulation P addresses security procedures for both state member banks and Federal Reserve Banks. Despite this concern the Board is rescinding Regulation P and incorporating it into Regulation H as proposed because it believes that the Federal Reserve Banks are well aware of the requirements of Regulation P.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this proposal will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will remove a regulation and an interpretation that the Board believes are no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 216

Federal Reserve System, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 1882, the Board is amending 12 CFR chapter II, as set forth below:

PART 216—[REMOVED]

1. Part 216 is removed.

By order of the Board of Governors of the Federal Reserve System, July 6, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–18276 Filed 7–10–98; 8:45 am]

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federal register

Monday
July 13, 1998

Part III

Securities and Exchange Commission

17 CFR Part 240

Reports to be Made by Certain Brokers and Dealers and Year 2000 Readiness Reports to be Made by Certain Transfer Agents; Final and Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40162; File No. S7–7–98]

RIN 3235–AH36

Reports to be Made by Certain Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending Rule 17a–5 under the Securities Exchange Act of 1934 ("Exchange Act") to require broker-dealers to file with the Commission and their designated examining authority ("DEA") at designated times two separate reports regarding their Year 2000 compliance. The reports will increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000; facilitate coordination with self regulatory organizations of industry-wide testing, implementation, and contingency planning; supplement the Commission's examination module for Year 2000 issues and identify potential Year 2000 problems; and provide information regarding the securities industry's preparedness for the Year 2000. The reports are designed to be available to the public which will enable broker-dealer counterparties and others to assess the risks of doing business with a broker-dealer that may not be Year 2000 compliant.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131; Thomas K. McGowan, Assistant Director, 202/942–4886; Lester Shapiro, Senior Accountant, 202/942–0757; or Christopher M. Salter, Staff Attorney, 202/942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in many of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date "01/01/00" as being the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems can also arise earlier than January 1, 2000, as dates in the next millennium are entered into non-Year 2000 compliant programs.

The Commission views the Year 2000 problem as an extremely serious issue. A failure to assess properly the extent of the problem, remediate systems that are not Year 2000 compliant, and then test those systems could endanger the nation's capital markets and place at risk the assets of millions of investors. In light of this, both the broker-dealer industry and the Commission are working hard to address the industry's Year 2000 problems.

As part of its ongoing efforts relating to the Year 2000, on March 5, 1998, the Commission requested comment on proposed amendments to Rule 17a–5 [1] that would require certain broker-dealers to file reports with the Commission and their DEA regarding Year 2000 compliance.[2] In particular, the Commission sought comment on: (i) the definition of the term "Year 2000 Problem;" [3] (ii) the minimum net capital reporting threshold; (iii) the proposed reporting content; (iv) the requirement that portions of the report be attested to by independent public accountants; and (v) the public availability of the information to be reported.

The Commission received 35 comment letters in response to the Proposing Release.[4] The majority of the commenters generally supported the Commission's proposals and made suggestions for improving one or more aspects of the proposed amendments.[5] However, the majority of the commenters objected to the attestation requirement and the $100,000 minimum net capital threshold for determining which broker-dealers would be required to file Year 2000 reports under the proposed amendments. The majority of the commenters that addressed the issue of whether the information reported should be publicly available, objected to the Year 2000 reports and related accountant's attestation report being made public. Based on the comments received, the Commission is adopting the proposed amendments with the changes discussed below.

II. Description of the Proposed Rule Amendments

Under the proposed amendments, a broker-dealer that is required to maintain minimum net capital of $100,000 or greater as of either December 31, 1997, or December 31, 1998, would have been required to file two reports at specified times with the Commission and its DEA regarding its efforts to address Year 2000 Problems. The first of these reports would have evaluated the efforts of the broker-dealer as of December 31, 1997, and would have been required to be filed no later than 45 days after the Commission adopted the proposed rule amendments. The second report would have evaluated the broker-dealer's efforts as of the date of its financial statements for fiscal year-end 1998. This report would have been required to be filed within 90 days after the date of its fiscal year-end financial statements.

As part of the second report, each reporting broker-dealer would have been required to make assertions about its efforts to prepare for the Year 2000. For example, a broker-dealer would have been required to assert whether or not it has a plan to address Year 2000 Problems. In addition to making the assertions, each reporting broker-dealer would have been required to engage an independent public accountant to attest to whether there was a reasonable basis for the broker-dealer's assertions.[6]

As noted in the Proposing Release, the Commission has advised broker-dealers that if a broker-dealer's computer systems have Year 2000 Problems, the broker-dealer may be deemed not to have accurate and current records and be in violation of Rule 17a–3 under the Exchange Act.[7] The Commission also reminded broker-dealers that Rule 17a–11 under the Exchange Act requires every broker-dealer to promptly notify

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[1] 17 CFR 240.17a–5. Rule 17a–5 was adopted by the Commission pursuant to authority under Section 17 of the Exchange Act [15 U.S.C. 78q], and particularly Section 17(e) [15 U.S.C. 78q(e)], which requires every broker- dealer to file annually with the Commission a certified balance sheet and income statement, and such officer information concerning its financial condition as the Commission may prescribe.

[2] Release Nos. 34–39724; IC–23059; IA–1704, (March 5, 1998), 63 FR 12056 (March 12, 1998) ("Proposing Release").

[3] The Proposing Release defined the term "Year 2000 Problem" to include any erroneous result caused by any computer software (i) incorrectly reading the date "01/01/00" or any year thereafter; (ii) incorrectly identifying a date in the year 1999 or any year thereafter; (iii) failing to detect that the Year 2000 is a leap year, and (iv) any other computer error that is directly or indirectly related to (i), (ii), or (iii) above.

[4] All comment letters are available in File No. S7–7–98 at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. The comment period closed on April 27, 1998. *See also* Release Nos. 34-39858; IC–23112; IA–1716 (extending the comment period from April 13, 1998 to April 27, 1998).

[5] Of the 35 comment letters received, five were opposed to any additional regulatory requirements.

[6] The broker-dealer's assertions and the related accountant's attestation report would have been required to be filed only with the second report.

[7] 17 CFR 240.17a–3.

the Commission of its failure to make and keep current books and records.[8]

III. Discussion of Final Rule Amendments

A. Reporting Threshold

In the Proposing Release, the Commission proposed the $100,000 minimum net capital reporting threshold because broker-dealers subject to this minimum net capital level are likely to have substantial financial exposure to the market and to customers. This threshold would have required all dealers, market makers, and clearing firms to file the Year 2000 reports.

Several commenters, including the National Association of Securities Dealers ("NASD"), expressed concern about the proposed net capital threshold because that threshold excludes nearly 72% of all registered broker-dealers from reporting on their efforts to address Year 2000 Problems.[9] These commenters stated that the Commission's proposal does not gather adequate information regarding the risks posed by the Year 2000 because the proposed threshold would exclude many firms that execute thousands of transactions each trading day effecting thousands of customers, market makers, and dealers. These commenters argued that the failure on the part of a large number of excluded broker-dealers to adequately prepare for the Year 2000 could have negative systemic effects on the world's financial markets.

While mindful of the burden on small broker-dealers, the Commission is addressing this comment by requiring each broker-dealer with a minimum net capital requirement of $5,000 or greater to file reports with the Commission and with its DEA that discuss its efforts to address Year 2000 Problems. Broker-dealers that have a minimum net capital requirement of less than $100,000 will only be required to file a less burdensome check-the-box style Year 2000 report. Broker-dealers that meet a $100,000 minimum net capital reporting threshold will be required to file, in addition to the check-the-box report, a more detailed narrative discussion of their Year 2000 efforts. The format for broker-dealers to report on their efforts to address Year 2000 Problems is discussed in more detail in paragraph III.F. below.

[8] 17 CFR 240.17a–11(d).

[9] As explained in the Proposing Release, under the proposed $100,000 net capital threshold, approximately 5,600 out of 7,800 registered broker-dealers would be exempt from the Year 2000 reporting requirements.

B. Attestation Requirement

The Proposing Release would have required each broker-dealer to have an independent public accountant attest to several specific assertions included in the second Year 2000 report. The Commission believed it was important to have an independent third party affirm that there was a reasonable basis supporting the broker-dealer's assertions.

As proposed, each broker-dealer would have been required to assert:

(1) whether it has developed written plans for preparing and testing its computer systems for potential Year 2000 Problems;

(2) whether the board of directors, or similar body, has approved these plans, and whether a member of the broker-dealer's board of directors, or similar body, is responsible for executing the plans;

(3) whether its Year 2000 remediation plans address all domestic and international operations, including the activities of its subsidiaries, affiliates, and divisions;

(4) whether it has assigned existing employees, hired new employees, or engaged third parties to execute its Year 2000 remediation plans; and

(5) whether it has conducted internal and external testing of its Year 2000 solutions and whether the results of those tests indicate that the broker-dealer has modified its software to correct Year 2000 problems.

The American Institute of Certified Public Accountants ("AICPA") commented that the required attestation report would be difficult for independent public accountants to provide. The AICPA said that some of the required broker-dealer assertions are not appropriate for accountant attestation because the assertions are not capable of reasonably consistent measurement against reasonable criteria. Currently, there are no established criteria related to Year 2000 remediation efforts. The lack of established criteria would likely result in significant variation in the examination procedures performed by independent public accountants and thus reduce the usefulness of the attestation reports. In addition, the AICPA expressed concern that the purpose and conclusions of the attestation report could be misunderstood. The AICPA was primarily concerned that uninformed users of the attestation reports would place undue reliance on them.

The AICPA suggested that an "agreed-upon procedures" engagement, instead of an attestation engagement, would more effectively meet the Commission's goals. Pursuant to such an engagement, a broker-dealer would engage an independent public accountant to perform and report on specific procedures designed to meet the Commission's objectives. This would eliminate the variability of examination procedures performed by independent public accountants and thus increase the consistency of the reports received by the Commission. The AICPA's letter outlined elements of an agreed-upon procedures report and offered to follow-up with the Commission staff regarding the development of specific procedures for a Year 2000 engagement.

The Commission is deferring consideration of whether to adopt a requirement that the second report be evaluated by an independent public accountant. The Commission, however, will consider such a requirement if the accounting industry recommends a standard which can be used by public accountants in connection with the second report.[10]

C. Public Availability

The proposed rules would have made a broker-dealer's Year 2000 reports, including the attestation by the independent public accountant, available to the public. The Commission recognizes commenters' concerns that some users of these reports could place undue reliance on the reports, the technical nature of the reports could confuse investors, detailed testing reports could be misleading and unnecessarily alarming, and the reports could contain confidential proprietary information.

However, the Commission believes that the public's interest is best served by requiring full and open disclosure. Allowing the public, particularly other broker-dealers and counterparties, to have access to the information reported by broker-dealers will enable interested persons to assess the Year 2000 readiness of a broker-dealer with which they are doing business. For example, after receiving a counterparty's report, another broker-dealer might request additional information or assurances if the counterparty does not appear to be taking the steps necessary to be Year 2000 compliant. In the absence of such assurances, the other broker-dealer could determine whether it wishes to

[10] In light of the AICPA's comment letter and ongoing efforts, in a companion release also issued today the Commission is re-opening the comment period with respect to the proposal to have an independent public accountant review a broker-dealer's second Year 2000 report. The public file (No. S7–7–98) will include both the AICPA's original comment letter and any follow-up letter submitted by the AICPA for the Commission's consideration.

continue its dealings with that broker-dealer.

Accordingly, the final rule provides that these reports will be available to the public.

D. Timing

The Proposing Release established as-of dates and due dates for the reports broker-dealers were required to file.[11] Some commenters explained that, in the absence of an existing requirement to make and retain records detailing Year 2000 remediation efforts as of December 31, 1997, the information to prepare the reports may not be available. In addition, several commenters stated that reporting Year 2000 status as of December 31, 1997 would provide data that is outdated and misleading. Finally, some broker-dealers commented that they have fiscal years that end in mid to late 1998, and that the proposed due dates and as-of-dates for the first and second reports would have required some broker-dealers to file their reports virtually back-to-back.

The rule adopted by the Commission today requires a broker-dealer to file its first report with the Commission and its DEA by August 31, 1998. This report should reflect the status of the broker-dealer's Year 2000 efforts as of July 15, 1998. The second report must be filed with the Commission and the broker-dealer's DEA by April 30, 1999, and should reflect the status of the broker-dealer's Year 2000 efforts as of March 15, 1999.

The rule adopted today also requires new broker-dealers who register as a broker-dealer between July 16, 1998 and December 31, 1998, to file with the Commission and its DEA no later than 30 days after its registration becomes effective the first report on its Year 2000 compliance as of the date of its registration. In addition, the rule also requires new broker-dealers who register as a broker-dealer between March 16, 1999 and October 1, 1999, to file with the Commission and its DEA no later than 30 days after its registration becomes effective a report on its Year 2000 compliance as of the date of its registration.[12]

[11] The first of these reports would have evaluated the efforts of broker-dealers as of December 31, 1997, and would have been required to be filed no later than 45 days after the Commission adopted the proposed rule amendments. The second report would have evaluated broker-dealer efforts as of the date of their financial statements for fiscal year-end 1998. This report would have been required to be filed within 90 days after the date of their financial statements.

[12] New broker-dealers who register between January 1, 1999 and March 15, 1999, are required to file a report on their Year 2000 efforts no later than April 30, 1999. This report should reflect their Year 2000 efforts as of March 15, 1999.

E. Reporting Requirements

As previously discussed, the Proposing Release would have required each reporting broker-dealer to discuss the steps it has taken to address Year 2000 Problems. More specifically, each broker-dealer would have been required to (i) indicate whether its board of directors, or similar body, has approved and funded written Year 2000 remediation plans that address all major computer systems; (ii) describe its Year 2000 staffing efforts, and the work performed by Year 2000 dedicated staff;[13] (iii) discuss its progress on each stage of preparation for the Year 2000;[14] (iv) indicate if it has written contingency plans to deal with Year 2000 problems that may occur;[15] and (v) identify what levels of management are responsible for Year 2000 remediation efforts.

The Securities Industry Association ("SIA") suggested some changes to the specific reporting requirements to better clarify the information sought by the Commission. For example, the Proposing Release would have required broker-dealers to discuss the work performed by Year 2000 dedicated staff on an individual basis. In addition, broker-dealers would have been required to identify the levels of management involved in the Year 2000 efforts, discuss the specific responsibilities of these managers, and provide an estimate of the time they have spent on Year 2000 efforts. The SIA explained that these proposed requirements may be very burdensome. Fixing Year 2000 problems may require the dedicated efforts of a significant number of employees and consultants. In addition, the tasks and responsibilities involved may be detailed, extensive, and constantly changing.

The proposed rule also would have required broker-dealers to report the number and nature of the exceptions resulting from both internal and integrated testing of software designed to avoid Year 2000 Problems. The SIA commented that this requirement would likely provide meaningless information. The SIA explained that testing software is a dynamic process that in many instances requires exceptions to be identified hourly, daily, and weekly. In addition, identified exceptions may be immediately addressed, causing new exceptions to emerge. This process may repeat itself many times before testing is finished. Consequently, by the time the Commission received the Year 2000 reports, the exceptions discussed in them may have been addressed and new exceptions identified.

The Commission agrees that some modification of the reporting requirements is warranted. The rule adopted today requires each broker-dealer completing the narrative portion of Form BD–Y2K to provide a summary of the efforts of Year 2000 dedicated individuals or groups of individuals. The broker-dealer will not have to provide an estimate of the time that its management has spent on Year 2000 efforts. Finally, the broker-dealer must report the number and description of material exceptions identified during the internal and external testing of its software that are unresolved as of the report date. The Commission is leaving the determination of what constitutes a material exception to the broker-dealer's judgment.

F. Report Format

The Proposing Release would have required each broker-dealer meeting the $100,000 minimum net capital threshold to discuss, in narrative format, its efforts to address Year 2000 Problems. The National Association of Securities Dealers Regulation, Inc. ("NASDR") commented that the Commission should prescribe a format for a broker-dealer to use when reporting on its Year 2000 efforts. More specifically, the NASDR suggested that the Commission prescribe an objective reporting format, such as a check-the-box questionnaire. The NASDR explained that an open narrative format may lead to great disparity in the nature and detail of the reports that broker-dealers would submit. Providing a reporting format would produce consistent results, improve the accuracy and comparability of reports received, and reduce the time required to

[13] This includes whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems.

[14] These stages are: (i) awareness of potential Year 2000 Problems; (ii) assessment of what steps must be taken to avoid Year 2000 Problems; (iii) implementation of the steps needed to avoid Year 2000 Problems; (iv) internal testing of software designed to avoid Year 2000 Problems; (v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, customers, and vendors); and (vi) implementation of tested software that will avoid Year 2000 Problems.

[15] Contingency planning should provide for adequate protections to ensure the success of critical systems if interfaces fail or unexpected problems are experienced with operating systems and infrastructure software. In addition, contingency plans should provide for the failure of external systems that interact with the broker-dealer's computer system. For example, contingency plans should anticipate the failure of a vendor that services mission critical applications and should provide for the potential that a significant customer experiences difficulty due to Year 2000 problems.

summarize, track, analyze, and report the information received.

The Commission recognizes the value of receiving the requested information in an objective format and that prescribing such a format would decrease the burden that the Year 2000 reporting requirements impose on broker-dealers. However, the Commission also is concerned that limiting the reporting requirements to a check-the-box format for broker-dealers that pose the greatest risk to customers and the market will not provide the Commission or the DEAs sufficient information to effectively review for Year 2000 compliance.

The rule the Commission adopts today requires each broker-dealer with a minimum net capital requirement of $5,000 or greater to file with the Commission and its DEA Part I of a new Form BD–Y2K.[16] Part I of Form BD–Y2K is a check-the-box Year 2000 report that generally addresses the same issues the proposed narrative discussion addresses. Each broker-dealer that is required to maintain net capital of $100,000 or greater will be required to file Part II of Form BD–Y2K, which requires a narrative discussion of its efforts to address Year 2000 Problems. The narrative discussion is designed to provide the Commission and the DEA's with additional information on the Year 2000 efforts of those broker-dealers who pose the greatest risk to customers and the market if they are not Year 2000 compliant.

Copies of Form BD–Y2K are available in Commission's Public Reference Room located at 450 Fifth Street, NW, Washington, DC 20549 or copies can be obtained from the Commission's internet web site at the following address: www.sec.gov.

IV. Costs and Benefits of the Rules and Their Effects on Competition, Efficiency, and Capital Formation

Section 23(a) of the Exchange Act[17] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules and to not adopt a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Furthermore, Section 3(f) of the Exchange Act[18] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission has considered the amendments to Rule 17a–5 in light of the standards cited in Sections 3 and 23 (a)(2) of the Exchange Act. In the Proposing Release, the Commission requested that commenters provide analysis and data supporting the costs and benefits of the proposed amendments. In addition, the Commission sought comments on the proposed amendments' effect on competition, efficiency, and capital formation.

Several commenters indicated that the Commission's cost estimates were too low. However, no commenters provided detailed information or data as to the costs of the proposed amendments. One commenter addressed the issue of whether the proposed amendments would affect competition. Finally, no comments were received regarding the proposed amendments effect on efficiency and capital formation.

A. Cost Benefit Analysis

Based on comments received, the Commission has revised the proposed amendments the result of which is to lower the aggregate cost of compliance with the rule. As discussed above, the Commission is adopting new Form BD–Y2K and is expanding the requirement that a broker-dealer report on its Year 2000 efforts to each broker-dealer with a minimum net capital requirement of $5,000 or greater. Each of these broker-dealers is required to file Part I of Form BD–Y2K, a check-the-box Year 2000 report. Each broker-dealer that meets the $100,000 minimum net capital reporting threshold is required to also complete Part II of Form BD–Y2K.

The Commission is also deferring consideration of whether to require broker-dealers to engage independent public accountants to examine their efforts to address Year 2000 Problems. The Commission is allowing broker-dealers to summarize by group the efforts of Year 2000 dedicated individuals as opposed to requiring individual descriptions of these people's efforts. Broker-dealers will not have to provide an estimate of the time management has spent on Year 2000 efforts. Finally, broker-dealers are only required to report the number and description of unresolved material exceptions identified during the internal and external testing of their software.

Based on field testing of Part I of Form BD–Y2K conducted by the Office of Compliance Inspections and Examinations, the Commission estimates that on average a broker-dealer will spend approximately two hours completing Part I of Form BD–Y2K resulting in a total cost to the industry of $2,400,000.[19] This is based on 6,000 respondents spending four hours at $100 per hour preparing two reports consisting of Part I of Form BD–Y2K. The Commission estimates that on average a broker-dealer will spend 35 hours completing Part II of Form BD–Y2K resulting in a total cost to the industry of $15,400,000. This is based on 2,200 broker-dealers spending 70 hours at $100 per hour preparing two reports consisting of Part II of Form BD–Y2K. Therefore, based upon the adjustments to the proposed rule, the Commission has revised its cost to the industry to a total of $17,800,000 ($2,400,000 + $15,400,000). It is important to note that this is a total cost estimate and not an annual cost. Broker-dealers will only be required to prepare and file two Form BD–Y2Ks.

No commenters addressed the potential benefits of the amendments, and the Commission has not been able to quantify those benefits. However, the Commission believes that the benefits will outweigh the costs. The Commission is aware of the significant effort the securities industry has put forth and the progress it has made but believes that significant progress still needs to be made by the securities industry to be ready for the Year 2000.

The Commission does not yet have comprehensive information regarding the readiness of the broker-dealer industry for the Year 2000. Although the NASD and the NYSE have conducted surveys of their members, not all members responded to the survey and some of those who did submitted incomplete responses. It is important for the Commission to obtain complete information from individual broker-dealers to permit the Commission and Self Regulatory Organizations ("SROs") to assess the risks associated with firms that fail to show adequate Year 2000 progress. Moreover, the Commission believes that a regulatory requirement to file Year 2000 reports should encourage broker-dealers to proceed expeditiously with their efforts to prepare for the Year 2000. The Commission will use the reported information to obtain a more complete understanding of the industry's overall Year 2000 preparations and to identify firm-specific and industry-wide problems. Information in the reports will help the

[16] For a copy of Form BD–Y2K see Attachment A.

[17] 15 U.S.C. 78w (a)(2).

[18] 15 U.S.C. 78c.

[19] Field tests of Part I of Form BD–Y2K indicated that it could be completed in as little as 30 minutes. However, the Commission believes that it may take longer for some broker-dealers to complete Part I of Form BD–Y2K.

Commission focus its Year 2000-related efforts for the rest of 1998 and 1999 on particular industry segments or firms that appear to pose the greatest risk of non-compliance.

In sum, the rule amendments will enable the Commission to take a more active role in reducing the Year 2000 risk to the securities industry. The reports broker-dealers will be required to file will enable the Commission and the SROs to (i) better monitor the industry's Year 2000 readiness; (ii) increase broker-dealer awareness that they should be aggressively preparing for the Year 2000; (iii) coordinate industry-wide testing, implementation, and contingency planning; and (iv) enable the Commission to identify potential compliance problems.

B. Efficiency, Competition, and Capital Formation

In the Proposing Release, the Commission stated that the proposed amendments should not unduly burden competition. One commenter addressed the proposed amendment's effect on competition. This commenter stated that the proposed amendments could have an anticompetitive effect because the amendments exclude nearly 72% of registered broker-dealers from having to report on their efforts to address Year 2000 Problems.

The Commission has drafted the rule amendments so as to minimize their impact on competition. As discussed above, the Commission adjusted the proposed amendments to require each broker-dealer with a minimum net capital requirement of $5,000 or greater to report on its Year 2000 efforts in order to gather adequate information regarding the industry-wide risks posed by the Year 2000 Problem. However, the Commission has structured the form of the report to differentiate between broker-dealers based upon their size, type of business, and relative risk they pose to customers and the market if they are not Year 2000 compliant. Broker-dealers that do not meet the $100,000 minimum net capital reporting threshold are only required to file the Year 2000 report. Broker-dealers that meet the $100,000 minimum net capital reporting threshold are required to provide additional information. The Commission believes that the proposed amendments do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

The Commission believes that the amendments should increase the efficiency and effectiveness of the industry's efforts to prepare for the Year 2000 by increasing awareness, focusing industry efforts, and providing critical information for identifying and remedying problems. In addition, the Commission believes that the amendments do not adversely affect capital formation. However, failure on the part of the securities industry to adequately prepare for the Year 2000 could adversely affect capital formation at the beginning of the next millennium.

V. Summary of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis ("FRFA") concerning the amendments to Rule 17a–5 has been prepared in accordance with the provisions of the Regulatory Flexibility Act ("RFA"), as amended by Pub. L. 104–121, 110 Stat. 847, 864 (1996), 5 U.S.C. 604. The FRFA notes that the amendments to Rule 17a–5 will enable the Commission to (i) monitor the steps broker-dealers are taking to address Year 2000 Problems; (ii) increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000; (iii) facilitate coordination with SROs on industry-wide testing, implementation, and contingency planning; and (iv) supplement the Commission's examination module for Year 2000 issues.

The Commission received no comments on the Initial Regulatory Flexibility Analysis ("IRFA") prepared in connection with the proposing release, and no comment letters specifically addressed the IRFA. However, as discussed in paragraphs III.A and IV.A above, certain commenters expressed concern about the threshold for determining which broker-dealers are required to report on their efforts to prepare for the Year 2000, and the estimated costs associated with obtaining the independent public accountant's attestation.

As discussed more fully in the FRFA, the rule will affect small entities. When used with reference to a broker or dealer, the Commission has defined the term "small entity" to mean a broker or dealer ("small broker-dealer") that: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to section 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.[20]

Based on FOCUS data for the fourth quarter of 1996, the latest information available, the Commission estimates that there are approximately 5,300 small broker-dealers. Of these 5,300 small broker-dealers, approximately 3,800 are affected by the amendments to Rule 17a–5.[21]

The Commission has drafted the rule amendments so as to minimize their impact on small broker-dealers while enhancing investor protection and minimizing any impact on competition, in part, by adopting different reporting requirements to take into account the resources available to small broker-dealers. The rule amendments require broker-dealers with a minimum net capital requirement of $5,000 or greater to report on their efforts to address Year 2000 problems. However, approximately 1,500 small broker-dealers who do not have a minimum net capital requirement are exempt from reporting on their Year 2000 efforts. In addition, the Commission has adopted two reporting formats for broker-dealers to use when reporting on their efforts to prepare for the Year 2000.

Of the 3,800 small broker-dealers required to report on their Year 2000 efforts, approximately 3,200 (84%) are only required to file a check-the-box style Year 2000 report. As noted in the cost-benefit section above, the Commission estimates that it would take each of these broker-dealers approximately 2 hours to complete the check-the-box Year 2000 report. The remaining 600 (16%) small broker-dealers are required to provide, in addition to the check-the-box style report, a more extensive narrative discussion of their Year 2000 efforts because the type of business that these broker-dealers conduct poses a greater risk to customers and the market if they are not Year 2000 compliant. Thus, by adopting different reporting requirements and by exempting those broker-dealers who do not have a minimum net capital requirement, the Commission has imposed no burden, or only a very limited burden, on approximately 4,700 (89%) small broker-dealers.

The FRFA notes that it would be difficult to further simplify, consolidate, or adjust compliance standards for small broker-dealers and be able to effectively monitor the securities industry's efforts

[20] 17 CFR 240.0–10(c).

[21] The proposed rule amendments would have affected approximately 600 small broker-dealers. The reasons for expanding the Year 2000 reporting requirements are discussed in paragraph III.A. above.

to prepare for the Year 2000. The Commission believes that the alternative reporting requirement adopted for small broker-dealers strikes the appropriate balance between the need to protect investors and the need to minimize the impact on small broker-dealers. The Commission also considered the use of performance rather than design standards. However, the Commission concluded that it would be inconsistent with the purpose of the rule to use performance standards to specify different requirements for small entities.

A copy of the FRFA may be obtained by contacting Christopher M. Salter, Staff Attorney, U.S. Securities and Exchange Commission, Mail stop 10–1, 450 Fifth Street, NW., Washington, DC 20549.

VI. Paperwork Reduction Act

As set forth in the Proposing Release, the amendments to Rule 17a–5 contain collections of information within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[22] Accordingly, the collection of information requirements were submitted to the Office of Management and Budget ("OMB") for review and were approved by OMB which assigned the following control number 3235–0511.

The Proposing Release solicited comments on the proposed collections of information. No comments were received that specifically addressed the PRA submission. However, as discussed in sections III. and IV. above, the Commission received suggestions that would improve the collections of information. Based upon these suggestions, the collections of information have been adjusted as described in sections III. above and are in accordance with Section 3507 of the PRA.[23] These adjustments include the adopting of two reporting formats to increase the consistency, accuracy and comparability of the information collected. In addition, the adjustments will reduce the time required to summarize, track, analyze, and report the information received.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. Broker-dealers are required to comply with the collection of information pursuant to the amendments to Rule 17a–5 and the information is necessary to provide the Commission with a better understanding of the security industry's readiness for the Year 2000. The information collected pursuant to the amendments to Rule 17a–5 will be public.

Based upon the adjustments to the amendments, the Commission is adjusting its burden estimate. The Commission estimated in the Proposing Release that, on average, a broker-dealer would spend 70 hours preparing the Year 2000 report and obtaining the independent public accountant's Attestation. The Commission estimates that under the final amendments, a broker-dealer will, on average, spend two hours preparing Part I of Form BD–Y2K and 35 hours preparing Part II of Form BD–Y2K. The total annualized burden to the securities industry is estimated to be 89,000 hours. This is based on 6,000 respondents spending two hours preparing Part I and 2,200 respondents spending 35 hours preparing Part II of Form BD–Y2K.

VII. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a) and 23(a) thereof, 15 U.S.C. 78o(c)(3) and 78w, the Commission is adopting amendments to § 240.17a–5 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Final Rule

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934.

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By amending § 240.17a-5 by adding paragraph (e)(5) to read as follows:

§ 240.17a-5 Reports to be made by certain brokers and dealers.

* * * * *

(e) *Nature and form of reports.* * * *

(5)(i) For purposes of this section, the term *Year 2000 Problem* shall include problems arising from:

(A) Computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year;

(B) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(C) Computer software failing to detect that the Year 2000 is a leap year; or

(D) Any other computer software error that is directly or indirectly caused by the problems set forth in paragraph (e)(5)(i)(A), (B), or (C) of this section.

(ii) (A) No later than August 31, 1998, every broker or dealer required to maintain minimum net capital pursuant to § 240.15c3–1(a)(2) of $5,000 or greater as of July 15, 1998, shall file Part I of Form BD–Y2K (§ 249.618 of this chapter) prepared as of July 15, 1998, and no later than April 30, 1999, every broker or dealer required to maintain minimum net capital pursuant to § 240.15c3–1(a)(2) of $5,000 or greater as of March 15, 1999, shall file Part I of Form BD–Y2K prepared as of March 15, 1999.

(B) Every broker or dealer that registers pursuant to section 15 of the Act between July 16, 1998 and December 31, 1998 or between March 16, 1999 and October 1, 1999, and that is required to maintain net capital pursuant to § 240.15c3–1(a)(2) of $5,000 or greater, shall file Part I of Form BD–Y2K (§ 249.18 of this chapter) no later than 30 days after its registration becomes effective. Part I of Form BD–Y2K shall be prepared as of the date its registration became effective.

(iii)(A) No later than August 31, 1998, every broker or dealer with a minimum net capital requirement pursuant to § 240.15c3–1(a)(2) of $100,000 or greater as of July 15, 1998 shall file Part II of Form BD–Y2K (§ 249.618 of this chapter). Part II of Form BD–Y2K shall address each topic in paragraph (e)(5)(iv) of this section as of July 15, 1998.

(B) No later than April 30, 1999, every broker or dealer with a minimum net capital requirement pursuant to § 240.15c3–1(a)(2) of $100,000 or greater as of March 15, 1999 shall file Part II of Form BD–Y2K (§ 249.618 of this chapter). In addition, each broker or dealer subject to paragraph (e)(5)(iii)(A) of this section shall file Part II of Form BD–Y2K pursuant to this paragraph (e)(5)(iii)(B) regardless of its minimum net capital requirement. Part II of Form BD–Y2K shall address each topic in paragraph (e)(5)(iv) of this section as of March 15, 1999.

(C) Every broker or dealer that registers pursuant to section 15 of the Act between July 15, 1998 and December 31, 1998 or between March

[22] 44 U.S.C. 3501 *et seq.*

[23] 44 U.S.C. 3507.

16, 1999 and October 1, 1999, and that is required to maintain net capital pursuant to § 240.15c3–1(a)(2) of $100,000 or greater, shall file Part II of Form BD–Y2K (§ 249.18 of this chapter) no later than 30 days after registration becomes effective. Part II of Form BD–Y2K shall address each topic in paragraph (e)(5)(iv) of this section as of the effective date of its registration.

(iv) Part II of Form BD–Y2K (§ 249.618 of this chapter) prepared pursuant to paragraph (e)(5)(iii) of this section shall identify a specific person or persons that are available to discuss the contents of the report and shall include a discussion of the following:

(A) Whether the board of directors (or similar body) of the broker or dealer has approved and funded plans for preparing and testing its computer systems for Year 2000 Problems;

(B) Whether the plans of the broker or dealer exist in writing and address all mission critical computer systems of the broker or dealer wherever located throughout the world;

(C) Whether the broker or dealer has assigned existing employees, hired new employees, or engaged third parties to provide assistance in addressing Year 2000 Problems, and if so, a description of the work that these groups of individuals have performed as of the date of each report;

(D) The current progress of the broker or dealer on each stage of preparation for potential problems caused by Year 2000 Problems. These stages are:

(*1*) Awareness of potential Year 2000 Problems;

(*2*) Assessment of what steps the broker or dealer must take to address Year 2000 Problems;

(*3*) Implementation of the steps needed to address Year 2000 Problems;

(*4*) Internal testing of software designed to address Year 2000 Problems, including the number and a description of the material exceptions resulting from such testing that are unresolved as of the reporting date;

(*5*) Point-to-point or industry-wide testing of software designed to address Year 2000 Problems (including testing with other brokers or dealers, other financial institutions, and customers), including the number and a description of the material exceptions resulting from such testing that are unresolved as of the reporting date; and

(*6*) Implementation of tested software that will address Year 2000 Problems;

(E) Whether the broker or dealer has written contingency plans in the event, that after December 31, 1999, it has problems caused by Year 2000 Problems;

(F) What levels of management of the broker or dealer are responsible for addressing potential problems caused by Year 2000 Problems, including a description of the responsibilities for each level of management regarding the Year 2000 Problems;

(G) Any additional material information concerning its management of Year 2000 Problems that will help the Commission and the designated examining authorities assess the readiness of the broker or dealer for the Year 2000.

(v) The broker or dealer shall file an original and two copies of Form BD–Y2K (§ 249.618 of this chapter) prepared pursuant to paragraph (e)(5) of this section with the Commission's principal office in Washington, D.C. and one copy of Form BD–Y2K with the designated examining authority of the broker or dealer. The reports required by paragraph (e)(5) of this section shall be public.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

4. By adding § 249.618 and Form BD–Y2K to read as follows.

§ 249.618 Form BD–Y2K, information required of broker-dealers pursuant to section 17 of the Securities Exchange Act of 1934 and § 240.17a–5 of this chapter.

This form shall be used by every broker-dealer required to file reports under § 240.17a–5(e) of this chapter.

Note: Form BD–Y2K does not appear in the *Code of Federal Regulations.* Form BD–Y2K is attached as Appendix A to this document.

By the Commission.

Dated: July 2, 1998.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

Appendix A

FORM BD-Y2K

Cover Page

United States

Securities and Exchange Commission

Mail Stop A-2
450 5th Steet, N.W.
Washington, DC 20549

OMB Number:	3235-0511
Expires	12/31/1999
Estimated Average Burden Hours per response	2

Name of Broker-Dealer: _____

SEC File No: _____

CRD File No: _____

Address of Principal Place of Business (Do Not Use P.O. Box No.):

_____

_____

_____

Contact Person Responsible for Filling Out This Form (Please provide your business address and phone number):

Name: _____

Title: _____

Phone: _____

Address: _____

_____

_____
Signature

_____
Title

Attention: Intentional misstatements or omissions of fact constitutes Federal Criminal Violations (See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a))

SEC 2435 (6-98)

GENERAL INSTRUCTIONS

These instructions are considered an integral part of Form BD-Y2K.

Form BD-Y2K is divided into two parts. As discussed below, Part I applies to each broker or dealer with a minimum net capital requirement of $5,000 or greater. Part II applies to only those brokers or dealers with a minimum net capital requirement of $100,000 or greater.

An original and two copies of each Form BD-Y2K must be filed with the Commission's principal office at mail stop A-2, 450 5th Street, N.W., Washington, D.C. 20549, and one copy of each Form BD-Y2K must be filed with the designated examining authority of the broker or dealer.

The original Form BD-Y2K that is required to be filed with the Securities and Exchange Commission ("Commission") must be manually signed. If the broker or dealer is a sole proprietorship, the signature shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the Chief Executive Officer, or if not available, by any person authorized to act on behalf of the broker or dealer.

For the purposes of this Form BD-Y2K, the term "Year 2000 Problem" includes any erroneous result caused by computer software (i) incorrectly reading the date "01/01/00" or any year thereafter; (ii) incorrectly identifying a date in the year 1999 or any year thereafter; (iii) failing to detect that the Year 2000 is a leap year; and (iv) any other computer error that is directly or indirectly related to the problems set forth in (i), (ii), or (iii) above.

PART I

Pursuant to section 240.17a-5(e)(5)(ii)(A), no later than August 31, 1998, every broker or dealer required to maintain minimum net capital of $5,000 or greater as of July 15, 1998, pursuant to section 240.15c3-1(a)(2) shall file Part I of Form BD-Y2K prepared as of July 15, 1998, and no later than April 30, 1999, every broker or dealer required to maintain minimum net capital of $5,000 or greater as of March 15, 1999, pursuant to section 240.15c3-1(a)(2) shall file Part I of Form BD-Y2K prepared as of March 15, 1999.

Pursuant to section 240.17a-5(e)(5)(ii)(B), every broker or dealer that registers pursuant to section 15 of the Act between July 16, 1998 and December 31, 1998 or between March 16, 1999 and October 1, 1999, and that is required to maintain net capital pursuant to § 240.15c3-1(a)(2) of $5,000 or greater, shall file Part I of Form BD-Y2K no later than 30 days after its registration becomes effective. Part I of Form BD-Y2K shall be prepared as of the date its registration became effective.

Please do not write explanatory notes next to the questions on the form.

PART II

Pursuant to section 240.17a-5(e)(5)(iii), no later than August 31, 1998, every broker or dealer with a minimum net capital requirement pursuant to section 240.15c3-1(a)(2) of $100,000 or greater as of July 15, 1998, shall file Part II of Form BD-Y2K prepared as of July 15, 1998.

Pursuant to section 240.17a-5(e)(5)(iii), no later than April 30, 1999, every broker or dealer with a minimum net capital requirement pursuant to section 240.15c3-1(a)(2) of $100,000 or greater as of March 15, 1999, and every broker or dealer required to file Part II of Form BD-Y2K as of July 15, 1998 shall file Part II of Form BD-Y2K prepared as of March 15, 1999.

Pursuant to section 240.17a-5(e)(5)(iii), every broker or dealer that registers pursuant to section 15 of the Act between July 15, 1998 and December 31, 1998 or between March 16, 1999 and October 1, 1999, and that is required to maintain net capital pursuant to § 240.15c3-1(a)(2) of $100,000 or greater, shall file Part II of Form BD-Y2K no later than 30 days after registration becomes effective. Part II of Form BD-Y2K shall address each topic in paragraphs (e)(5)(iv) of this section as of the effective date of its registration.

A broker or dealer required to complete Part II of the Form must also complete Part I. Each question should be answered in narrative form, even if your answer covers the same topics included in Part I of this Form.

PAPERWORK REDUCTION ACT DISCLOSURE

Form BD-Y2K requires a broker or dealer to file with the Commission and with its designated examining authority information concerning the broker's or dealer's efforts to address Year 2000 Problems. The form is designed to (i) increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000; (ii) facilitate coordination with self regulatory organizations on industry wide testing, implementation, and contingency planning; (iii) supplement the Commission's examination module for Year 2000 issues; and (iv) provide information regarding the securities industry's preparedness for the Year 2000.

It is estimated that a broker or dealer will spend approximately 2 hours completing Part I of Form BD-Y2K and will spend approximately 35 hours completing Part II of Form BD-Y2K. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

No assurance of confidentiality is given by the Commission with respect to the responses made in the Form BD-Y2K. This filing will be available to the public.

This collection of information has been reviewed by the Office of Management and Budget (OMB) in accordance with the clearance requirements of 44 U.S.C. § 3507. This collection of information has been assigned Control Number 3235-0511 by OMB.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid number. Section 17(a) of the Securities Exchange Act of 1934 authorizes the Commission to collect the information on this Form from registrants. See 15 U.S.C. § 78q.

PART I

Firm Name _____
Firm Address _____
SEC File No. _____
CRD No. _____

1. Year 2000 compliance plan

(a) Do you have a plan for Year 2000 compliance to address whether your computer systems will operate correctly after December 31, 1999?
☐ Yes ☐ No

(b) If not, are you:
☐ Developing a written plan? It is expected to be completed by: MM/DD/YYYY
☐ Not developing a written plan because you do not plan to be conducting business after January 1, 2000? Plan to be out of business by: MM/DD/YYYY
☐ Other (Please specify) _____

If you do not have a plan, go to question 2.

(c) Does the plan address external interfaces with third party computer systems that communicate with your systems?
☐ Yes ☐ No

(d) Is your Year 2000 compliance plan in writing?
☐ Yes ☐ No

(e) Who has approved the plan? (Check all that apply)
☐ No approval ☐ Board of Directors ☐ Corporate officers ☐ Executive management
☐ Head of Information Technology ☐ Employees

(f) Has the plan been discussed with your outside auditors?
☐ Yes ☐ No

(g) What is the scope of coverage of the plan? (Check all that apply)
☐ All systems ☐ Mission critical systems ☐ Physical facilities ☐ Communications systems

(h) Which of your facilities does the plan cover? (Check all that apply)
☐ Our primary facility ☐ Certain U.S. facilities ☐ All U.S. facilities
☐ Certain facilities worldwide ☐ All facilities worldwide
☐ We have no international facilities

(i) Are your activities for non-US clients covered by the plan?
☐ Yes ☐ No ☐ Not Applicable

2. Funding for Year 2000 compliance

(a) Please indicate the month your fiscal year begins. _____

(b) Has specific funding been allocated for fiscal year 1998, fiscal year 1999, or fiscal year 2000 for your Year 2000 compliance plan?
(i) 1998 ☐ Yes ☐ No
(ii) 1999 ☐ Yes ☐ No
(iii) 2000 ☐ Yes ☐ No

If funding has not been allocated for fiscal year 1999 or fiscal year 2000, mark "no." If you marked "no" for 1998, 1999, and 2000 go to question 3.

(c) What is your specific 1998 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?
☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000
☐ $50,001 - $100,000 ☐ $100,001 - $500,000
☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million
☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(d) What items are contained in your 1998 budget for Year 2000 compliance? (Check all that apply)
☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems
☐ Internal testing ☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
☐ Training ☐ SIA industry wide testing ☐ Implementation of contingency plans

If you marked "no" for fiscal year 1999 and fiscal year 2000 in question 2(b), go to question 3.

(e) What is your specific 1999 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?
☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000
☐ $50,001 - $100,000 ☐ $100,001 - $500,000
☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million
☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(f) What items are contained in your 1999 budget for Year 2000 compliance? (Check all that apply)
☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems
☐ Internal testing ☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
☐ Training ☐ SIA industry wide testing ☐ Implementation of contingency plans

If you marked "no" for fiscal year 2000 in question 2(b), go to question 3.

(g) What is your specific 2000 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?
☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000
☐ $50,001 - $100,000 ☐ $100,001 - $500,000
☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million
☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(h) What items are contained in your 2000 budget for Year 2000 compliance? (Check all that apply)
☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems
☐ Internal testing ☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
☐ Training ☐ SIA industry wide testing ☐ Implementation of contingency plans

3. Persons responsible for Year 2000

(a) Has one or more individuals been designated as responsible for your Year 2000 compliance?
☐ Yes ☐ No

(b) If yes, please provide the following information on the person primarily responsible:

Name: _____
Title: _____
Business address: _____

4. Staffing for Year 2000

(a) Is this a full-time project for at least one individual (including both employees and consultants)?
☐ Yes ☐ No

(b) If yes, how many individuals are working full time on Year 2000 compliance?
☐ 1 ☐ 2-5 ☐ 6-10 ☐ 11-20 ☐ 21-50 ☐ 51-100 ☐ 101-200 ☐ over 200

(c) Have you hired third parties to assist you on Year 2000 issues?
☐ Yes ☐ No

(d) If yes, what function(s) are the third parties performing? (Check all that apply)
☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems
☐ Internal testing ☐ Training ☐ Vendor assessment
☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
☐ SIA industry wide testing
☐ Other (Please specify): _____

(e) If you have not completed staffing your Year 2000 project, are you?
☐ Defining resources. This will be completed by: MM/DD/YYYY
☐ Unable to find sufficient staffing resources.
☐ Handling the staffing as part of your ongoing business operations.

5. Inventory of systems

(a) Have you inventoried all systems?
☐ Yes ☐ No

(b) What is the nature of the computer systems you utilize? (Check all that apply)
☐ Off the shelf ☐ Vendor provided
☐ In house developed (custom made)
☐ Other (Please specify): _____

(c) Have you identified your mission critical systems?
☐ Yes ☐ No

(d) If no, this will be completed by: MM/DD/YYYY

(e) Have you determined which of your mission critical systems are not currently Year 2000 compliant?
☐ Yes ☐ No

6. Awareness of the problem

What steps have you taken to enhance **awareness** of potential Year 2000 Problems? (Check all that apply)
☐ None to date ☐ Designated individuals for Year 2000 compliance
☐ Presentations to the Board ☐ Presentations to management
☐ Presentations to employees ☐ Contacted third parties
☐ Other (Please specify) _____

7. Progress on preparing mission critical systems for the Year 2000

What is your progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps you will take to address Year 2000 Problems with your mission critical systems (including preparing an inventory of computer systems affected by the Year 2000):
☐ 0% complete ☐ 1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, assessment expected to be completed by: MM/DD/YYYY

(b) **Implementation** of steps you will take to address Year 2000 Problems with your mission critical systems:
☐ 0% complete ☐ 1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, implementation expected to be completed by: MM/DD/YYYY

(c) **Testing of your mission critical internal systems**:
☐ 0% complete ☐ 1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, testing expected to be completed by: MM/DD/YYYY

(d) Did your testing of internal systems result in material exceptions that remain unresolved as of this filing?
☐ Yes ☐ No

(e) Point-to-point testing of your mission critical systems (including testing with other broker-dealers, other financial institutions, customers, and vendors):
☐ 0% complete ☐ 1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, testing expected to be completed by: MM/DD/YYYY

(f) Did your point-to-point testing result in material exceptions that remain unresolved as of this filing?
☐ Yes ☐ No

(g) **Implementation** of tested software that addresses Year 2000 Problems with your mission critical systems:
☐ 0% ☐ 1-25% complete ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, implementation expected to be completed by: MM/DD/YYYY

8. Progress on preparing all other systems for the Year 2000

What is your progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps you will take to address Year 2000 Problems with your non-critical systems (including preparing an inventory of computer systems affected by the Year 2000):
☐ 0% complete ☐ 1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, assessment expected to be completed by: MM/DD/YYYY

(b) **Implementation** of steps you will take to address Year 2000 Problems with your non-critical systems:
☐ 0% complete ☐ 1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, implementation expected to be completed by: MM/DD/YYYY

(c) **Testing of your non-critical internal systems**:
☐ 0% complete ☐ 1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, testing expected to be completed by: MM/DD/YYYY

(d) Did your testing of internal systems result in material exceptions that remain unresolved as of this filing?
☐ Yes ☐ No

(e) **Point-to-point testing of your non-critical systems (including testing with other broker-dealers, other financial institutions, customers, and vendors):**
☐ 0% complete ☐ 1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, testing expected to be completed by: MM/DD/YYYY

(f) Did your point-to-point testing result in material exceptions that remain unresolved as of this filing?
☐ Yes ☐ No

(g) **Implementation** of tested software that address Year 2000 Problems with your non-critical systems:
☐ 0% ☐ 1-25% complete ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, implementation expected to be completed by: MM/DD/YYYY

9. Contingency plans

(a) Do you have a contingency plan for your systems if, after December 31, 1999, you have problems caused by Year 2000 Problems?
☐ Yes ☐ No

(b) If yes, is the contingency plan in writing?
☐ Yes ☐ No ☐ Not Applicable

(c) If not, what is your progress in preparing a contingency plan?
☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-100%

(d) What is the scope of coverage of the contingency plan? (Check all that apply)
☐ No systems ☐ Mission critical systems ☐ Physical facilities
☐ Communications systems ☐ All systems

(e) Who has approved the contingency plan?
(Check all that apply)
☐ No approval ☐ Board of Directors ☐ Corporate officers ☐ Executive management
☐ Head of Information Technology ☐ Employees

10. Third parties (including clearing firms, vendors, service providers, counterparties, etc.) who provide mission critical systems

(a) Have you identified all third parties upon whom you rely for your mission critical systems?

☐ Yes ☐ No

(b) If yes, how many third parties do you rely upon for your mission critical systems?

☐ _____

(c) What percentage of third parties upon whom you rely for mission critical systems have you contacted regarding their readiness for the Year 2000?

☐ 0% ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ all

If not all, contact expected to be completed by: MM/DD/YYYY

(d) Has any third party upon whom you rely for mission critical systems declined or failed to provide you with assurances that it is taking the necessary steps to prepare for the Year 2000?

☐ Yes ☐ No ☐ Not Applicable

(e) If yes, how many third parties providing mission critical systems have not provided such assurances?

☐ _____

(f) Does your contingency plan account for third parties whose systems may fail after December 31, 1999?

☐ Yes ☐ No ☐ We have no contingency plan

PART II

Firm Name _____
Firm Address _____
SEC File No. _____
CRD No. _____

Pursuant to section 240.17a-5(e)(5)(iv), identify a specific person or persons that are available to discuss the contents of this report and please respond to each of the following questions in narrative form. Each question must be answered, even if your answer covers the same topics included in Part I of this Form

(A) Has the broker's or dealer's board of directors (or similar body) approved and funded plans for preparing and testing its computer systems for Year 2000 Problems?

(B) Do the broker's or dealer's plans for preparing and testing its computer systems for Year 2000 Problems exist in writing and do the plans address all mission critical computer systems of the broker or dealer wherever located throughout the world?

(C) Has the broker or dealer assigned existing employees, hired new employees, or engaged third parties to provide assistance in addressing Year 2000 Problems? If so, provide a description of the work that these groups of individuals have performed as of the date of each report.

(D) What is the broker's or dealer's current progress on each stage of preparation for potential problems caused by Year 2000 Problems? These stages are:

(1) Awareness of potential Year 2000 Problems;

(2) Assessment of what steps the broker or dealer must take to address Year 2000 Problems;

(3) Implementation of the steps needed to address Year 2000 Problems;

(4) Internal testing of software designed to address Year 2000 Problems, including the number and a description of the material exceptions resulting from such testing that are unresolved as of the reporting date;

(5) Point-to-point or industry wide testing of software designed to address Year 2000 Problems (including testing with other brokers or dealers, other financial institutions, and customers), including the number and a description of the

material exceptions resulting from such testing that are unresolved as of the reporting date; and

(6) Implementation of tested software that will address Year 2000 Problems.

(E) Does the broker or dealer have written contingency plans in the event, that after December 31, 1999, it has problems caused by Year 2000 Problems?

(F) What levels of management of the broker or dealer are responsible for addressing potential problems caused by Year 2000 Problems? Provide a description of the responsibilities for each level of management regarding the Year 2000 Problems.

(G) Provide any additional material information concerning the broker's or dealer's management of Year 2000 Problems that will help the Commission and the designated examining authorities assess the readiness of the broker or dealer for the Year 2000.

[FR Doc. 98–18292 Filed 7–10–98; 8:45 am]
BILLING CODE 8010–01–E

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40163; File No. S7–8–98]

RIN 3235–AH42

Year 2000 Readiness Reports To Be Made by Certain Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting Rule 17Ad–18 under the Securities Exchange Act of 1934 ("Exchange Act") to require certain transfer agents to file with the Commission two reports regarding their Year 2000 compliance. The reports will increase transfer agent awareness of the specific steps they should be taking to prepare for the Year 2000; help coordinate industry testing and contingency planning; supplement the Commission's examination module for Year 2000 issues and identify potential Year 2000 compliance problems; and provide information regarding the securities industry's preparedness for the Year 2000. The reports are designed to be available to the public, which will enable issuers and other parties to assess the risks of doing business with a transfer agent that may not be Year 2000 compliant.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, 202/942–4187; Thomas C. Etter, Jr., Special Counsel, 202/942–0178; or Jeffrey Mooney, Special Counsel, 202/942–4174, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in many of the vast majority of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date "01/01/00" as being January 1 of the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems also can arise earlier than January 1, 2000, as dates in the next millennium are entered into non-Year 2000 compliant programs. Year 2000 Problems could have negative repercussions throughout the world's financial systems because of the extensive interrelationship and information sharing between U.S. and foreign financial firms and markets.[1]

The Commission views the Year 2000 problem as an extremely serious issue. A failure to assess properly the extent of the problem, remediate systems that are not Year 2000 compliant, and then test those systems could endanger the nation's capital markets and place at risk the assets of millions of investors. In light of this, both transfer agents and the Commission are working hard to address the industry's Year 2000 Problems.

As part of its ongoing efforts relating to the Year 2000 on March 5, 1998, the Commission requested comment on proposed Rule 17Ad–18 that would require transfer agents to file at least one report with the Commission regarding its Year 2000 compliance.[2] The proposed rule noted that transfer agents present special considerations for the Commission because unlike other entities regulated under the Exchange Act transfer agents have no self-regulatory organization ("SRO") to assist them and the Commission in addressing Year 2000 issues.[3] Therefore, the Commission's only information from non-bank transfer agents is directly from the transfer agent themselves.

The Commission received 26 comment letters in response to the proposed rule.[4] The majority of the

[1] International Organization of Securities Commissions, *Statement of the IOSCO Technical Committee on Year 2000* (1997), available at http://www.iosco.org.

[2] Release No. 34–39726, (March 5, 1998), 63 FR 12062 (March 12, 1998).

[3] SRO is defined in Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26).

[4] All comment letters and a summary of the comments are available in File No. S7–8–98 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. The comment period closed on April 27, 1998. *See also* Release

commenters generally supported the spirit of the Commission's proposed rule with some commenters making suggestions on how they believed one or more aspects of the proposed rule could be improved. However, the majority of commenters objected to the requirement for an independent accountant's report and objected to the Year 2000 reports submitted by the transfer agents and related accountant's report being made available to the public. Based on the comments received, the Commission is adopting the proposed rule with changes discussed below.

II. Description of the Proposed Rule

The Commission proposed Rule 17Ad–18 to require non-bank transfer agents to file at least one report with the Commission regarding their Year 2000 compliance. Under the proposed rule, a non-bank transfer agent was a transfer agent whose appropriate regulatory agency ("ARA") was the Commission.[5] Transfer agents that were also banks and whose ARA was one of the federal banking agencies would have been exempt from the proposed rule. The initial report would have been due no later than 45 days after the Commission adopted the rule. Non-bank transfer agents that did not qualify for an exemption under existing Rule 17Ad–13(d) would have been required to submit follow-up reports to the Commission on August 31, 1998, and August 31, 1999.[6] The follow-up reports also would have included an attestation by an independent public accountant as to whether there was a reasonable basis for the non-bank transfer agent's assertions in the reports.

As noted in the proposed rule, the Commission has advised all transfer agents that if a transfer agent's computer systems have Year 2000 Problems, the transfer agent's record may be inaccurate or not current and therefore be in violation of Rules 17Ad–6 and 17Ad–7 under the Exchange Act.[7]

No. 34–39859; (April 14, 1998), 63 FR 19430 (extending the comment period from April 13, 1998, to April 27, 1998).

[5] ARA is defined in Section 3(a)(34)(B) of the Exchange Act, 15 U.S.C. 78c(a)(34)(B). Transfer agents that are also banks have either the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation as their ARA. Approximately 1,360 transfer agents are registered with the Commission, and the Commission is the ARA for approximately 740 of them.

[6] 17 CFR 240.17Ad–13(d). Generally, the Rule 17Ad–13(d) exemption applies to issuer transfer agents, small transfer agents exempt under Rule 17Ad–4(b), and bank transfer agents.

[7] 17 CFR 240.17Ad–6 and 17Ad.7.

III. Discussion of Significant Issues

A. Reporting Threshold

The Office of Thrift Supervision ("OTS") requested that the Commission extend the exemption in the proposed rule for bank transfer agents to include savings associations regulated by the OTS. The OTS stated that savings associations, unlike other non-bank transfer agents, are subject to comprehensive examinations by a Federal banking agency, using the same uniform examination standards developed under the oversight of the Federal Financial Institutions Examination Council. The OTS also noted that it is subject to similar Congressional oversight on Year 2000 issues as the Commission and the other Federal bank regulatory agencies. The OTS believes that it would be duplicative and inconsistent to require savings associations to file the reports with the Commission exempting banks from the requirement.

The Commission agrees with the OTS. Accordingly, the rule as adopted excludes from its reporting requirements transfer agents that are savings associations regulated by the OTS. Therefore the term "non-bank transfer agent" used in the rule and in the remainder of this release means a transfer agent whose: (i) Appropriate regulatory agency, as that term is defined by 15 U.S.C. 78(c)(34)(B), is the Commission; but (ii) is not a savings association, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, which is regulated by the OTS. Because the Commission will continue to be the ARA for these non-bank transfer agents, the Commission will continue to consult with the OTS about the results of their examinations.

B. Attestation Requirement

The proposed rule would have required transfer agents that did not qualify for an exemption under existing Rule 17Ad–13(d) to make assertions about their efforts to address Year 2000 problems and to engage an independent public accountant to attest to their assertions.[8] As proposed, each non-bank transfer agent would have been required to assert:

(1) Whether it has developed written plans for preparing and testing its computer systems for potential Year 2000 Problems;

(2) Whether the board of directors, or similar body, has approved these plans, and whether a member of the non-bank transfer agent's board of directors, or similar body, is responsible for executing the plans;

(3) Whether its Year 2000 remediation plans address all domestic and international operations, including the activities of its subsidiaries, affiliates, and divisions;

(4) Whether it has assigned existing employees, hired new employees, or engaged third parties to execute its Year 2000 remediation plans; and

(5) Whether it has conducted internal and external testing of its Year 2000 solutions and whether the results of those tests indicate that the non-bank transfer agent has modified its software to correct Year 2000 problems.

The American Institute of Certified Public Accountants ("AICPA") commented that the required attestation report would be difficult for independent public accountants to provide.[9] The AICPA explained that some of the required assertions are not appropriate for accountant attestation because the assertions are not capable of reasonably consistent measurement against established criteria. Currently, there are no established criteria related to Year 2000 remediation efforts. The lack of established criteria would likely result in significant variation in the examination procedures performed by independent public accountants and thus reduce the usefulness of the attestation reports. In addition, the AICPA expressed concern that the purpose and conclusions of the attestation report could be misunderstood. The AICPA was primarily concerned that uninformed users of the attestation reports would place undue reliance on them.

The AICPA suggested that an "agreed-upon procedures" engagement, instead of an attestation engagement, would more effectively meet the Commission's goals. Pursuant to such an engagement, non-bank transfer agents would engage independent public accountants to perform and to report on specific procedures designed to meet the Commissions objectives. This would eliminate the variability of examination procedures performed by independent public accountants and thus increase the consistency of the reports the Commission would receive. The AICPA's letter outlined elements of an agreed upon procedures report and offered to follow-up with the Commission staff regarding the development of specific procedures for a Year 2000 engagement.

[8] The attestation report would have only been required to be filed with the follow-up reports.

[9] Letter from Alan W. Anderson, Senior Vice-President, Technical Services and Deborah D. Lambert, Chair, Auditing Standards Board, AICPA (April 13, 1998).

The Commission is deferring consideration of whether to adopt a requirement that the second report be evaluated by an independent public accountant. The Commission, however, will consider such a requirement if the accounting industry recommends a standard which can be used by public accountants in connection with the second report.[10]

C. Public Availability

In the proposed rule, the Commission expressed its preliminary view that it should make publicly available non-bank transfer agent reports regarding their Year 2000 remediation efforts. Certain commenters expressed the following concerns: (i) Members of the public could place undue reliance on the reports, (ii) the technical nature of the reports may confuse investors, (iii) detailed testing reports could be misleading and unnecessarily alarming, and (iv) the reports could contain confidential proprietary information.

However, the Commission believes that the public's interest is best served by requiring full and open disclosure. Allowing the public, particularly other non-bank transfer agents and counterparties, to have access to the information reported by non-bank transfer agents will enable interested persons to assess the Year 2000 readiness of a non-bank transfer agent with which they are doing business. For example, after receiving a non-bank transfer agent's report, an issuer might request additional information or assurances if the non-bank transfer agent does not appear to be taking the steps necessary to be Year 2000 compliant. In the absence of such assurances, the issuer could determine whether it wishes to continue its dealings with that non-bank transfer agent. Accordingly, the final rule provides that these reports will be available to the public.

D. Timing

Under the proposed rule, the initial report would have evaluated the efforts of non-bank transfer agents as of December 31, 1997, and would have been required to be filed no later than 45 days after the Commission adopted the proposed rule. The follow-up reports would have evaluated non-bank transfer agent efforts as of June 30, 1998 and June 30, 1999, and would have been due August 31, 1998, and August 31, 1999, respectively.

Some commenters expressed concerns about making reports based on old data. These commenters explained that non-bank transfer agents might not have retained the information needed to prepare the reports and would require non-bank transfer agents to provide data that was outdated and misleading.

In light of these concerns, the rule adopted today by the Commission requires non-bank transfer agents to file the initial report with the Commission by August 31, 1998. This report should reflect the status of the non-bank transfer agent's Year 2000 efforts as of July 15, 1998. The rule requires transfer agents to submit only one follow-up report, which must be filed with the Commission by April 30, 1999, and should reflect the status of the transfer agent's Year 2000 efforts as of March 15, 1999.

The rule adopted today also requires a non-bank transfer agent whose registration with the Commission becomes effective between the adoption of this rule and December 31, 1999, to file Part I of Form TA–Y2K with the Commission no later than 30 days after their registration becomes effective describing their Year 2000 compliance as of the date of their registration. New transfer agents whose registration with the Commission becomes effective between January 1, 1999, and April 30, 1999, would be required to file the second report due on April 30, 1999.

E. Reporting Requirements

As previously discussed, the proposed rule would have required certain non-bank transfer agents to discuss the steps they have taken to address Year 2000 Problems. More specifically, non-bank transfer agents would have been required to (i) indicate whether their board of directors or similar body has approved and funded written Year 2000 remediation plans that address all major computer systems; (ii) describe their Year 2000 staffing efforts and the work performed by Year 2000 dedicated staff;[11] (iii) discuss their progress on each stage of preparation for the Year 2000;[12] (iv) indicate if they have written contingency plans to deal with Year 2000 problems that may occur;[13] and (v) identify what levels of management are responsible for Year 2000 remediation efforts.

One commenter suggested certain changes to the specific reporting requirements to better clarify the information sought by the Commission. For example, the proposed rule would have required non-bank transfer agents to discuss the extent to which it has assigned existing employees, or engaged third parties in the Year 2000 effort. In addition, non-bank transfer agents would have been required to identify the levels of management involved in the Year 2000 efforts, discuss the specific responsibilities of these managers, and provide an estimate of the time they have spent on Year 2000 efforts. The commenter explained that these proposed requirements may be very burdensome, particularly for those firms that have comprehensive, complex-wide Year 2000 plans. Fixing Year 2000 problems may require the dedicated efforts of a significant number of employees and consultants. In addition, the tasks and responsibilities involved are detailed, extensive, and constantly changing.

The Commission agrees that some modification and clarification of the reporting requirements is warranted. The rule adopted today requires non-bank transfer agents to provide a summary of the efforts of individuals or groups of individuals assigned to work on the Year 2000 Problem. The non-bank transfer agent will not have to provide an estimate of the time that its management has spent on Year 2000 efforts. Finally, the non-bank transfer agent must report the number and description of material exceptions identified during the internal and external testing of its software that are unresolved as of the report date. The Commission is leaving the determination of what constitutes a

[10] In light of the AICPA's comment letter and ongoing efforts, in a companion release also issued today the Commission is re-opening the comment period with respect to the proposal to hava an independent public accountant review a non-bank transfer agent's second Year 2000 report. The public file (No. S7–8–98) will includa both the AICPA's original comment letter and any follow-up letter submittad by the AICPA for the Commission's consideration.

[11] This includes whether the transfer agent has assigned existing employees, has hired new employees, or has engaged third parties to provide assistance in avoiding Year 2000 Problams.

[12] Thesa stages are: (i) awareness of potential Year 200 Problems; (ii) assessment of what steps must be taken to avoid Year 2000 Problems; (iii) implementation of tha steps needed to avoid Year 2000 Problems; (iv) internal testing of software designed to avoid Year 2000 Problems; (v) integrated or industry-wide testing of software designed to avoid Year 200 Problems (including testing with other transfer agents, other financial institutions, customers, and vendors); and (vi) implementation of tested software that will avoid Year 2000 Problems.

[13] Contingency planning should provide for adequate protections to ensure the success of critical systems is intarfaces fail or unexpectad problems are experienced with operating systems and infrastructure software. In addition, contingency plans should provide for tha failura of external systems that interact with the transfer agents' computer systems. For example, contingency plans should anticipate tha failura of a vendor that sarvices mission critical applications and should provida for tha potential that a significant customer experiences difficulty due to Year 2000 problems.

material exception to the non-bank transfer agent's judgment.

F. Report Format

The proposed rule would have required certain non-bank transfer agents to discuss, in narrative format, their efforts to address Year 2000 Problems. The National Association of Securities Dealers Regulation ("NASDR") commented that the Commission should prescribe an objective format, such as a check-the-box questionnaire, for non-bank transfer agents to use when reporting on their Year 2000 efforts. The NASDR explained that an open narrative format might lead to great disparity in the nature and detail of the reports the non-bank transfer agents would submit. Providing an objective reporting format would produce consistent results, improve the accuracy and comparability of reports received, and reduce the time required to summarize, track, analyze, and report the information received.

The Commission agrees that the checklist format suggested by the NASDR may be a more efficient way of collecting certain information and believes that prescribing such a format would decrease the burden the Year 2000 reporting requirements impose on non-bank transfer agents. However, the Commission is concerned that by limiting the reporting requirements to a check-the-box format, the largest, most significant non-bank transfer agents would not provide the Commission with sufficient information to effectively assess Year 2000 problems. Therefore, the rule as adopted requires all non-bank transfer agents to file with the Commission Part I of Form TA–Y2K, a check-the-box style report.[14] Part I of Form TA–Y2K requires non-bank transfer agents to provide generally the same information as the proposed rule would have required to be submitted in narrative form. However, non-bank transfer agents that do not qualify for an exemption under Rule 17Ad–13(d) will be required to supplement Part I by completing Part II of Form TA–Y2K, which requires a narrative discussion of their efforts to address Year 2000 Problems. Because Rule 17Ad–13(d) generally exempts small transfer agents or issuer transfer agents that typically handle few issues, the potential that these transfer agents could disrupt the clearance and settlement process is not as likely as larger transfer agents that process more issues for more issuers.

Copies of Form TA–Y2K are available in the Commission Public Reference Room located at 450 Fifth Street, NW, Washington DC 20549 or copies can be obtained from the Commission's internet web site at the following address: www.sec.gov.

[14] For a copy of Form TA–Y2K see Appendix A.

IV. Costs and Benefits of the Rules and Their Effects on Competition, Efficiency, and Capital Formation

Section 23(a) of the Exchange Act [15] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules and to not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 3(f) of the Exchange Act [16] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission has considered the amendments to Rule 17Ad–18 in light of the standards cited in Sections 3 and 23 (a)(2) of the Exchange Act. In the proposed rule, the Commission requested that commenters provide analysis and data supporting the costs and benefits of the proposed rule. In addition, the Commission sought comments on the proposed rule's effect on competition, efficiency, and capital formation.

Several commenters indicated that the Commission's cost estimates were too low. However, no commenters provided detailed information or data as to the costs of the proposed rule. One commenter questioned whether the additional regulations and their expense will generate greater preparedness and compliance or whether they would be a greater distraction and misdirect the focus from Year 2000 preparations. Another commenter noted that the Division of Market Regulation has already requested information from each transfer agent regarding its Year 2000 preparations. Therefore, the commenter believed that the proposed rule was duplicative. Another commenter suggested that instead of the proposed rule the Commission should issue an interpretive release under Rule 17Ad–13 that provided standards for transfer agent Year 2000 programs.

Two commenters believed that preparation of the reports required by the proposed rule was not costly or difficult. One of these commenters suggested that all transfer agents, regardless of size or being regulated by other authorities, should provide the reports required by the proposed rule. Three commenters suggested that the Commission also should require transfer agents to obtain certifications from their vendors. No commenter addressed the issue of whether the proposed rule would affect competition or regarding the proposed rule's affect on efficiency and capital formation.

[15] 15 U.S.C. 78W (A)(2).

[16] U.S.C. 78c.

A. Cost Benefit Analysis

Based on comments received, the Commission has revised the proposed rule to lower the aggregate cost of compliance with the rule. As discussed above, the Commission is adopting new Form TA–Y2K, eliminating one of the reporting dates, and expanding the reporting requirement for certain non-bank transfer agents. Under the final rule, all non-bank transfer agents are required to file Part I of Form TA–Y2K, a less burdensome check-the-box report, twice. The proposed rule required an initial report from all non-bank transfer agents and two follow-up reports from those non-bank transfer agents that did not qualify for an exemption under Rule 17Ad–13(d). Under the final rule, each non-bank transfer agent that does not qualify for an exemption under Rule 17Ad–13(d) is also required to complete Part II of Form TA–Y2K.

The Commission is also deferring consideration of whether to require non-bank transfer agents to engage accountants to examine their efforts to address Year 2000 Problems. The Commission is allowing non-bank transfer agents to summarize by group the efforts of Year 2000 dedicated individuals as opposed to requiring individual descriptions of their efforts. Non-bank transfer agents will not have to provide an estimate of the time management has spent on Year 2000 efforts. Finally, non-bank transfer agents are only required to report the number and description of unresolved material exceptions identified during the internal and external testing of their software.

Based on field testing of a virtually identical form, Form BD–Y2K, conducted by the Office of Compliance Inspections and Examinations, the Commission estimates that on average a non-bank transfer agent will spend approximately two hours completing Part I of Form TA–Y2K resulting in a total cost to the industry of $296,000.[17] This is based on 740 respondents

[17] Field tests of Part I of Form BD–Y2K indicated that it could be completed in as little as 30 minutes. However, the Commission believes that it may take longer for some broker-dealers to complete Part I of Form BD–Y2K.

spending four hours at $100 per hour preparing two Part Is of Form TA–Y2K. The Commission estimates that on average a non-bank transfer agent will spend 35 hours completing Part II of Form TA–Y2K resulting in a total cost to the industry of $1,400,000. This is based upon 200 non-bank transfer agents spending 70 hours at $100 per hour preparing two Part IIs of Form TA–Y2K. Therefore, based upon the adjustments to the proposed rule, the Commission has revised its cost to the industry to a total of $1,696,000 ($296,000 + $1,400,000). It is important to note that the total cost estimate is not an annual cost. Non-bank transfer agents will only be required to prepare and file two Form TA–Y2Ks.

No commenters addressed the potential benefits of the rule and the Commission has not been able to quantify those benefits. However, the Commission believes that the benefits will outweigh the costs. The Commission is aware of the significant effort the securities industry has put forth and the progress its has made, but believes that significant progress still needs to be made by the securities industry to be ready for the Year 2000. As noted above, because transfer agents do not have an SRO, the only available information is from the transfer agents themselves.

The Commission does not yet have comprehensive information regarding the readiness of the transfer agent industry for the Year 2000. While the federal banking agencies are examining bank transfer agents, it is important for the Commission to obtain complete information from non-bank transfer agents to permit the Commission to assess the risks associated with non-bank transfer agents that fail to show adequate Year 2000 progress. Moreover, the Commission believes that a requirement to file Year 2000 reports should encourage non-bank transfer agents to proceed expeditiously with their efforts to prepare for the Year 2000. The Commission will use the reported information to obtain a more complete picture of the industry's overall Year 2000 preparations and to identify transfer agent-specific and industry-wide problems. Information in the reports will help the Commission focus its Year 2000-related efforts for the rest of 1998 and 1999 on particular industry segments or non-bank transfer agents that appear to pose the greatest risk of non-compliance.

In sum, the rule will enable the Commission to take a more active role in assessing the Year 2000 risk to the securities industry. The reports non-bank transfer agents will be required to file will increase transfer agent awareness that they should be taking specific steps now to prepare for the Year 2000; help coordinate industry testing and contingency planning; supplement the Commission's examination module for Year 2000 issues; provide information regarding the securities industry's preparedness for the Year 2000; and (iv) enable the Commission to identify particular compliance problems.

B. Efficiency, Competition, and Capital Formation

In the proposing release, the Commission stated that the proposed rule should not unduly burden competition. No commenter addressed the proposed rule's effect on competition.

The Commission believes that it has drafted Rule 17Ad–18 so as to minimize their impact on competition. As discussed above, the Commission has structured the form of the report to differentiate between non-bank transfer agents based upon the threat they would pose to customers and the market if they are not Year 2000 compliant. As discussed above, non-bank transfer agents that qualify for an exemption under Rule 17Ad–13(d) (*i.e.*, small transfer agents and issuer transfer agents) are only required to file the less burdensome Year 2000 report. Larger non-bank transfer agents that provide services for multiple issuers do not qualify for an exemption and are required to provide additional information. The Commission believes that Rule 17Ad–18 does not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

The Commission believes that the rule should increase the efficiency and effectiveness of the industry's efforts to prepare for the Year 2000 by increasing awareness, focusing industry efforts, and providing critical information for identifying and remedying problems. In addition, the Commission believes that the rule does not adversely affect capital formation. However, failure on the part of the securities industry to adequately prepare for the Year 2000 could adversely affect capital formation at the beginning of the next millennium.

V. Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis ("FRFA") concerning Rule 17Ad–18 has been prepared in accordance with the provisions of the Regulatory Flexibility Act ("RFA"), as amended by Pub. L. 104–121, 110 Stat. 847, 864 (1996), 5 U.S.C. 604. The FRFA notes that Rule 17Ad–18 will increase transfer agent awareness of the specific steps they should be taking to prepare for the Year 2000; help coordinate industry testing and contingency planning; supplement the Commission's examination module for Year 2000 issues and identify potential Year 2000 compliance problems; and provide information regarding the securities industry's preparedness for the Year 2000.

The Commission received no comments on the Initial Regulatory Flexibility Analysis ("IRFA") prepared in connection with the proposed rule, and no comment letters specifically addressed the IRFA. However, as discussed in paragraph III.A above, certain commenters expressed concern about the threshold for determining which non-bank transfer agents are required to report on their efforts to prepare for the Year 2000, and estimated costs associated with obtaining the independent public accountant's attestation.

As discussed more fully in the FRFA, the rule will affect transfer agents that are small entities pursuant to Rule 0–10 under the Exchange Act.[18] When used with reference to a transfer agent, the Commission has defined the term "small entity" to mean a transfer agent that: (1) received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10. Approximately 413 registered transfer agents qualify as "small entities" for purposes of the RFA.

The Commission has drafted Rule 17Ad–18 to minimize its impact on small transfer agents while enhancing investor protection and minimizing any impact on competition, in part, by adopting different reporting requirements to take into account the resources available to small non-bank transfer agents. First, small bank transfer agents are not required to submit any reports. Second, while the rule requires all non-bank transfer agents to report on their efforts to address Year 2000 problems, the Commission has adopted two reporting formats. Small non-bank

[18] 17 CFR 240.0–10.

transfer agents are only required to file a less burdensome check-the-box style Year 2000 report. As noted in section IV.A above, the Commission estimates that it would take each non-bank transfer agent approximately four hours to complete Part I of Form TA–Y2K. The remaining non-bank transfer agents are required to provide, in addition to the check-the-box style report, a more extensive narrative discussion of their Year 2000 efforts. These non-bank transfer agents are typically larger transfer agents that process multiple issues and could potentially have a greater impact on the clearance and settlement system. Thus, by adopting different reporting requirements and by exempting small bank transfer agents, the Commission has imposed no burden, or only a very limited burden, on small transfer agents.

The FRFA notes that it would be difficult to further simplify, consolidate, or adjust compliance standards for small non-bank transfer agents and be able to effectively monitor the securities industry's efforts to prepare for the Year 2000. The Commission believes that the alternate reporting requirement adopted today for small non-bank transfer agents strikes the appropriate balance between the need to protect investors and to minimize any impact on small non-bank transfer agents. The Commission also considered the use of performance rather than design standards. However, the Commission concluded that it would be inconsistent with the purpose of the rule to use performance standards to specify different requirements for small entities.

A copy of the FRFA may be obtained by contacting Jeffrey Mooney, Special Counsel, U.S. Securities and Exchange Commission, Mail stop 10–1, 450 Fifth Street, NW., Washington, DC 20549.

VI. Paperwork Reduction Act

As set forth in the proposed rule, Rule 17Ad–18 contains collections of information within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[19] Accordingly, the collection of information requirements were submitted to the Office of Management and Budget ("OMB") for review and were approved by OMB which assigned the following control number 3235–0512.

The proposed rule solicited comments on the proposed collections of information. No comments were received that specifically addressed the PRA submission. However, as discussed above, the Commission received suggestions that would improve the collections of information. Based upon these suggestions, the collections of information have been adjusted as described in section III. above. For example, the rule adopted today requires non-bank transfer agents to provide a summary of the efforts of individuals or groups of individuals assigned to work on the Year 2000 Problem, and the reports will not have to provide an estimate of the time management has spent on Year 2000 efforts, nor the number and nature of material exceptions identified during the internal and external testing of its software.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. The collection of information under Rule 17Ad–18 is necessary for non-bank transfer agents to comply with certain requirements and is necessary to provide the Commission with information on the security industry's readiness for the Year 2000. The information collected pursuant to Rule 17Ad–18 will be made public.

Based upon the adjustments to the amendments, the Commission is adjusting its burden estimate. The Commission estimated in the proposed rule that, on average, a non-bank transfer agent would spend 50 hours preparing each of the three Year 2000 reports and obtaining the two independent public accountant's Attestations. The Commission estimates that under the final amendments, a non-bank transfer agent will, on average, spend two hours preparing Part I of Form TA–Y2K and 35 hours preparing Part II of Form TA–Y2K. The total annualized burden to the securities industry is estimated at 8,480 hours. This is based on 740 respondents spending two hours preparing Part I and 200 respondents preparing Part II of Form TA–Y2K.

VII. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a) and 23(a) thereof, 15 U.S.C. 78o(c)(3) and 78w, the Commission is adopting amendments to § 240.17Ad–18 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Final Rule

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By adding § 240.17Ad–18 to read as follows:

§ 240.17Ad–18 Year 2000 Reports to be made by certain transfer agents.

(a) Each registered non-bank transfer agent must file Part I of Form TA–Y2K (§ 249.619 of this chapter) with the Commission describing the transfer agent's preparation for Year 2000 Problems. Part I of Form TA–Y2K shall be filed no later than August 31, 1998, and April 30, 1999. Part I of Form TA–Y2K shall reflect the transfer agent's preparation for the Year 2000 as of July 15, 1998, and March 15, 1999, respectively.

(b) Each registered non-bank transfer agent, except for those transfer agents that qualify for the exemption in paragraph (d) of § 240.17Ad–13, must file with the Commission Part II of Form TA–Y2K (§ 249.619 of this chapter) in addition to Part I of Form TA–Y2K. Part II of Form TA–Y2K report shall address the following topics:

(1) Whether the board of directors (or similar body) of the transfer agent has approved and funded plans for preparing and testing its computer systems for Year 2000 Problems;

(2) Whether the plans of the transfer agent exist in writing and address all mission critical computer systems of the transfer agent wherever located throughout the world;

(3) Whether the transfer agent has assigned existing employees, has hired new employees, or has engaged third parties to provide assistance in addressing Year 2000 Problems; and if so, a description of the work that these groups of individuals have performed as of the date of each report;

(4) The current progress on each stage of preparation for potential problems caused by Year 2000 Problems. These stages are:

(i) Awareness of potential Year 2000 Problems;

[19] 44 U.S.C. 3501 *et seq.*

(ii) Assessment of what steps the transfer agent must take to address Year 2000 Problems;

(iii) Implementation of the steps needed to address Year 2000 Problems;

(iv) Internal testing of software designed to address Year 2000 Problems, including the number and description of the material exceptions resulting from such testing that are unresolved as of the reporting date;

(v) Point-to point or industry-wide testing of software designed to address Year 2000 Problems (including testing with other transfer agents, other financial institutions, and customers), including the number and description of the material exceptions resulting from such testing that are unresolved as of the reporting date; and

(vi) Implementation of tested software that will address Year 2000 Problems;

(5) Whether the transfer agent has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(6) What levels of the transfer agent's management are responsible for addressing potential problems caused by Year 2000 Problems, including a description of the responsibilities for each level of management regarding the Year 2000 Problems:

(7) Any additional material information in both reports concerning its management of Year 2000 Problems that could help the Commission assess the transfer agent's readiness for the Year 2000.

(8) Part II of Form TA–Y2K (§ 249.619 of this chapter) shall be filed no later than August 31, 1998, and April 30,999. Part II of Form TA–Y2K shall reflect the transfer agent's preparation for the Year 2000 as of July 15, 1998, and March 15, 1999, respectively.

(c) Any non-bank transfer agent that registers between the adoption of the final rule and December 31, 1999, must file with the Commission Part I of Form TA–Y2K (§ 249.619 of this chapter) no later than 30 days after their registration becomes effective. New transfer agents whose registration with the Commission becomes effective between January 1, 1999, and April 30, 1999, would be required to file the second report due on April 30, 1999.

(d) For purposes of this section, the term Year 2000 Problem shall include problems arising from:

(1) Computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year;

(2) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(3) Computer software failing to detect that the Year 2000 is a leap year; or

(4) Any other computer software error that is directly or indirectly caused by paragraph (d)(1), (2), or (3) of this section.

(e) For purposes of this section, the term non-bank transfer agent means a transfer agent whose:

(1) Appropriate regulatory agency, as that term is defined by 15 U.S.C. 78(c)(34)(B), is the Securities and Exchange Commission; and

(2) Is not a savings association, as defined by Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, which is regulated by the Office of Thrift Supervision.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

4. By adding § 249.619 and Form TA–Y2K to read as follows.

§ 249.619 Form TA–Y2K, information required of transfer agents pursuant to section 17 of the Securities Exchange Act of 1934 and § 240.17Ad–18 of this chapter.

This form shall be used by every registered transfer agent required to file reports under § 240.17Ad–18 of this chapter.

Note: Form TA–Y2K does not appear in the *Code of Federal Regulations.* Form TA–Y2K is attached as Appendix A to this document.

By the Commission.

Dated: July 2, 1998.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

OMB Number:	3235-0512
Expires	12/31/1999
Estimated Average Burden Hours per response	2

APPENDIX A

FORM TA-Y2K
Cover Page
United States
Securities Exchange Commission
Mail Stop A-2
450 5th Street, N.W.
Washington, D.C. 20549

Name of Transfer agent: _____

File No.: _____

Address of Principal Place of Business (Do Not Use P.O. Box No.):

_____

_____

_____

Contact Person Responsible for Filling Out This Form (Please provide your business address and phone number):

Name: _____

Title: _____

Phone: _____

Address: _____

_____

_____
Signature

_____
Title

Attention: Intentional misstatements or omissions of fact constitutes Federal Criminal Violations (See 18 U.S.C. 1001 and 15 U.S.C. 78:ff(a))
SEC 2437 (6/98)

GENERAL INSTRUCTIONS

These instructions are considered an integral part of Form TA-Y2K.

TYPE all responses to this Form. Once submitted, Form TA-Y2K may not be amended.

Form TA-Y2K is divided into two parts. As discussed below, each non bank transfer agent must complete Part I. A Non-bank transfer agent must complete Part II if it does not qualify for one of the exemptions contained in Rule 17Ad-13(d) (17 CFR 240.17Ad-13(d)).

An original and two copies of each Form TA-Y2K must be filed with the Commission's principal office at mail stop A-2, 450 5th Street, N.W., Washington, D.C. 20549. The original Form TA-Y2K that is required to be filed with the Securities and Exchange Commission must be manually signed.

For purposes of this form, a transfer agent is a non-bank transfer agent if: (i) its appropriate regulatory agency, as that term is defined by 15 U.S.C. 78(c)(34)(B), is the Securities and Exchange Commission ("Commission"); and (ii) it is not a savings association, as defined by 12 U.S.C. 1813, regulated by the Office of Thrift Supervision.

For the purposes of this Form TA-Y2K, the term "Year 2000 Problem" includes any erroneous result caused by computer software (i) incorrectly reading the date "01/01/00" or any year thereafter; (ii) incorrectly identifying a date in the year 1999 or any year thereafter; and (iii) failing to detect that the Year 2000 is a leap year; and (iv) any other computer error that is directly or indirectly related to the problems set forth in (i), (ii), or (iii) above.

PART I

Pursuant to section 240.17Ad-18(a) each non-bank transfer agent must file Part I of Form TA-Y2K with the Commission no later than August 31, 1998, and no later than April 30, 1999. Part I of Form TA-Y2K shall reflect the non-bank transfer agent's preparation for the Year 2000 as of July 15, 1998, and March 15, 1999, respectively.

Any non-bank transfer agent whose registration becomes effective between the adoption of the final rule and December 31, 1999, must file with the Commission Part I of Form TA-Y2K no later than 30 days after their registration becomes effective. New transfer agents whose registration with the Commission becomes effective between January 1, 1999, and April 30, 1999, would be required to file the second report due on April 30, 1999.

Please do not write explanatory notes next to the questions on the form.

PART II

Pursuant to section 240.17Ad-18(b), all non-bank transfer agents that are eligible for an exemption under section 240.17Ad-13(d) must file Part II of Form TA-Y2K with the Commission no later than August 31, 1998, and April 30, 1999. Part II of Form TA-Y2K shall reflect the non-bank transfer agent's preparation for the Year 2000 as of July 15, 1998, and March 15, 1999, respectively.

A non-bank transfer agent required to complete Part II of the form must also complete Part I. Each question should be answered in narrative form, even if your answer covers the same topics included in Part I of this Form.

PAPERWORK REDUCTION ACT DISCLOSURE

Form TA-Y2K requires a non-bank transfer agent to provide to the Commission information concerning its efforts to address Year 2000 Problems. The form is designed to enable the Commission to increase transfer agent awareness that they should be taking specific steps now to prepare for the Year 2000, help coordinate industry testing, and help identify potential compliance problems.

It is estimated that a transfer agent will spend approximately 2 hours completing Part I of each Form TA-Y2K and 35 hours completing Part II of Form TA-Y2K. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. This filing will be available to the public.

No assurance of confidentiality is given by the Commission with respect to the responses made in the Form TA-Y2K. The public has access to the information contained in the form.

This collection of information has been reviewed by the Office of Management and Budget (OMB) in accordance with the clearance requirements of 44 U.S.C. §3507. This collection of information has been assigned Control Number 3235-XXXX by OMB.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid number. Section 17(a) of the Securities Exchange Act of 1934 authorizes the Commission to collect the information on this Form from transfer agents. See 15 U.S.C. §78q.

PART I

Transfer Agent Name _____
Address _____
_____
File No. _____

☐ **Check box if you are also completing Part II of Form TA-Y2K**

1. Year 2000 compliance plan

(a) Do you have a plan for Year 2000 compliance to address whether your computer systems will operate correctly after December 31, 1999?
☐ Yes ☐ No

(b) If not, are you?
☐ Developing a written plan. It is expected to be completed by: MM/DD/YYYY
☐ Not developing a written plan because you do not plan to be conducting business after January 1, 2000. Plan to be out of business by: MM/DD/YYYY
☐ Other (Please specify) _____

If you do not have a plan, go to question 2.

(c) Does the plan address external interfaces with third party computer systems that communicate with your systems?
☐ Yes ☐ No

(d) Is your Year 2000 compliance plan in writing?
☐ Yes ☐ No

(e) Who has approved the plan? (Check all that apply)
☐ No approval ☐ Board of Directors ☐ Corporate officers ☐ Executive management ☐ Head of Information Technology ☐ Employees

(f) Has the plan been discussed with your outside auditors?
☐ Yes ☐ No

(g) What is the scope of coverage of the plan? (Check all that apply)
☐ All systems ☐ Mission critical systems ☐ Physical facilities ☐ Communications systems

(h) Which of your facilities does the plan cover? (Check all that apply)
☐ Our primary facility ☐ Certain U.S. facilities ☐ All U.S. facilities
☐ Certain facilities worldwide ☐ All facilities worldwide
☐ We have no international facilities

(i) Are your activities for non-US clients covered by the plan?
☐ Yes ☐ No ☐ Not Applicable

2. Funding for Year 2000 compliance

(a) Please indicate the month your fiscal year begins. _____

(b) Has specific funding been allocated for fiscal year 1998, fiscal year 1999, or fiscal year 2000 for your Year 2000 compliance plan?

(i)1998	☐	Yes	☐	No
(ii)1999	☐	Yes	☐	No
(ii)2000	☐	Yes	☐	No

If funding has not been allocated for fiscal year 1999, mark "no."
If you marked "no" for 1998 and 1999, go to question 3.

(c) What is your specific 1998 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?
☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000
☐ $50,001 - $100,000 ☐ $100,001 - $500,000
☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million
☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(d) What items are contained in your 1998 budget for Year 2000 compliance? (Check all that apply)
☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems ☐ Internal testing ☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, and etc.) ☐ Training ☐ SIA industry wide testing ☐ Implementation of contingency plans

If you marked "no" for fiscal year 1999 in question 2(b), go to question 3.

(e) What is your specific 1999 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?
☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000
☐ $50,001 - $100,000 ☐ $100,001 - $500,000
☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million
☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(f) What items are contained in your 1999 budget for Year 2000 compliance? (Check all that apply)
☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems ☐ Internal testing ☐ Point-to-point testing (including testing with issuers, broker-dealers, custodians, clearing agencies, other service providers, and etc.) ☐ Training ☐ SIA industry wide testing ☐ Implementation of contingency plans.

If you marked "no" for fiscal year 2000 in question 2(b), go to question 3.

(g) What is your specific 2000 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?
☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000
☐ $50,001 - $100,000 ☐ $100,001 - $500,000
☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million
☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(h) What items are contained in your 2000 budget for Year 2000 compliance? (Check all that apply)
☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems
☐ Internal testing ☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents, clearing agencies, other service providers, etc.)
☐ Training ☐ SIA industry wide testing ☐ Implementation of contingency plans

3. Persons responsible for Year 2000

(a) Has one or more individuals been designated as responsible for your Year 2000 compliance?

☐ Yes ☐ No

(b) If yes, please provide the following information on the person primarily responsible:

Name: _____
Title: _____
Business address: _____

4. Staffing for Year 2000

(a) Is this a full-time project for at least one individual (including both employees and consultants)?

☐ Yes ☐ No

(b) If yes, how many individuals are working full time on Year 2000 compliance?

☐ 1 ☐ 2-5 ☐ 6-10 ☐ 11-20 ☐ 21-50 ☐ 51-100 ☐ 101-200 ☐ over 200

(c) Have you hired third parties to assist you on Year 2000 issues?

☐ Yes ☐ No

(d) If yes, what function(s) are the third parties performing? (Check all that apply)

☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems
☐ Internal testing ☐ Training ☐ Vendor assessment
☐ Point-to-point testing (including testing with issuers, broker-dealers, custodians, clearing agencies, other service providers, and etc.)
☐ SIA industry wide testing
☐ Other (Please specify): _____

(e) If you have not completed staffing your Year 2000 project, are you?
☐ Defining resources. This will be completed by: MM/DD/YYYY
☐ Unable to find sufficient staffing resources.
☐ Handling the staffing as part of your ongoing business operations.

5. Inventory of systems

(a) Have you inventoried all systems?
☐ Yes ☐ No

(b) What is the nature of the computer systems you utilize? (Check all that apply)
☐ Off the shelf ☐ Vendor provided
☐ In house developed (custom made)
☐ Other (Please specify): _____

(c) Have you identified your mission critical systems?
☐ Yes ☐ No

(d) If no, this will be completed by: MM/DD/YYYY

(e) Have you determined which of your critical systems are not currently Year 2000 compliant?
☐ Yes ☐ No

6. Awareness of the problem

What steps have you taken to enhance awareness of potential Year 2000 Problems?
(Check all that apply)
☐ None to date ☐ Designated individuals for Year 2000 compliance
☐ Presentations to the Board ☐ Presentations to management
☐ Presentations to employees ☐ Contacted third parties
☐ Other (Please specify) _____

7. Progress on preparing critical systems for the Year 2000

What is your progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps you will take to address Year 2000 Problems with your mission critical systems (including preparing an inventory of computer systems affected by the Year 2000):
☐ 0% complete ☐1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, assessment expected to be completed by: (MM/DD/YYYY)

(b) **Implementation** of steps you will take to address Year 2000 Problems with your mission critical systems:
☐ 0% complete ☐1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, implementation expected to be completed by:
(MM/DD/YYYY)

(c) **Testing of your mission critical internal systems:**
☐ 0% complete ☐1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, testing expected to be completed by: (MM/DD/YYYY)

(d) Did your testing of internal systems result in material exceptions that remain unresolved as of this filing?
☐ Yes ☐ No

(e) **Point-to-point testing of your critical systems (including testing with issuers, broker-dealers, other financial institutions, customers, and vendors):**
☐ 0% complete ☐1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, testing expected to be completed by: (MM/DD/YYYY)

(f) Did your point-to-point testing result in material exceptions that remain unresolved as of this filing?
☐ Yes ☐ No

(g) **Implementation** of tested software that addresses Year 2000 Problems with your mission critical systems:
☐ 0% ☐ 1-25% complete ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, implementation expected to be completed by:
(MM/DD/YYYY)

8. Progress on preparing all other systems for the Year 2000.

What is your progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps you will take to address Year 2000 Problems with your non-critical systems (including preparing an inventory of computer systems affected by the Year 2000):
☐ 0% complete ☐1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, assessment expected to be completed by: (MM/DD/YYYY)

(b) **Implementation** of steps you will take to address Year 2000 Problems with you non-critical systems:
☐ 0% complete ☐1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, implementation expected to be completed by:
(MM/DD/YYYY)

(c) **Testing of your non-critical internal systems**:
☐ 0% complete ☐1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, testing expected to be completed by: (MM/DD/YYYY)

(d) **Did your testing of internal systems result in material exceptions that remain unresolved as of this filing?**
☐ Yes ☐ No

(e) **Point-to-point testing of your non-critical systems (including testing with other broker-dealers, other financial institutions, customers, and vendors):**
☐ 0% complete ☐1%-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, testing expected to be completed by: (MM/DD/YYYY)

(f) **Did your point-to-point testing result in material exceptions that remain unresolved as of this filing?**
☐ Yes ☐ No

(g) **Implementation** of tested software that addresses Year 2000 Problems with your non-critical systems:
☐ 0% ☐ 1-25% complete ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete
If not completed, implementation expected to be completed by:
(MM/DD/YYYY)

9. Contingency plans

(a) Do you have a contingency plan for your systems if, after December 31, 1999, you have problems caused by Year 2000 Problems?
☐ Yes ☐ No

(b) If yes, is the contingency plan in writing?
☐ Yes ☐ No ☐ Not Applicable

(c) If not, what is your progress in preparing a contingency plan?
☐ 0% complete ☐1-25% ☐ 26-50% ☐ 51-75% ☐ 76-100%

(d) What is the scope of the contingency plan? (Check all that apply)
☐ No systems ☐ Critical systems ☐ Physical facilities
☐ Communications systems ☐ All systems

(e) Who has approved the contingency plan?
(Check all that apply)
☐ No approval☐ Board of Directors ☐ Corporate officers ☐ Executive management ☐ Head of Information Technology ☐ Employees

10. Third parties who provide mission critical systems

(a) Have you identified all third parties upon whom you rely for your critical systems?
☐ Yes ☐ No

(b) If yes, how many third parties do you rely upon for your mission critical systems?
☐ _____

(c) What percentage of third parties upon whom you rely for mission critical systems have you contacted regarding their readiness for the Year 2000?
☐ 0% ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ all
If not all, contact expected to be completed by: (MM/DD/YYYY)

(d) Has any third party upon whom you rely for mission critical systems declined or failed to provide you with assurances that it is taking the necessary steps to prepare for the Year 2000?

☐ Yes ☐ No ☐ Not Applicable

(e) If yes, how many third parties providing critical systems have not provided such assurances?

☐ _____

(f) Does your contingency plan account for third parties whose systems may fail after December 31, 1999?

☐ Yes ☐ No ☐ We have no contingency plan

PART II

Transfer Agent Name _____
Address _____
_____
File No. _____

Pursuant to section 240.17Ad-17(b), identify a specific person or persons that are available to discuss the contents of this report and please respond to each of the following questions in narrative form. Each question must be answered, even if your answer covers the same topics included in Part I of this Form

(A) Has the transfer agent's board of directors (or similar body) approved and funded plans for preparing and testing its computer systems for Year 2000 Problems?

(B) Do the transfer agent's plans for preparing and testing its computer systems for Year 2000 Problems exist in writing and do the plans address all mission critical computer systems of the transfer agent wherever located throughout the world?

(C) Has the transfer agent assigned existing employees, hired new employees, or engaged third parties to provide assistance in addressing Year 2000 Problems? If so, provide a description of the work that these groups of individuals have performed as of the date of each report.

(D) What is the transfer agent's current progress on each stage of preparation for potential problems caused by Year 2000 Problems? These stages are:

(1) Awareness of potential Year 2000 Problems;

(2) Assessment of what steps the transfer agent must take to address Year 2000 Problems;

(3) Implementation of the steps needed to address Year 2000 Problems;

(4) Internal testing of software designed to address Year 2000 Problems, including the number and a description of the material exceptions resulting from such testing that are unresolved as of the reporting date;

(5) Point-to-point or industry-wide testing of software designed to address Year 2000 Problems (including testing with issuers, brokers, The Depository Trust Company, other financial institutions, and customers), including the number and

a description of the material exceptions resulting from such testing that are unresolved as of the reporting date; and

(6) Implementation of tested software that will address Year 2000 Problems.

(E) Does the transfer agent have written contingency plans in the event, that after December 31, 1999, it has problems caused by Year 2000 Problems?

(F) What levels of management of the transfer agent are responsible for addressing potential problems caused by Year 2000 Problems? Provide a description of the responsibilities for each level of management regarding the Year 2000 Problems.

(G) Provide any additional material information concerning the transfer agent's management of Year 2000 Problems that will help the Commission assess the transfer agent's readiness for the Year 2000.

[FR Doc. 98–18296 Filed 7–10–98; 8:45 am]
BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40164; File No. S7–7–98]

RIN 3235–AH36

Reports To Be Made by Certain Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; request for additional comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is reopening the comment period with respect to its proposal that would have required broker-dealers to engage an independent public accountant to attest to specific assertions included in the broker-dealer's report on Year 2000 compliance. The attestation by independent public accountants was one amendment to Rule 17a–5 under the Securities Exchange Act of 1934 proposed by the Commission in Release No. 34–39724 which was published in the **Federal Register** on March 12, 1998 (63 FR 12056).

DATES: Comments should be received on or before August 12, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("Commission"), 450 Fifth Street, NW, Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule=comments@sec.gov. Comment letters should refer to File No. S7–7–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131; Thomas K. McGowan, Assistant Director, 202/942–4886; Lester Shapiro, Senior Accountant, 202/942–0757; or Christopher M. Salter, Staff Attorney, 202/942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in many of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date "01/01/00" as being the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems can also arise earlier than January 1, 2000, as dates in the next millennium are entered into non-Year 2000 compliant programs.

The Commission views the Year 2000 problem as an extremely serious issue. A failure to assess properly the extent of the problem, remediate systems that are not Year 2000 compliant, and then test those systems could endanger the nation's capital markets and place at risk the assets of millions of investors. In light of this, both the broker-dealer industry and the Commission are working hard to address the industry's Year 2000 Problems.[1]

In a companion release also issued today, the Commission is adopting amendments to Rule 17a–5[2] under the Securities Exchange Act[3] that require certain broker-dealers to file reports with the Commission and their Designated Examining Authority ("DEA") regarding Year 2000 compliance.[4]

II. Year 2000 Reporting Requirements

The amendments to Rule 17a–5 included in the Adopting Release require broker-dealers with a minimum net capital requirement of $5,000 or greater to file the new Form BD–Y2K. Part I of Form BD–Y2K is a check-the-box Year 2000 questionnaire. Each broker-dealer that is required to maintain net capital of $100,000 or greater will also be required to file Part II of Form BD–Y2K, which requires a narrative discussion of its efforts to address Year 2000 Problems.

Generally, Form BD–Y2K requires each broker-dealer to discuss the steps it has taken to address Year 2000 Problems. Each broker-dealer, among other things, is required to (i) indicate whether its board of directors, or similar body, has approved and funded written Year 2000 remediation plans that address all mission critical computer systems; (ii) describe its Year 2000 staffing efforts; (iii) discuss its progress on each stage of preparation for the Year 2000;[5] (iv) indicate if it has written contingency plans to deal with Year 2000 problems that may occur; and (v) identify what levels of management are responsible for Year 2000 remediation efforts.[6]

III. Independent Public Accountant Review

The Commission originally proposed amendments to Rule 17a–5[7] that would have required each broker-dealer to have an independent public accountant attest to several specific assertions included in its second Year 2000 report, now Part II of Form BD–Y2K.[8] In response to the Proposing Release, the American Institute of Certified Public Accountants ("AICPA") commented that the required attestation report would be difficult for independent public accountants to provide.[9] The AICPA said that some of the required broker-dealer assertions are not appropriate for accountant attestation because the assertions are not capable of reasonably consistent measurement against reasonable criteria. The AICPA stated that currently, there are no established criteria related to Year 2000 remediation efforts, and that the lack of

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[1] The Proposing Release defined the term "Year 2000 Problem" to include any erroneous result caused by any computer software (i) incorrectly reading the date "01/01/00" or any year thereafter; (ii) incorrectly identifying a date in the year 1999 or any year thereafter; (iii) failing to detect that the Year 2000 is a leap year, and (iv) any other computer error that is directly or indirectly related to (i), (ii), or (iii) above.

[2] 17 CFR 240.17a–5.

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

[4] Release No. 34–40162, (July 2, 1998) ("Adopting Release").

[5] These stages are: (i) Awareness of potential Year 2000 Problems; (ii) assessment of what steps must be taken to avoid Year 2000 Problems; (iii) implementation of the steps needed to avoid Year 2000 Problems; (iv) internal testing of software designed to avoid Year 2000 Problems; (v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, customers, and vendors); and (vi) implementation of tested software that will avoid Year 2000 Problems.

[6] The Commission refers members of the public to the Adopting Release for more detailed information about the reporting requirements and Form BD–Y2K.

[7] Release Nos. 34–39724; IC–23059; IA–1704, (March 5, 1998), 63 FR 12056 (March 12, 1998) ("Proposing Release").

[8] As proposed, each broker-dealer would have been required to assert (i) whether it has developed written plans for preparing and testing its computer systems for potential Year 2000 Problems; (ii) whether the board of directors, or similar body, has approved these plans, and whether a member of the broker-dealer's board of directors, or similar body, is responsible for executing the plans; (iii) whether its Year 2000 remediation plans address all domestic and international operations, including the activities of its subsidiaries, affiliates, and divisions; (iv) whether it has assigned existing employees, hired new employees, or engaged third parties to execute its Year 2000 remediation plans; and (v) whether it has conducted internal and external testing of its Year 2000 solutions and whether the results of those tests indicate that the broker-dealer has modified its software to correct Year 2000 Problems.

[9] This point was echoed by a number of other comment letters.

established criteria would likely result in significant variation in the examination procedures performed by independent public accountants and thus reduce the usefulness of the attestation reports. In addition, the AICPA expressed concern that the purpose and conclusions of the attestation report could be easily misunderstood. The AICPA was primarily concerned that uninformed users of the attestation reports would place undue reliance on them.

The AICPA suggested that an "agreed-upon procedures" engagement, instead of an attestation engagement, would more effectively meet the Commission's goals. Pursuant to such an engagement, a broker-dealer would engage an independent public accountant to perform and report on specific procedures designed to meet the Commission's objectives. This would eliminate the variability of examination procedures performed by independent public accountants and thus increase the consistency of the reports received by the Commission. The AICPA's letter outlined elements of an agreed-upon procedures report and offered to follow-up with the Commission staff regarding the development of specific procedures for a Year 2000 engagement.

In light of the above, the Commission has deferred consideration of the appropriate accountant's review of Part II of the second Form BD–Y2K that broker-dealers with a minimum net capital requirement of $100,000 or greater will be required to file by April 30, 1999, reflecting the status of the broker-dealer's Year 2000 efforts as of March 15, 999. Accordingly, the Commission is reopening the comment period to obtain additional views, including commentary on the feasibility and desirability of an agreed-upon procedures engagement. The public file (No. S7–7–98) contains the AICPA's comment letter received in the original comment period, the Commission's Initial Regulatory Flexibility Analysis, and will contain any subsequent letters submitted for the Commission's consideration.

Dated: July 2, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18294 Filed 7–10–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40165; File No. S7–8–98]

RIN 3235–AH42

Year 2000 Readiness Reports To Be Made by Certain Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; request for additional comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is re-opening the comment period with respect to its proposal that would have required transfer agents to engage an independent public accountant to attest to specific assertions included in the transfer agent's report on Year 2000 compliance. The attestation by independent public accountants was one component of Rule 17Ad–18 under the Securities Exchange Act of 1934 proposed by the Commission in Release No. 34–39726, which was published in the **Federal Register** on March 12, 1998 (63 FR 12062).

DATES: Comments should be received on or before August 12, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("Commission"), 450 Fifth Street, NW, Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–8–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, 202/942–4187; Thomas C. Etter, Jr., Special Counsel, 202/942–0178; or Jeffrey Mooney, Special Counsel, 202/942–4174, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in many of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date "01/01/00" as being the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems can also arise earlier than January 1, 2000, as dates in the next millennium are entered into non-Year 2000 compliant programs.

The Commission views the Year 2000 problem as an extremely serious issue. A failure to assess properly the extent of the problem, remediate systems that are not Year 2000 compliant, and then test those systems could endanger the nation's capital markets and place at risk the assets of millions of investors. In light of this, both the transfer agent industry and the Commission are working hard to address the industry's Year 2000 problems.

In a companion release also issued today, the Commission is adopting Rule 17Ad–18 [1] under the Securities Exchange Act [2] to require certain transfer agents to file reports with the Commission regarding Year 2000 compliance.[3]

II. Year 2000 Reporting Requirements

Rule 17Ad–18 requires new Form TA–Y2K to be filed by each transfer agents whose: (i) Appropriate regulatory agency, as that term is defined by 15 U.S.C. 78(c)(34)(B), is the Commission; but (ii) is not a savings association, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, which is regulated by the Office of Thrift Supervision. Part I of Form TA–Y2K is a check-the-box Year 2000 questionnaire. Each transfer agent that does not qualify for an exemption under Rule 17Ad–13(d) [4] will also be required to file Part II of Form TA–Y2K, which requires a narrative discussion of its efforts to address Year 2000 Problems.

Generally, Form TA–Y2K requires each transfer agent to discuss the steps it has taken to address Year 2000 Problems. Each transfer agent is required, among other things, to (i) indicate whether its board of directors, or similar body, has approved and funded written Year 2000 remediation plans that address all mission critical computer systems; (ii) describe its Year 2000 staffing efforts; (iii) discuss its

[1] 17 CFR 240.17Ad–18.

[2] U.S.C 78a *et seq.*

[3] Release No. 34–XXXXX, (XXXX X, 1998), ("Adopting Release").

[4] 17 CFR 240.17Ad–13(d). Generally, Rule 17Ad–13(d) exempts the following transfer agents from the rule's annual reporting requirements: issuer transfer agents, small transfer agents exempt under Rule 17Ad–4(b), and bank transfer agents.

progress on each stage of preparation for the Year 2000;[5] (iv) indicate if it has written contingency plans to deal with Year 2000 problems that may occur; and (v) identify what levels of management are responsible for Year 2000 remediation efforts.[6]

III. Independent Public Accountant Review

When the Commission originally proposed Rule 17Ad–18,[7] the rule would have required each transfer agent to have an independent public accountant attest to several specific assertions included in its follow-up reports, now Part II of Form TA–Y2K.[8]

In reposnse to the proposing release, the American Institute of Certified Public Accountants ("AICPA") commented that the required attestation report would be difficult for independent public accountants to provide.[9] The AICPA said that some of the required assertions are not appropriate for accountant attestation because the assertions are not capable of reasonably consistent measurement against reasonable criteria. Currently, there are no established criteria related to Year 2000 remediation efforts. The lack of established criteria would likely result in significant variation in the examination procedures performed by independent public accountants and thus reduce the usefulness of the attestation reports. In addition, the AICPA expressed concern that the purpose and conclusions of the attestation report could be easily misunderstood. The AICPA was primarily concerned that uninformed users of the attestation reports would place undue reliance on them.

The AICPA suggested that an "agreed-upon procedures" engagement, instead of an attestation engagement, would more effectively meet the Commission's goals. Pursuant to such an engagement, a transfer agent would engage an independent public accountant to perform and report on specific procedures designed to meet the Commission's objectives. This would eliminate the variability of examination procedures performed by independent public accountants and thus increase the consistency of the reports received by the Commission. The AICPA's letter outlined elements of an agreed-upon procedures report and offered to follow-up with the Commission staff regarding the development of specific procedures for a Year 2000 engagement.

In light of the above, the Commission has deferred consideration of the appropriate accountant's review of Part II of Form TA–Y2K that transfer agents that do not qualify for an exemption under existing Rule 17Ad–13(d) will be required to file by April 30, 1999, reflecting the status of the transfer agent's Year 2000 efforts as of March 15, 1999. Accordingly, the Commission is reopening the comment period to obtain additional views, including comments on the feasibility and desirability of an agreed–upon procedures engagement. The public file (No. S7–8–98) contains the AICPA's original comment letter, received in the original comment period, the Commission's Initial Regulatory Flexibility Analysis, and will contain any subsequent letters submitted for the Commission's consideration.

Dated: July 2, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18295 Filed 7–10–98; 8:45 am]

BILLING CODE 8010–01–P

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[5] These stages are: (i) awareness of potential Year 2000 Problems; (ii) assessment of what steps must be taken to avoid Year 2000 Problems; (iii) implementation of the steps needed to avoid Year 2000 Problems; (iv) internal testing of software designed to avoid Year 2000 Problems; (v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other transfer agents, other financial institutions, customers, and vendors); and (vi) implementation of tested software that will avoid Year 2000 Problems.

[6] The Commission refers members of the public to the Adopting Release for more detailed information about the reporting requirements and Form.

[7] Securities Exchange Act Release No. 39726 (March 5, 1998), 63 FR 12062 (March 12, 1998).

[8] As proposed, each transfer agent would have been required to assert (i) whether it has developed written plans for preparing and testing its computer systems for potential Year 2000 Problems; (ii) whether the board of directors, or similar body, has approved these plans, and whether a member of the transfer agent's board of directors, or similar body, is responsible for executing the plans; (iii) whether its Year 2000 remediation plans address all domestic and international operations, including the activities of its subsidiaries, affiliates, and divisions; (iv) whether it has assigned existing employees, hired new employees, or engaged third parties to execute its Year 2000 remediation plans; and (v) whether it has conducted internal and external testing of its Year 2000 solutions and whether the results of those tests indicate that the transfer agent has modified its software to correct Year 2000 problems.

[9] This point was echoed by a number of other comment letters.

federal register

Monday
July 13, 1998

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC52

Student Assistance General Provisions

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations, 34 CFR part 668, to permit a school to appeal its Direct Loan Program cohort rate or weighted average cohort rate on the basis of improper servicing or collection of the Direct Loans included in that rate. The Secretary also proposes to clarify when a school's rate is considered final.

DATES: Comments must be received by the Department on or before September 11, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Kenneth Smith, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. Comments may also be sent through the Internet to: cohort__rates@ed.gov.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW., ROB–3, Room 3045, Washington, DC 20202. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

General

On December 1, 1995, the Secretary published final regulations (60 FR 61760) that modified the regulations relating to the default reduction initiative in the Federal Family Education Loan (FFEL) Program and implemented default reduction measures in the William D. Ford Federal Direct Loan (Direct Loan) Program. Those regulations established the formula for the calculation of rates for schools that participate in the Direct Loan Program and revised the appeal procedures and criteria for schools that were subject to a loss of eligibility to participate in the FFEL Program or the Direct Loan Program due to high FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates.

The Secretary is proposing to amend the appeal procedures and criteria in these regulations. A discussion of each proposed change is provided below.

Section 668.17(h) Loan Servicing Appeals

Under the Department's regulations, a school may challenge its FFEL Program cohort default rate or weighted average cohort rate on the basis of the improper servicing or collection of the FFEL loans included in the calculation of that rate. However, a school may not challenge a Direct Loan Program cohort rate or a weighted average cohort rate on the basis of the improper servicing or collection of the Direct Loans included in the calculation of the rate. The procedures and criteria for loan servicing appeals were made different for the two programs because the historical and structural problems of the FFEL Program did not exist in the new Direct Loan Program.

As discussed in the preamble to the final regulations published on December 1, 1995, Congress' decision to provide schools with an FFEL Program loan servicing appeal was based, in large measure, on a number of incidents in which large FFEL Program lenders had failed to comply with the Department's loan servicing requirements. The lenders' failure to satisfy FFEL Program loan servicing requirements had a demonstrable effect on cohort default rates (see 60 FR 61769). However, the detailed loan servicing regulations in the FFEL Program do not exist in the Direct Loan Program. Instead, loan servicing in the Direct Loan Program is controlled by contracts between the Department and its Direct Loan Servicers.

Nevertheless, to promote parity between the FFEL Program and the Direct Loan Program, the Secretary is proposing to permit a school to appeal its Direct Loan Program cohort rate or weighted average cohort rate on the basis of the improper servicing or collection of defaulted Direct Loans included in that rate. Just as for an FFEL Program loan servicing appeal, this type of appeal would only be available to a school—

- With a Direct Loan Program cohort rate or weighted average cohort rate that equals or exceeds 20 percent for the most recent year in which data are available; or
- That becomes subject to a loss of eligibility due to rates that equal or exceed 25 percent for 3 consecutive years.

While the Secretary continues to believe that the structure and controls inherent in the Direct Loan Program should ensure that Direct Loans are properly serviced and collected, establishing appeal provisions for the Direct Loan Program that are similar to those available in the FFEL Program will address concerns that some schools have raised about this difference between the two programs.

The procedures for a school's loan servicing challenge in the Direct Loan

Program would correspond to those for a school challenging its FFEL Program cohort default rate on a similar basis. A summary of the proposed appeals process follows:

- Within 10 working days of receiving notification from the Secretary that its Direct Loan Program cohort rate or weighted average cohort rate equals or exceeds 20 percent for the most recent year or that it is subject to loss of participation in the loan programs based on its rate, the school notifies the Secretary, in writing, that it is appealing the calculation of its rate based on allegations of improper loan servicing or collection.
- Within 15 working days of receiving the school's notice, the Secretary determines the size of the representative sample of loan servicing and collection records to be reviewed and notifies the school of the amount of the fee that it must pay to the Secretary for copying and providing the documents. Under the proposed regulations, the Secretary may charge a fee of up to $10 per borrower file in the sample. The Secretary intends to charge a fee of $10 per borrower file.
- Within 15 working days of receiving the notice of the fee, the school must pay the fee to the Secretary. If payment is not received from the school within the required timeframe, the records will not be provided and the school will have waived its right to challenge the rate.
- Upon timely receipt of the fee, and within the timelines provided in the proposed regulations, the Secretary provides the school with a representative sample of the loan servicing and collection records relating to borrowers whose Direct Loans were included in the school's rate.
- After receiving the relevant loan servicing and collection records from the Secretary (for Direct Loan Program loans included in a rate) and from the appropriate guaranty agency (for FFEL Program loans included in a rate), the school has 30 calendar days to file its appeal with the Secretary.
- If the school is also filing an appeal based upon allegations that inaccurate data were used to calculate the rate, under § 668.17(c)(1)(i)(A), the school may delay submitting its loan servicing appeal until the appeal under § 668.17(c)(1)(i)(A) is submitted to the Secretary.

Due to fundamental differences between the FFEL and Direct Loan programs, the proposed regulations for appeals based on loan servicing and collection in the Direct Loan Program are not exactly the same as the FFEL Program regulations. One of the most significant differences is in the scope of an appeal. For both FFEL and Direct Loans, under § 668.17(h)(3)(v)(B), if the Secretary finds that evidence presented by the school shows that some loans included in the sample reviewed by the school should be excluded from the calculation of the rate, the Secretary reduces the rate to reflect the percentage of defaulted loans in the sample that should be excluded.

In the FFEL Program, the proportional reduction applies to all of the FFEL loans included in the school's rate, because an FFEL Program cohort default rate is a percentage rate of the students whose loans are in default. However, for some schools, the Direct Loan Program cohort rate is not limited to the percentage rate of students whose loans are in default. For proprietary non-degree-granting institutions, it may also include the percentage rate of borrowers repaying Direct Loans under the income-contingent repayment (ICR) plan who have scheduled payments of less than $15 per month, when those amounts result in negative amortization for a period of 270 days or more (see §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii)).

If borrowers are included in a school's Direct Loan Program cohort rate because they are repaying under the ICR plan, rather than because their loans are in default, the improper loan servicing and collection criteria do not apply. For example, the Direct Loan Servicer would not mail a final demand letter to a borrower who is making payments under the ICR plan and is not in default. Therefore, as reflected in the proposed § 668.17(h)(2)(iii), the proportional reduction of the rate would apply only to borrowers with defaulted loans who were included in a school's rate, not to any borrowers who have been included because they made certain payments under the ICR plan.

The most significant remaining differences between the requirements for a loan servicing appeal in the FFEL Program and those proposed for the Direct Loan Program are the following:

- For FFEL, the regulations in § 668.17(h)(3)(ii) require a school to include in its notice of appeal to the guaranty agency a list of the students included in its rate. No similar requirement is provided for Direct Loans because the Department already has that information.
- When sending the school a list of the loans and a description of how the sample of loans was chosen, a guaranty agency is required, in § 668.17(h)(3)(ii)(B)(*5*), to send a copy of the list to the Secretary. No corresponding action is provided for the Direct Loan Program because it would be redundant.
- In § 668.17(h)(3)(ii)(B)(*6*), a guaranty agency is required to notify a school that has failed to pay a fee that the school has apparently waived its right to challenge the calculation of its rate with regard to the loans guaranteed by that agency. The guaranty agency also notifies the Secretary. The Secretary then determines whether the guaranty agency's conclusion was correct. No similar provision is needed for Direct Loans because the Secretary issues the original notification of the waiver determination.
- For FFEL, a school is required in § 668.17(h)(3)(iv)(C) to send the Secretary a copy of the lists provided to it by the guaranty agencies when it is filing an appeal. No similar list is required for Direct Loans because the Department will have the information that it provided to the institution.
- Section § 668.17(h)(3)(viii)(C) provides that a lender's failure to submit a request for preclaims assistance to the guaranty agency, if required, is a factor in determining whether a default on an FFEL Program loan may be considered to have been due to improper servicing or collection. No similar factor is included for Direct Loans because no similar process exists for the Direct Loan Servicer. The Direct Loan Servicer services the loan until its transfer to the Department's Debt Collection Service at 271 days of delinquency, the date on which the loan is considered, under § 668.17(e)(3), to be in default for rate calculations purposes.

The revisions in this NPRM would provide the regulatory changes needed to properly reflect the proposed changes to the appeal process for Direct Loans. The proposed regulations would not revise the current regulations for an FFEL Program appeal on the basis of improper servicing or collection.

Official rates for fiscal year (FY) 1996 are scheduled to be issued later this year. The Secretary intends to allow a school to appeal its official Direct Loan Program cohort rate or weighted average cohort rate for FY 1996 on the basis of the improper servicing or collection of the Direct Loans included in the rate as defaulted loans. This type of appeal would be available only to schools with rates of 20 percent or greater and to schools that are subject to loss of participation in the loan programs based on their rates.

Section 668.17(i) Finality of a School's Rate

Under § 668.17(a)(2), a school with an FFEL Program cohort default rate, Direct Loan Program cohort rate, or a weighted

average cohort rate that is over 40 percent for the most recent fiscal year for which rates have been calculated may be subject to an action to limit, suspend, or terminate its participation in all of the Federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). If the Secretary initiates such an action, the school may appeal under 34 CFR part 668, Subpart G.

The Secretary has found, however, that some schools with a rate over 40 percent do not challenge the rate when they are notified. Rather, these schools wait to challenge the calculation of that rate until they have 3 consecutive years of rates over 25 percent. As a result, the administrative review process provided under Subpart G is delayed while the school's new appeal is evaluated. The Secretary believes that some schools wait to appeal in these circumstances solely to delay a final determination of the limitation, suspension, or termination action. Because a school may continue to make loans while the appeal process is pending, any unnecessary delay increases the likelihood of program abuse.

It was not the intent of the Secretary to permit this type of delay—which may last a year or more—between the date a school is notified of its rate and the resolution of the school's appeal of a sanction resulting from the rate. The Secretary proposes to address the problem of unnecessary delays in Subpart G proceedings by providing that once the Secretary initiates a proposed limitation, suspension, or termination action under § 668.17(a)(2), based on the school's rate, the school may not challenge that rate.

A school that initiates an appeal of a rate over 40 percent in a timely manner, within 10 working days of the date that the school is notified of the rate, would not be affected by this revision. The Secretary does not initiate an action under § 668.17(a)(2) during the period in which a school may file a timely appeal of its rate. Also, if a school does file a timely appeal, the Secretary does not initiate an action under § 668.17(a)(2) until a determination has been made on the appeal. Note that current provisions in § 668.17(i) are not changed other than to number paragraphs and to update references to types of rates; the only substantive change to the current § 668.17(i) is in the proposed § 668.17(i)(3).

The proposed revision would help the Department, guaranty agencies, and institutions to research appeals more efficiently and to resolve appeals and limitation, suspension, and termination actions promptly. Ensuring timely appeals and resolutions is particularly important because schools remain eligible to participate in the FFEL and Direct Loan programs until the appeal process is complete.

Executive Order 12866

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.17 *Default reduction and prevention measures.*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FB–10), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary has determined that these proposed regulations would not have a significant adverse economic impact on a substantial number of small entities. A Preliminary Regulatory Flexibility Analysis (PRFA) was performed. The provision that extends the appeals of improper loan servicing to Direct Loans will provide a positive benefit to schools. The provision on the finality of appeals was analyzed in more detail. The PRFA determined that the number of small and large entities experiencing adverse economic impacts from the appeal finality provisions is expected to be between one and eight per year, which is not a substantial number.

Estimate of the Number of Entities Experiencing Adverse Economic Impacts From Finality of Appeal Provision

Although no school has successfully used the delaying tactic these regulations would prohibit, 2 schools could have used this tactic for fiscal year 1994 rates, and it is possible that up to 16 schools could use this tactic for fiscal year 1995 rates. There is no reason to believe that this will apply to more schools in the future. Thus, the estimate of the number of small and large entities to which these regulations would apply is between 2 and 16 each year. In the year when two schools could have used this delaying tactic, one school unsuccessfully attempted to employ it or half of the eligible schools. The PRFA estimates that about half of the schools to which these regulations would apply will attempt to employ this delaying tactic, or between one and eight per year. Thus, the number of small and large entities to which these regulations would impose adverse economic impacts is small and not considered a substantial number.

Estimate of the Adverse Economic Impacts of Finality of Appeal Provision

One school attempted to use this delaying tactic, but that appeal was denied on technical grounds. Had that school been successful, the economic impact would have been to delay the school's removal from the Title IV programs for an estimated six months. During those six months, the school was estimated to have potentially earned an additional $135,000 in Title IV revenue. Using a 5 percent profit rate, which is typical for proprietary schools participating in Title IV programs, the adverse economic impact on this school would have been to lose about $6,750 in profit. The PRFA did not address whether this was a significant economic impact, since it was previously determined that a full Regulatory Flexibility analysis was not required because of the small number of entities to which these regulations would apply.

The Secretary particularly invites comments on the impact of these proposed regulations on small entities.

Paperwork Reduction Act of 1995

Section 668.17 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Assistance General Provisions—668.17—Default reduction and prevention measures.

The Secretary proposes to provide schools the opportunity to challenge Direct Loan Program cohort rates or weighted average cohort rates on the basis of allegations of improper loan servicing or collection of the Direct Loans included in that rate as defaulted loans. Annual public reporting burden for the portion of this collection of information that is attributable to § 668.17(h) remains unchanged and is estimated to average 128 hours per response for 160 non-degree-granting school respondents, 96 hours per response for 20 degree-granting school respondents, and 16 hours per response for 20 low borrower school respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The collection's total estimated annual recordkeeping and reporting burden hours for this section equals 22,720 hours.

There is no change to the current burden for this collection because neither the estimated number of respondents nor the amount of time needed to respond is expected to change. At the time that previous regulations were published, no rates had been issued that included Direct Loans; all schools received rates that included only FFEL loans. A school appealing its rate due to improper loan servicing or collection, under these proposed regulations, would have been subject to the same requirements for the appeal of its FFEL Program cohort default rate.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the State Student Incentive Grant Program are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

The Federal Family Education Loan, Federal Supplemental Loans for Students, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Income Contingent Loan, and William D. Ford Federal Direct Loan programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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The documents are located under Option G—
Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 7, 1998.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007: Federal Supplemental Educational Opportunity Grant Program; 84.032: Federal Family Education Loan Program; 84.032: Federal PLUS Program; 84.032: Federal Supplemental Loans for Students Program; 84.033: Federal Work-Study Program; 84.038: Federal Perkins Loan Program; 84.063: Federal Pell Grant Program; 84.069: State Student Incentive Grant Program; 84.226: Income Contingent Loan Program; and 84.268: William D. Ford Federal Direct Loan Program)

The Secretary proposes to amend Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.17 is amended by revising the heading, and paragraphs (h) and (i) to read as follows:

§ 668.17 Default reduction and prevention measures.

* * * * *

(h) *Appeal based on allegations of improper loan servicing or collection—*

(1) *General.* An institution that is subject to loss of participation in the FFEL Program or the Direct Loan Program under paragraph (a)(3), (b)(1), or (b)(2) of this section or that has been notified by the Secretary that its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate equals or exceeds 20 percent for the most recent year for which data are available may include in its appeal of that loss or rate a challenge based on allegations of improper loan servicing or collection. This challenge may be raised in addition to other challenges permitted under this section.

(2) *Standard of review.* (i) An appeal based on allegations of improper loan servicing or collection must be submitted to the Secretary in accordance with the requirements of this paragraph.

(ii) The Secretary excludes any loans from the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate calculation that, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of that rate.

(iii) For the purposes of this paragraph, a Direct Loan that has been included in a Direct Loan Program cohort rate, under paragraph (e)(1)(ii) of this section, or a weighted average cohort rate, under paragraph (f)(1)(ii) of this section, because it has been in repayment under the income-contingent repayment plan for 270 days, with scheduled payments that are less than $15 per month and with those payments resulting in negative amortization, is not considered to have been included in that rate as a defaulted loan. An institution's appeal under this paragraph does not affect the inclusion of these loans in an institution's rate.

(3) *Procedures.* The following procedures apply to appeals from FFEL Program cohort default rates, Direct Loan Program cohort rates, and weighted average cohort rates issued by the Secretary:

(i) *Notice of rate.* Upon receiving notice from the Secretary that the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate exceeds the thresholds specified in paragraph (a)(3), (b)(1), or (b)(2) of this section or that its most recent rate equals or exceeds 20 percent, the institution may appeal the calculation of that rate based on allegations of improper loan servicing or collection. The Secretary's notice includes a list of all borrowers included in the calculation of the institution's rate.

(ii) *Appeals for FFEL Program loans.* (A) To initiate an appeal under this paragraph for FFEL Program loans included in the institution's rate, the institution must notify, in writing, the Secretary and each guaranty agency that guaranteed loans included in the institution's FFEL Program cohort default rate or weighted average cohort rate that it is appealing the calculation of that rate. The notification must be received by the guaranty agency and the Secretary within 10 working days of the date the institution received the Secretary's notification. The institution's notification to the guaranty agency must include a copy of the list of students provided by the Secretary to the institution.

(B) Within 15 working days of receiving the notification from an institution subject to loss of participation in the FFEL or Direct Loan programs under paragraph (a)(3), (b)(1), or (b)(2) of this section, or within 30 calendar days of receiving that notification from any other institution that may file a challenge to its FFEL Program cohort default rate or weighted average cohort rate under this paragraph, the guaranty agency shall provide the institution with a representative sample of the loan servicing and collection records relating to borrowers whose loans were guaranteed by the guaranty agency and that were included as defaulted loans in the calculation of the institution's rate. For purposes of this section, the term *loan servicing and collection records* refers only to the records submitted by the lender to the guaranty agency to support the lender's submission of a default claim and included in the claim file. In selecting the representative sample of records, the guaranty agency shall use the following procedures:

(*1*) The guaranty agency shall list in social security number order all loans made to borrowers for attendance at the institution and guaranteed by the guaranty agency and included as defaulted loans in the calculation of the FFEL Program cohort default rate or weighted average cohort rate that is being challenged by the institution.

(*2*) From the population of loans identified by the guaranty agency, the guaranty agency shall identify a sample of the loans. The sample must be of a size such that the universe estimate derived from the sample is acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval. The sampling procedure must result in a determination of the number of FFEL Program loans that should be excluded from the calculation of the FFEL Program cohort default rate or weighted average cohort rate under this paragraph.

(*3*) The guaranty agency shall provide a copy of all servicing and collection records relating to each loan in the sample to the institution in hard copy format unless the guaranty agency and institution agree that all or some of the records may be provided in another format.

(*4*) The guaranty agency may charge the institution a reasonable fee for copying and providing the documents, not to exceed $10 per borrower file.

(*5*) After compiling the servicing and collection records for the loans in the sample, the guaranty agency shall send the records, a list of the loans included in the sample, and a description of how the sample was chosen to the institution. The guaranty agency shall also send a copy of the list of the loans included in the sample, listed in order by social security number, and the description of how the sample was chosen to the Secretary at the same time the material is sent to the institution.

(*6*) If the guaranty agency charges the institution a fee for copying and providing the documents under paragraph (h)(3)(ii)(B)(*4*) of this section, the guaranty agency is not required to provide the documents to the institution until payment is received by the agency. If payment of a fee is required, the guaranty agency shall notify the institution, in writing, within 15 working days of receipt of the institution's request, of the amount of the fee. If the guaranty agency does not receive payment of the fee from the institution within 15 working days of the date the institution receives notice of the fee, the institution shall be considered to have waived its right to challenge the calculation of its FFEL Program cohort default rate or weighted average cohort rate based on allegations of improper loan servicing or collection in regard to the loans guaranteed by that guaranty agency. The guaranty agency shall notify the institution and the Secretary, in writing, that the institution has failed to pay the fee and has apparently waived its right to challenge the calculation of its rate for this purpose. The Secretary determines that an institution that does not pay the required fee to the guaranty agency has not met its burden of proof in regard to the loans insured by that guaranty agency unless the institution proves that the agency's conclusion that the institution waived its appeal is incorrect.

(iii) *Appeals for Direct Loan Program loans.* (A) To initiate an appeal under

this paragraph for Direct Loans included in the institution's rate, the institution must notify the Secretary, in writing, that it is appealing the calculation of its Direct Loan Program cohort rate or weighted average cohort rate. The notification must be received by the Secretary within 10 working days of the date the institution received the Secretary's notification.

(B) Within 15 working days of receiving the notification from an institution subject to loss of participation in the FFEL or Direct Loan Program under paragraph (a)(3), (b)(1), or (b)(2) of this section, or within 30 calendar days of receiving that notification from any other institution that may file a challenge to its Direct Loan Program cohort rate or weighted average cohort rate under this paragraph, the Secretary provides the institution with a representative sample of the loan servicing and collection records relating to borrowers whose Direct Loans were included as defaulted loans in the calculation of the institution's rate. For purposes of this section, the term "loan servicing and collection records" refers only to the records maintained by the Department's Direct Loan Servicer with respect to the servicing and collecting of delinquent loans prior to the default. In selecting the representative sample of records, the Secretary uses the following procedures:

(*1*) The Secretary lists in social security number order all Direct Loans made to borrowers for attendance at the institution and included as defaulted loans in the calculation of the Direct Loan Program cohort rate or weighted average cohort rate that is being challenged by the institution.

(*2*) From the population of loans identified by the Secretary, the Secretary identifies a sample of the loans. The sample is of a size such that the universe estimate derived from the sample is acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval. The sampling procedure must result in a determination of the number of Direct Loans included in the rate as defaulted loans that should be excluded from the calculation of the Direct Loan Program cohort rate or weighted average cohort rate under this paragraph.

(*3*) The Secretary provides a copy of all servicing and collection records relating to each loan in the sample to the institution in hard copy format unless the Secretary and institution agree that all or some of the records may be provided in another format.

(*4*) The Secretary may charge the institution a reasonable fee for copying and providing the documents, not to exceed $10 per borrower file.

(*5*) After compiling the servicing and collection records for the loans in the sample, the Secretary sends the records, a list of the loans included in the sample, and a description of how the sample was chosen to the institution.

(*6*) If the Secretary charges the institution a fee for copying and providing the documents under paragraph (h)(3)(iii)(B)(*4*) of this section, the Secretary does not provide the documents to the institution until payment is received by the Secretary. If payment of a fee is required, the Secretary notifies the institution, in writing, within 15 working days of receipt of the institution's request, of the amount of the fee. If the Secretary does not receive payment of the fee from the institution within 15 working days of the date the institution receives notice of the fee, the institution shall be considered to have waived its right to challenge the calculation of its Direct Loan Program cohort rate or weighted average cohort rate based on allegations of improper loan servicing or collection in regard to the Direct Loans included in that rate. The Secretary shall notify the institution, in writing, that the institution has failed to pay the fee and has waived its right to challenge the calculation of its rate on the basis of those allegations.

(iv) *Procedures for filing an appeal.* After receiving the relevant loan servicing and collection records from the Secretary (for defaulted Direct Loan Program loans included in a Direct Loan Program cohort rate or weighted average cohort rate) and from all of the guaranty agencies that insured loans included in the institution's FFEL Program cohort default rate or weighted average cohort rate calculation (for defaulted FFEL Program loans included in a rate), the institution has 30 calendar days to file its appeal with the Secretary. An appeal is considered filed when it is received by the Secretary. If the institution is also filing an appeal under paragraph (c)(1)(i) of this section, the institution may delay submitting its appeal under this paragraph until the appeal under paragraph (c)(1)(i) of this section is submitted to the Secretary. As part of the appeal, the institution shall submit the following information to the Secretary:

(A) A list of the loans that the institution alleges would, due to improper loan servicing or collection, result in an inaccurate or incomplete calculation of the rate.

(B) Copies of all of the loan servicing or collection records and any other evidence relating to a loan that the institution believes has been subject to improper servicing or collection. The records must be in hard copy or microfiche format.

(C) For FFEL Program loans, a copy of the lists provided by the guaranty agencies under paragraph (h)(3)(ii)(B) of this section.

(D) An explanation of how the alleged improper servicing or collection resulted in an inaccurate or incomplete calculation of the institution's rate.

(E) A summary of the institution's appeal listing the following:

(*1*) For FFEL Program cohort default rates, the number of loans insured by each guaranty agency that were included as defaulted loans in the calculation of the institution's rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans for each guaranty agency.

(*2*) For Direct Loan Program cohort rates, the number of Direct Loans that were included as defaulted loans in the calculation of the institution's rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans serviced by the Secretary.

(*3*) For weighted average cohort rates——

(*i*) The number of FFEL Program loans insured by each guaranty agency that were included as defaulted loans in the calculation of the institution's rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans for each guaranty agency; and

(*ii*) The number of Direct Loans that were included as defaulted loans in the calculation of the institution's rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans serviced by the Secretary.

(F) A certification by an authorized official of the institution that all information provided by the institution in the appeal is true and correct.

(v) *Decision.* The Secretary or the Secretary's designee reviews the information submitted by the institution and issues a decision.

(A) In making a decision under this paragraph, the Secretary presumes that the information provided to the institution by the guaranty agency or Secretary under paragraphs (h)(3)(ii)(B)

and (iii)(B) of this section is correct unless the institution provides substantial evidence showing that the information is not correct.

(B) If the Secretary finds that the evidence presented by the institution shows that some of the loans included in the sample of loan records reviewed by the institution should be excluded from calculation of the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate under paragraph (h)(2) of this section, the Secretary reduces the institution's rate, in accordance with a statistically valid methodology, to reflect the percentage of defaulted loans in the sample that should be excluded.

(vi) *Notification.* The Secretary notifies the institution, in writing, of the decision.

(vii) *Seeking judicial review.* An institution may not seek judicial review of the Secretary's determination of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate until the Secretary or the Secretary's designee issues the decision under paragraph (h)(3)(v) of this section.

(viii) *Improper loan servicing or collection criteria.* For purposes of this paragraph, a default is considered to have been due to improper servicing or collection only if the borrower did not make a payment on the loan and the institution proves that the lender (for an FFEL Program loan) or the Direct Loan Servicer (for a Direct Loan Program loan) failed to perform one or more of the following activities, if that activity was required:

(A) Send at least one letter (other than the final demand letter) urging the borrower or endorser to make payments on the loan.

(B) Attempt at least one phone call to the borrower or endorser.

(C) For an FFEL Program loan, submit a request for preclaims assistance to the guaranty agency.

(D) Send a final demand letter to the borrower.

(E)(*1*) For an FFEL Program loan, submit a certification (or other evidence) that skip tracing was performed; or

(*2*) For a Direct Loan Program loan, document that skip tracing was performed.

(i) *Effect of decision.* (1) An institution may challenge the calculation of an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate under this section no more than once. The Secretary's determination of an institution's appeal of the calculation of such a rate is binding on any future appeal by the institution.

(2) An institution that fails to challenge the calculation of an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate under this section within 10 working days of receiving notice of the determination of that rate is prohibited from challenging that rate in any other proceeding before the Department.

(3) If the Secretary has initiated an action under paragraph (a)(2) of this section, the institution may not challenge the calculation of the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate on which the action is based.

* * * * *

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federal register

Monday
July 13, 1998

Part V

Federal Election Commission

11 CFR Parts 102, 103, and 106
Prohibited and Excessive Contributions; "Soft Money"; Proposed Rule

FEDERAL ELECTION COMMISSION

[Notice 1998–12]

11 CFR Parts 102, 103, and 106

Prohibited and Excessive Contributions; "Soft Money"

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Federal Election Commission today seeks comments on proposed rules relating to funds received by party committees outside the prohibitions and limitations of the Federal Election Campaign Act, also known as "soft money." This NPRM addresses issues raised in two petitions for rulemaking, one submitted by President William J. Clinton and the other submitted by five Members of the United States House of Representatives. The two petitions seek limits on the use of soft money for activities that have an impact on federal elections. The draft rules which follow do not represent a final decision by the Commission regarding the changes sought in the petitions. Further information is provided in the supplementary information that follows.

DATES: Statements in support of or in opposition to the proposed rules must be filed on or before September 11, 1998. The Commission will hold a public hearing at 10:00 a.m. on September 23, 1998. Persons wishing to testify must so indicate in their written comments.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to softmoneynpr@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The public hearing will be held in the Commission's public hearing room, 999 E Street, N.W., 9th Floor.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: With this NPRM, the Commission is publishing and seeking comments on proposed rules relating to the receipt and use of prohibited and excessive contributions, also known as "soft money," by national, state and local party committees. The Commission is publishing these rules in response to two petitions for rulemaking that seek limits on the use of soft money in activities that may influence federal elections.

For reasons that will be explained further below, the Commission has decided that the issues raised in the petitions warrant further consideration. The Commission believes that changes in the regulations relating to soft money may be necessary to give full force and effect to the prohibitions and limitations in the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* ["FECA" or "the Act"], and ensure that impermissible funds are not used to influence federal elections. Therefore, the Commission is seeking comments on proposed rules that would limit the use of soft money by party committees. The proposed rules are described in detail below.

However, the Commission would like to emphasize that no final decision has been made on whether or not to promulgate new rules in this area. At this point, the Commission is merely seeking comments on possible approaches for limiting the impact of soft money on federal elections. No final decision will be made until after the comment period has concluded and a public hearing has been held.

Prior History

The Act limits the amount that individuals can give to candidates, political committees and political parties for use in federal elections. 2 U.S.C. 441a. The Act also prohibits corporations and labor organizations from contributing their general treasury funds for these purposes. 2 U.S.C. 441b. Federal contractors are also prohibited from making these contributions. 2 U.S.C. 441c, 11 CFR 115.2(a). Note that, under 2 U.S.C. 441b and 441e, national banks, Congressionally-chartered corporations, and foreign nationals are prohibited from making contributions in connection with any election to any political office.

In contrast, some state campaign finance statutes allow corporations and labor organizations to make contributions to state and local candidates, and also allow individuals to make contributions to state and local candidates in amounts that would exceed the dollar limits in 2 U.S.C. 441a. In addition, the Act's prohibition on contributions by federal contractors does not apply to contributions made in connection with state or local elections. 11 CFR 115.2(a).

Today, most party committees receive some contributions that are permissible under the FECA and also receive other contributions that are not permissible under the Act if they are to be used in connection with federal elections. Contributions that are permissible under the FECA are often referred to as "hard money" contributions. Contributions that are not permissible, i.e., individual contributions in excess of the section 441a dollar limits, all corporate and labor organization general treasury contributions, and contributions from federal contractors, are often referred to as "soft money," and are to be used exclusively for state and local campaign activity or other party committee activities that do not influence federal elections.

Typically, party committees set up separate bank accounts into which they deposit the hard and soft money contributions they receive. Hard money contributions are to be deposited into a federal account, and soft money contributions are to be deposited into a non-federal account. Some party committees have a federal account and multiple non-federal accounts. However, since 2 U.S.C. 441b and 441e prohibit national banks, Congressionally-chartered corporations, and foreign nationals from making contributions in connection with any election to any political office, contributions from these entities to a party committee's non-federal accounts are also prohibited.

It is usually a relatively simple matter for the party committee to distinguish between hard and soft money contributions and segregate them in separate bank accounts. However, it can be more difficult to distinguish between a party committee's federal and non-federal expenses, because many party committee activities benefit both federal and non-federal candidates. For example, when a party committee conducts a get-out-the-vote drive urging people to support the party's candidates, it presumably increases the turnout of voters who favor that party's candidates. If there are both federal and non-federal candidates on the ballot, the drive benefits both the federal and the non-federal candidates. Consequently, if the party committee pays the costs of such a drive entirely with soft dollars, the committee is using prohibited contributions to benefit federal candidates. This would violate the contribution prohibitions and limitations in the FECA.

Since early in its history, the Commission has struggled with the fact that many party functions have an impact on both federal and non-federal elections, and has sought to give force and effect to the FECA's prohibitions and limitations by requiring party committees to pay at least a portion of the cost of these "mixed" activities with hard dollars. For example, in Advisory Opinion 1975–21, the Commission required a local party committee to use hard dollars to pay for a portion of its administrative expenses and voter registration costs. The Commission said that even though some party functions do not relate to any particular candidate or election, "these functions have an indirect effect on particular elections, and since monies contributed to fulfill these functions free other money to be used for contributions and expenditures in connection with Federal elections, it is appropriate to ascribe a certain portion of the administrative functions of a party organization to Federal elections during time periods in which Federal elections are held." *Id.*

The Commission incorporated part of Advisory Opinion 1975–21 into regulations promulgated in 1977. The regulations required political committees active in both federal and non-federal elections to allocate their administrative expenses between separate federal and non-federal accounts "in proportion to the amount of funds expended on federal and non-federal elections, or on another reasonable basis." 11 CFR 106.1(e) (1978). Sections 106.1 and 106.5 of the current rules contain updated versions of these regulations.

In two opinions issued after AO 1975–21, the Commission took an even more restrictive view of the use of soft money for registration and get-out-the-vote drive activity. In its response to Advisory Opinion Request 1976–72, the Commission said that "even though the Illinois law apparently permits corporate contributions for State elections, corporate/union treasury funds may not be used to defray any portion of a registration or get-out-the-vote drive conducted by a political party." Thus, the Commission concluded that this type of activity would have to be paid for with hard dollars. In its response to Advisory Opinion Request 1976–83, the Commission reached a similar conclusion.

However, in Advisory Opinion 1978–10, the Commission modified its position. In that opinion, the Commission concluded that the costs of voter registration and GOTV drives should be allocated in the same manner as party administrative expenditures. In reaching this conclusion, the Commission superseded Re: AOR 1976–72 and 1976–83 and said that corporate and union treasury funds could be used for the portion of the costs allocated to the party committee's non-federal account.

In Advisory Opinion 1979–17, the Commission recognized the ability of a national party committee to establish a separate account to be used "for the deposit and disbursement of funds designated specifically and exclusively to finance national party activity limited to influencing the nomination or election of candidates for public office other than elective 'federal office.'" Thus, the Commission concluded that a national party committee could accept corporate contributions "for the exclusive and limited purpose of influencing the nomination or election of candidates for nonfederal office."

The 1979 amendments to the Federal Election Campaign Act sought to encourage the participation of state and local party committees in federal elections by carving out exceptions to the definitions of contribution and expenditure for certain volunteer, voter registration and get-out-the-vote activity conducted by these committees. Under sections 431(8)(B)(x) and 431(9)(B)(viii), payments for the costs of campaign materials used in connection with volunteer activities on behalf of the party's nominee are not contributions or expenditures so long as the payments do not finance any general public political advertising, and are made from contributions that are permissible under the Act but were not designated for a particular candidate. Sections 431(8)(B)(xii) and 431(9)(B)(ix) contain the same rule for voter registration and get-out-the-vote drive costs conducted by the committee on behalf of its presidential and vice-presidential nominees. These provisions supplement a similar provision for slate cards and sample ballots that existed in the Act prior to the 1979 amendments. 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv). Since then, these activities have collectively been referred to as "exempt activities." The House Report accompanying the 1979 amendments recognizes the ability of state and local party committees to allocate the costs of slate card and volunteer activities in certain circumstances. H.R. Rep. No. 96–422 at 8, 9 (1979).

In 1984, the Commission received a petition for rulemaking from Common Cause seeking new rules relating to the use of soft money. The petition requested that the Commission take action to address what the petitioner alleged was the use of soft money by national party committees to influence federal elections. The Commission published a Notice of Availability on January 4, 1985, and subsequently published a Notice of Inquiry on December 18, 1985. *See* 50 FR 477 (Jan. 4, 1985), 50 FR 51535 (Dec. 18, 1985). These two notices sought comments from the public on the issues raised in the petition. The Commission also held a public hearing on January 29, 1986, at which several witnesses testified.

After reviewing the petition, the comments and the witness' testimony, the Commission denied the Common Cause petition, concluding that neither the petition nor the comments "constitute concrete evidence demonstrating that the Commission's regulations have been abused so that funds purportedly raised for use in nonfederal elections have in fact been transferred to the state and local level with the intent that they be used to influence federal elections." Notice of Disposition, 51 FR 15915 (Apr. 29, 1986).

Common Cause challenged the Commission's denial of the petition in U.S. District Court. In court, Common Cause asserted that no allocation method is permissible under the FECA. Consequently, Common Cause argued, the Commission's denial of the petition was arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706. Common Cause also argued that allowing committees to allocate on a reasonable basis was contrary to law because it failed to ensure proper allocation between federal and non-federal accounts.

The court rejected Common Cause's first argument, saying that the Act cannot be read to prohibit allocation. *Common Cause* v. *FEC*, 692 F. Supp. 1391, 1395 (D.D.C. 1987). However, the court then agreed that the Commission's policy of allowing state party committees to allocate slate card expenses on any reasonable basis was contrary to law, "since Congress stated clearly in the FECA that all monies spent by state committees on these activities vis-à-vis federal elections must be paid for 'from contributions subject to the limitations and prohibitions of this Act.'" *Id.* (*quoting* 2 U.S.C. 431(8)(B)(x)(2) and (xii)(2), 431(9)(B)(viii)(2) and (ix)(2)). The court said that

> [t]he plain meaning of the FECA is that any improper allocation of nonfederal funds by a state committee would be a violation of the FECA. Yet, the Commission provides no guidance whatsoever on what allocation methods a state or local committee may use; . . . Thus, a revision of the Commission's

regulations to ensure that any method of allocation used by state or local party committees is in compliance with the FECA is warranted. *Id.* at 1396.

The court directed the Commission to replace the "any reasonable basis" allocation method with more specific allocation formulas that would ensure that only contributions subject to the limitations and prohibitions of the Act are used to influence federal elections. However, the court also acknowledged that the Commission could "conclude that *no* method of allocation will effectuate the Congressional goal that *all* moneys spent by state political committees on those activities permitted in the 1979 amendments be 'hard money' under the FECA. That is an issue for the Commission to resolve on remand." *Id.* (emphasis in original).

In a subsequent order, the same court stated that "'[s]oft money' denotes contributions to federally regulated campaign committees in excess of the aggregate amounts permitted for federal elections by the FECA; these contributions, even if directed to national campaign entities, are permissible if the money is not to be used in connection with federal elections." *Common Cause* v. *FEC,* 692 F.Supp. 1397, 1398 (D.D.C. 1988).

The Commission initiated a rulemaking in response to the court's decision in which it made several efforts to obtain input from the regulated community. In addition to the two comment periods and public hearing held before the court's decision, the Commission sought comments on proposed rules through a new Notice of Proposed Rulemaking published on September 29, 1988. 53 FR 38012. The Commission also held another public hearing on the proposed rules on December 15, 1988, at which a cross section of the regulated community had an opportunity to testify. The Commission took the additional step of sending questionnaires to the chairs of all the Democratic and Republican state party committees, and also sought input from the chief fundraisers for each of the major political parties during the 1988 election year.

The Commission issued final rules in 1990 and put them into effect on January 1, 1991. *Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting,* 55 FR 26058 (June 26, 1990). These rules currently govern the allocation of expenses between federal and non-federal accounts. They seek to address the issue of soft money in two ways.

First, the current rules replace the "any reasonable basis" allocation method with specific allocation methods to be used to pay the costs of activities that impact both federal and nonfederal elections. The method to be used depends on the type of committee incurring the expense and the type of activity for which expenses are to be allocated.

National party committees, other than the Senate and House campaign committees, are required to allocate a minimum of 60% of their administrative expenses and costs of generic voter drives to their federal accounts each year (65% in presidential election years). 11 CFR 106.5(b). In addition, national party committees must allocate the costs of each combined federal and non-federal fundraising program or event using the funds received method described in 11 CFR 106.5(f).

Senate and House campaign committees are required to allocate their administrative and generic voter drive expenses using a funds expended formula, subject to a 65% minimum federal percentage, 11 CFR 106.5(c), and, like the national party committees, they must allocate the costs of each combined federal and non-federal fundraising program or event using the funds received method described in 11 CFR 106.5(f), with no minimum federal percentage required.

State and local party committees must allocate (1) their administrative expenses and generic voter drive costs using the ballot composition method, described in 11 CFR 106.5(d); (2) the costs of communications exempt from the contribution and expenditure definitions under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18), according to the proportion of time or space devoted to federal and nonfederal candidates in the communication, 11 CFR 106.5(e); (3) expenses incurred in joint fundraising activities using the funds received method, 11 CFR 106.5(f); and (4) direct candidate support activity according to the time or space devoted to each candidate in the communication. 11 CFR 106.1. The new rules also set up procedures to be used by all three types of committees to pay for their mixed activities.

Second, the rules impose additional reporting requirements in order to enhance the Commission's ability to monitor the allocation process. All three types of party committees are required to report their allocations of administrative expenses, voter drive costs, fundraising costs and costs of exempt activities, and also to itemize any transfer of funds from their non-federal to their federal or allocation accounts. In addition, all six national party committees are now required to disclose the financial activities of their nonfederal accounts. Specifically, the committees are required to report all nonfederal receipts and disbursements. The Commission believed this additional reporting would help to ensure that impermissible funds were not used for federal election activities.

On May 20, 1997, the Commission received a petition for rulemaking from five Members of the United States House of Representatives urging the Commission "to modify its rules to help end or at least significantly lessen the influence of soft money." On June 5, 1997, the Commission received a second petition for rulemaking relating to soft money, this one submitted by President Clinton. President Clinton's petition asks the Commission to "ban soft money" and "adopt new rules requiring that candidates for federal office and national parties be permitted to raise and spend only 'hard dollars.'"

In accordance with its usual procedures, the Commission published a Notice of Availability in the June 18, 1997 edition of the **Federal Register** announcing that it had received the petitions and inviting the public to submit comments on them. 62 FR 33040 (June 18, 1997). The comment period closed on July 18, 1997. The Commission received 188 comments in response to the Notice of Availability.

Summary of Comments on the Petitions for Rulemaking

Most of the comments on the Notice of Availability were directed at the question of whether the Commission should promulgate new rules on soft money, and if so, what those rules should be. However, a few commenters raised threshold issues regarding the petitions that should be addressed before examining the substantive issues raised. These threshold issues will be discussed in subsection 1, below. The remaining comments will be summarized in subsection 2.

1. Comments Raising Threshold Issues Regarding the Petitions

a. Sufficiency of the Petitions

One comment raised a threshold question about the sufficiency of the petitions. This comment asserted that the petitions should be denied because they do not set forth the factual and legal grounds supporting the proposed change in the rules. *See* 11 CFR 200.2(b)(4). The comment said that the Commission should require petitioners to put on record "specific, detailed and credible instances of abuse that in terms of seriousness and scope will justify" the rules sought in the petition, and

should hold certain petitioners to a higher standard of evidence.

This comment misconstrues the purpose of the petition for rulemaking procedures. These procedures provide the public with guidance on how to seek changes in the Commission's rules, and should be read in light of the Commission's long-standing practice of making its policymaking processes as open and accessible as possible. The rules do not place a heavy evidentiary burden on a petitioner to prove, on the face of a petition, that policy changes are necessary. Petitioners need only raise policy issues that are within the Commission's jurisdiction, and request that the Commission consider whether policy changes are warranted. If a petitioner does so, the Commission will publish a Notice of Availability and begin its consideration process. The Commission will use the comments received on the petition and its own experience in interpreting and enforcing the Act to determine whether to proceed with a rulemaking.

Furthermore, implicit in the Commission's commitment to making its rulemaking process easily accessible to the public is a commitment to making that process available to all members of the public on an equal basis. Consequently, the Commission does not believe it would be appropriate to hold certain petitioners to higher evidentiary standards.

The Commission concludes that the letters submitted by President Clinton and the five Members of Congress adequately explain the factual and legal grounds upon which they rely, and demonstrate that there are issues related to the use of soft money that are worthy of Commission consideration. Therefore, they qualify as petitions under 11 CFR 200.2(b). The Commission also notes that even if it were to conclude that the letters do not qualify as petitions, it has the discretionary authority to treat them as the basis for a sua sponte rulemaking. 11 CFR 200.2(d).

b. Statutory Authority

Another threshold issue raised by the comments is whether the Commission has the authority to regulate soft money. Several of the comments that opposed the petitions take the position that soft money is outside the Commission's jurisdiction, and that imposing limits on soft money would exceed the Commission's statutory authority. They assert that, since the Act does not restrict the use of non-federal funds by the national party committees unless those funds are used for federal election activity, the Commission cannot impose restrictions on its own.

In contrast, several of the comments that support the petitions argued that the Commission has the power to ban the use of soft money by party committees to the extent necessary to avoid having soft money influence federal elections. Another comment argued that, in the *Common Cause* case, discussed above, the court said that when the Commission fails to issue regulations, and the policy resulting from that failure flatly contradicts Congress's purpose, the Commission can be held to have acted contrary to law. Since the Act prohibits the use of soft money in federal elections, this comment asserts that a Commission-imposed limitation serving the same purpose would be upheld.

The Commission has reviewed this threshold question and reached the preliminary conclusion that it has the authority to issue new rules relating to soft money, at least insofar as it is used in connection with Federal elections. The FECA limits the amounts that individuals and political committees can contribute for the purpose of influencing federal elections, and also prohibits corporations, labor organizations and federal contractors from using their general treasury funds to make contributions in connection with federal elections. 2 U.S.C. 441a, 441b, 441c. Section 438(a)(8) of the Act authorizes the Commission to "prescribe rules, regulations and forms to carry out the provisions of this Act. * * *" The Commission believes this broad grant of rulemaking authority includes the authority to promulgate rules to limit the use of soft money in connection with federal elections.

There is ample judicial authority supporting this conclusion. As the United States Court of Appeals for the District of Columbia Circuit has recognized, courts have shown a "lack of hesitation in construing broad grants of rule-making power to permit promulgation of rules with the force of law as a means of agency regulation of otherwise private conduct." *National Petroleum Refiners Association* v. *Federal Trade Commission*, 482 F.2d 672, 680 (D.C. Cir. 1973) ("*NPRA*"). "An agency with a general grant of rulemaking authority has jurisdiction to promulgate regulations reasonably related to the purposes of its enabling legislation." *Pinney* v. *National Transportation Safety Board*, 993 F.2d 201, 202 (10th Cir. 1993). The Supreme Court has said that "[w]here the empowering provision of a statute states simply that the agency may 'make * * * such rules and regulations as may be necessary to carry out the provisions of this Act,' we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.'" *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973) (quoting *Thorpe* v. *Housing Authority of City of Durham*, 393 U.S. 268, 280–81 (1969). The "authority of the [Federal Power Commission] need not be found in explicit language. [A general rulemaking provision] demonstrates a realization by Congress that the Commission would be confronted with unforeseen problems of administration in regulating this huge industry and should have a basis for coping with such confrontation. While the action of the Commission must conform with the terms, policies and purposes of the Act, it may use means which are not in all respects spelled out in detail." *Public Service Comm'n of State of New York* v. *Federal Power Commission*, 327 F.2d 893, 897 (D.C. Cir. 1964). Thus, the Commission believes that it has the authority to promulgate rules to ensure that contributions that would violate sections 441a, 441b or 441c are not used to influence federal elections.

The Commission also believes that, given the complexity of the issues raised, this is an area in which providing additional guidance to the regulated community is particularly important. "More than merely expediting the agency's job, use of substantive rule-making is increasingly felt to yield significant benefits to those the agency regulates. Increasingly, courts are recognizing that use of rule-making to make innovations in agency policy may actually be fairer to regulated parties than total reliance on case-by-case adjudication." *NPRA*, 482 F.2d at 682.

However, the Commission does not regard this as a closed issue. Therefore, as part of its effort to explore the question of whether new rules are needed, commenters are invited to further address the issue of whether the Commission has the authority to promulgate rules in this area. Commenters are also encouraged to express their views on whether the proposed rules set out in this notice are within the scope of that authority.

2. General Comments on the Petitions for Rulemaking

a. Comments Supporting the Petitions

Approximately ¾ of the 188 comments received in response to the Notice of Availability expressed support for the petitions for rulemaking. Among

those supporting the petition were twelve United States Senators, three United States Congressmen, the Secretaries of State of five states, and eleven state Attorneys General.

These supporting comments suggested a number of different strategies for addressing the issues raised in the petition. For example, more than a hundred comments urged the Commission to ban soft money completely, while other comments urged the Commission to limit certain uses of soft money. A dozen comments urged the Commission to ban soft money contributions to the national party committees, or to prohibit the party committees from receiving soft money contributions. Three other commenters urged the Commission to prohibit the solicitation of soft money contributions by national party committees, federal officeholders, and federal candidates. Another comment suggested that the Commission prohibit the party committees from spending soft money or transferring it to other committees. Other comments were directed at the use of soft money by state and local party committees. These comments suggested that the Commission prohibit state and local party committees from spending soft money on any activity or event that might influence a federal election, and limit their use of soft money to general overhead expenses.

Several comments suggested that the Commission impose partial limits on soft money. One comment suggested that the use of soft money be reduced or limited so that the amount will not influence a party or candidate. Two comments suggested that specific dollar limits be imposed, one on the amount that a party committee could receive, and the other on the amount that a contributor could give.

The comments contained a number of arguments as to why additional limits on the use of soft money are needed. Four comments asserted that soft money destroys the integrity of the political process, and said that a ban on soft money would help to restore public confidence in the integrity of the process. Eight comments said that the widespread use of soft money alienates voters, and creates the perception of impropriety, thereby discouraging involvement in the process. Five commenters argued that soft money increases the demand for campaign contributions, and distracts government officials from the responsibilities of governance.

Many of the comments also argued that soft money is a loophole being used to circumvent the prohibitions and limitations of the Act. One comment asserted that the current system essentially allows money laundering to occur by allowing impermissible soft dollars to be exchanged for hard dollars that can be used without limitation. Other comments said that soft money results in actual *quid pro quo* corruption, thereby frustrating the purposes of 2 U.S.C. 441a and 441b. Another comment expressed concern that soft money is having a negative impact on the public financing system for presidential campaigns.

Several comments were directed at the system of allocating federal and non-federal expenses, as set out in the current rules. Most of these comments urged the Commission to abandon the system and prohibit any combined use of federal and nonfederal funds. Several comments asserted that the soft money problem has grown significantly worse since the rules were promulgated, indicating that the rules have failed to ensure that only hard dollars are used to influence federal elections. One of these comments said that reporting under the allocation rules is inadequate, and that the Commission does not have the resources necessary to enforce the rules.

b. Comments Opposing the Petitions

As indicated above, about one quarter of the comments spoke out against limits on soft money, for a variety of reasons. Several comments argued that the proposals set out in the petitions would violate the First Amendment. Others expressed concern that the proposals would effectively federalize all national party activities, and could weaken parties, which play an important role in our political system. Two other comments urged the Commission to take action on soft money only when it has addressed the issue of compulsory union dues. Three comments urged the Commission to reject the petitions and devote its resources to enforcing existing laws.

Analysis

Prior to 1991, it was difficult to determine how much soft money the party committees were raising and spending, because there was no systematic disclosure of soft money activity, and no uniform guideline for allocating expenses. Although some states required party committees to disclose their non-federal account activity, others did not, and even in those states where disclosure was required, not all activity appeared on the public record. Consequently, most of the available information was anecdotal.

The Commission is generally reluctant to make significant changes in existing policy in the absence of clear evidence that such changes are needed to effectuate the Act's mandate. Consequently, the Commission concluded that it would be inappropriate to impose the significant restraints on the use of soft money sought in the 1984 petition for rulemaking. Instead, the Commission established specific allocation methods and required additional disclosure by the party committees. Based upon the information available at the time, the Commission believed this approach struck the appropriate balance between the need to effectuate the prohibitions and limitations of the Act, and also recognize the interests of the states in regulating non-federal activity.

However, recent developments—brought to light in many instances because of the additional disclosure requirements imposed in 1991—have reopened the question of whether allowing party committees to pay a portion of their mixed activities costs with soft dollars is consistent with the mandate of the FECA. Concerns have been raised that the allocation rules have allowed party committees to use large contributions from prohibited sources and in excess of the hard dollar limits in ways that, in fact, influence federal elections, even though they are ostensibly being used for nonfederal election activity.

One such development is the dramatic increase in the amount of soft money raised and spent by the national party committees since promulgation of the allocation rules. According to summaries of the reports filed with the Commission, which do not include transfers among the national party committees, the national committees raised $262.1 million during the 1995–96 election cycle, or an average of approximately $131.05 million per year, up from $86 million in the 1992 election cycle or an average of $43 million per year. Similarly, soft money disbursements by the committees totaled $271.5 million in the 1996 election cycle, a significant increase from the $79.1 million spent in the 1992 election cycle. The reports also show that soft money receipts by the national party committees continued to increase in 1997. Soft money fundraising by the Democratic committees increased 25% during the first six months of the year, when compared to the same period during the previous election cycle. Soft money fundraising by the Republican national party committees increased 17% during this period.

In addition to the increase in the total dollar amount of soft money contributions, there has also been an increase in the number of contributions made to the party committees' nonfederal accounts that would have been prohibited under FECA if they had been made to a federal account. As explained above, the Act limits individual contributions to the national party committees' federal accounts to $20,000 per calendar year, and also limits total contributions by an individual to $25,000 per year. 2 U.S.C. 441a(a)(1)(B) and 441a(a)(3). In addition, the Act prohibits contributions by corporations, labor organizations and federal contractors. 2 U.S.C. 441b, 441c. Entities that are prohibited from making contributions to a federal account and individuals wishing to make contributions in excess of the dollar limits have generally been permitted to direct those contributions to a nonfederal account, even though contributions to nonfederal accounts are often used for activities that have an impact on federal elections.

The reports indicate that contributors are doing so with increasing frequency. The national party committees' nonfederal accounts received at least 381 individual contributions of more than $20,000 during the 1992 presidential election cycle, and also received about 11,000 contributions from sources that are prohibited from contributing to federal accounts. In the 1996 election cycle, both numbers more than doubled. The committees' nonfederal accounts received nearly 1000 individual contributions in excess of $20,000, and also received approximately 27,000 contributions from FECA-prohibited sources. Thus, it appears that an increasing number of contributors see the party committees' nonfederal accounts as an avenue through which they can make contributions that would be prohibited under sections 441b or 441c or would exceed the $20,000 individual contribution limit. Some individual contributors may also be using these accounts to make contributions that would otherwise exceed their $25,000 overall limit.

Ironically, there are also indications that the allocation rules themselves may have increased the amount of soft money raised by the national party committees, although it may not be possible to establish cause and effect. Although the national party committees were not required to report soft money receipts in 1984, one national party committee official submitted testimony stating that his party raised $3.7 million in soft money during the 1984 Presidential election year. *Federal Election Commission Hearing on the Use of Undisclosed Funds or "Soft Money" to Influence Federal Elections,* January 29, 1986 (written testimony of Frank J. Fahrenkopf, Chairman, Republican National Committee, at 4). That same party committee raised $23.5 million in 1992, the first Presidential election year in which the allocation rules applied. This party committee subsequently raised $66.2 million in the 1996 Presidential election year, approximately 18 times the amount reportedly raised in 1984. In addition, two national party committees that did not have a non-federal money account before promulgation of the allocation rules established such an account and began raising soft money after the rules went into effect.

In some situations, the national party committees have interpreted the allocation rules to allow transfers of funds to state and local party committees in order to take advantage of more favorable allocation ratios. Although the allocation rules prohibit state party committees from using transferred funds for certain volunteer and GOTV activities, *see* 11 CFR 100.7(b)(15)(vii), and (b)(17)(vii), 100.8(b)(16)(vii) and (b)(18)(vii), they do not prohibit the use of transferred funds for voter drive or other activities, nor do they explicitly require state parties to apply the national party committee's allocation ratio when they use transferred funds for those purposes.

Generally speaking, it is easier to raise soft money than hard money. As a result, the national party committees look for ways to make their hard dollars go farther. Transferring funds helps them achieve this goal in a number of ways. For example, a national party may try to stretch its hard dollars by transferring them to a state or local party committee and instructing the committee to use the funds for a particular mixed activity. Generally, the rules permit a state or local party committee to pay a higher percentage of its mixed activity costs with soft dollars than a national party is able to when conducting the same activity. In many cases, the difference is significant. To illustrate, a national party committee conducting a $100,000 voter drive under the current rules would be required to pay for the drive with at least $60,000 in hard money. In contrast, a state party committee conducting the same drive might only be required to use $35,000 in hard money, and could pay the remaining costs with soft money. This creates an incentive for the national committee to transfer hard dollars to the state committee and have the recipient committee conduct the activity.

There have also been allegations that both national and state party committees have transferred soft dollars to nonprofit organizations for them to use in conducting activities that influence federal elections, such as voter registration drives or get-out-the-vote campaigns. Ordinarily, a party committee would be required to allocate the costs of such an activity, i.e., pay part of the cost of the activity with hard dollars. However, many nonprofit organizations are not political committees under the FECA, and thus are generally not subject to the allocation rules. Currently, in many situations, nonprofit organizations that are not political committees under the FECA can pay the costs of voter registration or get-out-the-vote activities entirely with soft dollars. Thus, as with the hard dollar transfers described above, the party committees may believe that transferring soft money to these types of nonprofit organizations will enable them to conserve hard dollars. However, in applying the allocation rules, one court has said that when an organization conducts an allocable activity with funds received from a party committee, the recipient organization can be required to use the allocation rules applicable to the party committee from which the funds were obtained. *FEC* v. *California Democratic Party,* No. S–97–891, (E.D.Cal. Jun. 11, 1998).

The disclosure reports show that, in election years, the national party committees transfer more soft money to state and local party committees in states that appear to have closely contested races for federal office. For example, reports indicate that the national party committees transferred a combined $14.3 million in soft money to state and local party committees in California during the 1995–96 election cycle. California was an important battleground state in the Presidential election. Polls indicated that both major party candidates had a chance to win the state's 54 electoral votes.

In contrast, polls indicated that President Clinton had a substantial lead in New York State. One national party committee did not transfer any soft money to state and local party committees in New York during the 1995–96 election cycle, and the other national party committee transferred only $325,332, even though New York represents 33 electoral votes. While this is only one example and there are other possible explanations for this disparity, one likely explanation for it is that the national party committees were

directing their soft money to those states in which it would have the most impact on federal elections.

In addition, there have been allegations in the press and other fora that suggest that federal candidates and officeholders may be more involved in the process of raising soft money for the parties than they have been in the past. Federal officeholders, in particular, appear to be directly involved in soliciting contributions for the party committees' soft money accounts. In 1990, the Commission recognized that some solicitations for soft money contributions may lead contributors to believe that funds contributed will be used to benefit federal candidates, when, in fact, soft money can only be used for non-federal election activity. In order to address this concern, the Commission created a presumption that party committee solicitations that refer to a federal candidate or election are for the purpose of influencing a federal election, and thus any contributions received in response to those solicitations are subject to the prohibitions and limitations of the Act. 11 CFR 102.5(a)(3). 55 FR at 26059 (June 26, 1990). The Commission now believes it may be appropriate to seek comments as to whether solicitations by a federal candidate or federal officeholder should be covered by § 102.5(a)(3), and thus whether the resulting contributions should be subject to the Act's prohibitions and limitations.

Of course, the discussion of the above allegations should not be read as a determination by the Commission that these allegations involve violations of the FECA. Determinations by the Commission of violations of FECA by specific persons in specific factual contexts can only be made in an enforcement proceeding.

However, the record described above suggests that the use of soft money has expanded far beyond what the Commission anticipated when it promulgated the allocation rules. This appears to be particularly true for the national party committees. They are directly tied to federal officeholders in Congress and the White House. They also play a major role in raising funds to elect candidates for federal office, and in directing those funds to states in which key elections are being held. Thus, it is reasonable to conclude that at least one dominant focus of the national party committees is in electing federal candidates. This is in contrast to state and local party committees, who focus more of their activities on raising funds for and assisting in the election of state and local candidates.

On the other hand, the Commission is also aware that only a small percentage of the 500,000 elected positions in this country are federal, and that national party committees may have an interest in the outcome of both federal and nonfederal elections. In some cases, the national party committees promote ideas, issues and agendas of importance to their respective parties, activities which, they assert, do not fall within the FECA. Thus, it is reasonable to conclude that another dominant focus of the national party committees is advocating issues and electing state and local candidates, although the level of direct involvement in non-federal elections varies among the national party committees. In recognition of this interest, national party committees have, to date, been permitted to set up separate nonfederal accounts to raise and spend money as allowed under applicable state and local law.

Putting aside the question of how much national party committee activity is not federal-election related, it appears that by allowing national party committees to pay a portion of their mixed activities costs with soft dollars, the allocation rules appear to be allowing the national party committees to use large soft money contributions in ways that unavoidably influence federal elections, even though they are ostensibly raised for nonfederal election activity. This is inconsistent with the policy goals of the FECA, which seeks to limit corruption and the appearance of corruption that is created when large individual contributions and corporate, labor organization and federal contractor funds are used to influence federal elections. The number and percentage of comments expressing the view that soft money has a corrupting influence on the federal election process is a strong indication that soft money is "eroding * * * public confidence in the electoral process through the appearance of corruption." *FEC* v. *National Right to Work Committee,* 459 U.S. 197, 209 (1982) (citing *Buckley* v. *Valeo,* 424 U.S. 1, 26–27 (1976)).

Consequently, the Commission believes that it may be necessary to promulgate new rules to ensure that soft money is not used to influence federal elections, and give full force and effect to the prohibitions and limitations of the Act. The Commission has drafted proposed rules that seek to achieve this goal. These rules are set out below, along with several alternative proposals.

The Commission is also interested in receiving comments on any other issues relating to soft money. In particular, as discussed above, comments are invited on the scope of the Commission's authority to promulgate rules in this area. Comments are also invited on whether the allegations discussed above are accurate, relevant to this inquiry, and adequate to justify changes in Commission policy.

The Commission would like to re-emphasize that the rules and alternatives set out below are preliminary proposals only. They do not represent a final decision, and may be modified by the Commission or rejected and not adopted at all. Also note that these proposals focus on soft money activity conducted by party committees, and would not directly impact issue advocacy conducted by other entities, which, unless it expressly advocates the election or defeat of a clearly identified candidate, or in certain cases is coordinated with a candidate or party, is outside the Commission's jurisdiction. Coordination is currently being addressed in another rulemaking. *See* 62 FR 24367 (May 5, 1997).

Rulemaking Proposals

In an effort to generate a full range of views, the Commission is seeking comment on two options for addressing the issues raised above, and is also seeking comment on three variations on the second of these two options.

The first option would be to make no changes to the current rules. Under the first option, the national parties would continue to be prohibited from receiving and using soft money in connection with federal elections. Soft money raised for non-federal election related purposes would be permitted. Non-federal accounts would be permitted for these non-federal election purposes along with the building fund accounts specifically authorized by the FECA.

The second option would be to make revisions to the current rules. The Commission has drafted proposed revisions to the current rules that would address these issues. The proposed revisions are described in detail in the next two sections. Draft rules implementing these proposals are set out in the proposed rule section of this notice.

The proposed revisions consist of a core proposal, and three variations on the core proposal. The core proposal would prohibit the receipt and use of soft money by the national party committees, and would eliminate all national party committee nonfederal accounts other than the building fund accounts specifically authorized by the FECA. This proposal also clarifies portions of section 102.5 relating to solicitations by federal candidates and officeholders. However, the core proposal would not change the

allocation rules for state and local party committees.

The first variation to the core proposal would modify it to make a narrow exception to the prohibition on the receipt of soft money by national party committees. This exception would allow national party committees to raise soft money for the limited purpose of making direct or earmarked contributions to state and local candidates. The section of the proposed rules titled "variation one" sets out those rule provisions that would be different from the core proposal if this variation were adopted. All the other provisions of the core proposal would remain the same.

The second variation on the core proposal would modify the core proposal to ensure that hard money transferred from a national to a state or local party committee is spent using the rules applicable to the national party committees, rather than the state or local party committee's more favorable allocation ratios. Variation two would require the national party committee to earmark transfers of funds for use in a particular activity, and would require the state or local party committee to finance the identified activity entirely with hard dollars. Variation two could be implemented if either one of the two options were adopted as is, or if the core proposal of the second option were adopted with variation one. As with variation one, variation two of the proposed rules sets out those rule provisions that would be different from the core proposal if variation two were adopted.

Finally, the third variation on the second option's core proposal would extend portions of the core proposal's treatment of national party committees to state and local party committees. Under variation three, state and local party committees would be required to finance their mixed activities entirely with hard dollars. Like variation two, variation three could be implemented in conjunction with the core proposal, or in conjunction with both the core proposal and variation one. Those provisions that would differ from the core proposal of the second option are set out in variation three of the proposed rules, below.

The Commission invites commenters to submit their views on the first and second options, including the core proposal and all three variations of the second option.

1. National Party Committees, Including the Senate and House Campaign Committees of the National Parties

The objective of the proposed rules is to ensure that soft money is not used to influence federal elections. In order to achieve this result, the core proposal virtually eliminates the soft money available to the national party committees to subsidize activities that influence federal elections.

Both the first and second options recognize the limited scope of the FECA, and acknowledge that national party committees have other purposes besides the election of federal candidates. The major difference between the two options is whether most national party committees' federal and nonfederal activities are inextricably intertwined, or, as the current rules suggest, can be separated in a way that will ensure that soft money is not used to influence federal elections.

One way to attempt to reduce the amount of soft money used to influence federal elections would be to adjust the allocation ratios so that national party committees are required to use a larger percentage of hard dollars to pay the costs of their mixed activities. However, adjusting the allocation ratios would have limited impact for several reasons.

First, unless the ratios were increased to 100%, the national party committees could continue to pay for a portion of their mixed activities with soft dollars. Thus, increasing the ratios would merely reduce, rather than eliminate, the amount of soft money spent by the national party committees on mixed activities that influence federal elections.

In addition, this approach would have no impact on soft money spent by the national party committees that is not spent directly on mixed activities. Of the $271.5 million in soft money disbursed by the national party committees during the 1996 election cycle, only $90.5 million, or one third, was spent directly on mixed activities that were subject to the allocation ratios. An even greater amount, $114.8 million, or 42% of the total spent during the cycle, was transferred to state and local party committees. An additional amount, which cannot be as readily determined from the committees' reports, was transferred to outside groups that are not subject to the allocation rules. Adjusting the allocation ratios would only affect those amounts spent on mixed activities. Amounts transferred between party committees would be unaffected.

The preliminary evidence described above indicates that soft money transferred by the national party committees, except for money not used in connection with federal elections, is having a significant impact on federal elections. If the proposed rules do not take these transfers into account, they will not adequately effectuate the Congressional intent that only hard money be used to influence the outcome of federal elections. *See Common Cause* v. *FEC*, 692 F. Supp. 1391 (D.D.C. 1987), *enforced*, 692 F. Supp. 1397 (D.D.C. 1987).

The first option, described in the introduction above, assumes that money raised by national party committees to elect candidates to state and local offices and to promote party positions on issues of local, regional, and national importance can be spent in a way that will not influence federal elections, and thus is beyond the Commission's jurisdiction. The Commission invites comments on this option. In particular, the Commission encourages commenters to help clarify the various purposes of national party committees by discussing those national party committee activities that promote party positions, agendas and ideas on issues of local, regional, and national importance.

In addition to seeking comments on this approach, the Commission is also seeking comments on whether Schedule I should be revised so that transfers between party committees can be more accurately tracked as well as money used to elect candidates to state and local offices and to promote party positions on issues of local, regional, and national importance. This information would greatly enhance the available information on how soft money is spent by national party committees.

The second option is based on the conclusion that the only way to limit the amount of soft money spent by the party committees to influence federal elections would be to reduce the amount of soft money raised by the party committees, and in particular, by the national party committees. This option concludes that the dominant focus of the national party committees is on electing federal candidates, and virtually all national party committee activities influence federal elections. Thus, it would be more consistent with the purposes of the FECA and the statute's jurisdictional reach to require national party committees to finance their mixed activities entirely with hard dollars. The most effective way of carrying out the Act's requirements is to prohibit the national party committees

from raising soft money for most purposes.

The core proposal of the second option would achieve this goal by revising the allocation rules for national party committees. Specifically, the core proposal would revise section 102.5 to prohibit all three types of national party committees from operating non-federal accounts and accepting soft money. The only exception would be that committees could continue to operate the building fund accounts, since these accounts are specifically permitted by the FECA. *See* 2 U.S.C. 431(8)(B)(viii), 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13).

The core proposal of the second option would also make related changes to Part 106. Proposed sections 106.1(a) and 106.5(b) would require the national party committees to defray expenses, other than building fund expenses, entirely with hard dollars. This would include the costs of expenditures that are on behalf of both federal and nonfederal candidates, section 106.1(a), and the costs of combined federal and non-federal fundraising programs currently allocated using the funds received method in section 106.5(f). It would also include costs incurred in fundraising for the committees' building funds, in order to ensure that fundraising for building funds does not become an avenue for spending soft money to influence federal elections, such as by soliciting building fund contributions with communications that expressly advocate the election or defeat of federal candidates.

Sections 106.1(a) and 106.5(b) of the core proposal would apply to all of the national party committees, including the Senate and House campaign committees. The core proposal would also make minor structural modifications to section 106.1. Paragraph (a) would be broken into two parts, and several reporting requirements in separate paragraphs of the current rule would be relocated to paragraph (b). In addition, current section 106.5(c), would be removed and replaced with an entirely new provision, to be discussed below. The Commission invites comments on these proposals.

Variation one on the second option's core proposal is largely the same as the core proposal. However, variation one would create a narrow exception to the prohibition on the receipt of soft money by national party committees. Under section 102.5(c) of variation one, national party committees other than the Senate and House campaign committees would be allowed to maintain a second non-federal account for the limited purpose of receiving donations that are either earmarked for and subsequently donated to clearly identified non-federal candidates or are raised and spent solely in the form of donations to non-federal candidates, either directly or through an earmarked transfer to a state or local party committee. This would allow national party committees to continue raising soft dollars for the very limited purpose of making or passing on contributions directly to nonfederal candidates. However, the national party committees would still be required to finance their mixed activities entirely with hard dollars. Comments are invited on this proposal.

If the second option were to be adopted, either with or without variation one of the core proposal, a modest reorganization of section 106.5 of the regulations would be necessary. This reorganization is shown in the core proposal section of the proposed rules. First, the section heading would be revised to reflect the substantive changes in the section. Second, since the national party committees would no longer be allocating expenses, the list of costs to be allocated in current section 106.5(a)(2) would be relocated to section 106.5(c)(2). Revised section 106.5(b) would apply to all national party committees, including the Senate and House campaign committees, and new section 106.5(c) would state the general rule that state and local party committees are required to allocate the expenses in paragraph (c)(2) in accordance with paragraphs (d) through (f). Comments are invited on the reorganization of section 106.5.

The version of section 106.5 in variation three of the second option also reflects this reorganization, although variation three would also make other changes to section 106.5 that will be discussed further below.

2. State and Local Party Committees

The Commission is seeking comment on whether the rules governing state and local party committees should be changed to address some of the issues raised above.

As with the national party committees, the current allocation rules appear to be allowing state and local party committees to use soft money to subsidize activities that, at least in part, influence federal elections. In addition, as discussed above, the differences between the allocation methods applicable to national party committees and those applicable to state and local party committees create an incentive for a national party committee that wants to engage in a mixed activity to transfer hard dollars to a state or local party committee and have the recipient committee conduct the activity using its more favorable allocation ratios. This problem exists under the current rules. However, it would be made more acute if the second option were adopted, because the core proposal for national party committees would eliminate the national party committees' non-federal accounts and require national party committees to use 100% hard money for all activities.

Implementing the core proposal of the second option could also encourage soft money donors to redirect their contributions to the state and local party committees, which would then use the funds for mixed activities that influence federal elections. The national party committees might assist their state and local affiliates by employing a type of directed donor strategy, in which the national committee solicits soft money contributions and instructs contributors to send their contributions directly to the state or local committee. Thus, instead of reducing the amount of soft money activity, the core proposal for national party committees may merely redirect that activity to the state and local level, where reporting may be less complete than at the federal level.

Variations two and three on the core proposal would address these issues. If the core proposal of the second option were implemented with variation two, the rules would eliminate the national party committees' nonfederal accounts and would also seek to limit the incentive for national party committees to transfer funds to state and local party committees in order to take advantage of the recipient committee's more favorable allocation ratios. Specifically, variation two would require a national party committee that transfers hard dollars to a state or local party committee to include a written communication identifying the state or local party committee activity for which the transferred funds are to be used. The national party committee would also be required to include a copy of the written communication in its next regularly scheduled disclosure report to the Commission. *See* section 106.5(b) of variation two.

The recipient state or local party committee would then be required to use the transferred funds for the identified activity, and pay any additional costs incurred in the identified activity entirely with hard dollars. This would ensure that funds that originate with a national party committee are used in accordance with the rules that apply to national party committees. Finally, like the national

party committee, the state or local party committee would be required to submit a copy of the written communication with its next regularly scheduled disclosure report. Section 106.5(c)(1)(ii)(A) of variation two. Comments are encouraged on these proposals.

Paragraph (c)(1)(ii)(B) of variation two contains an exception for transfers to state and local party committees in states that hold federal and non-federal elections in different years. The transfer requirements described above would not apply to transfers made to these entities if the funds transferred were used exclusively for generic voter drive activity conducted in a calendar year in which no candidates for federal office appear on any primary, general, or special election ballot.

Variation two also contains a conforming amendment to section 106.1. Revised section 106.1(a)(1) would require state and local committees to follow the transfer rules in section 106.5 if they use transferred funds to pay for expenditures on behalf of both federal and nonfederal candidates. The Commission also notes that it may be necessary to make other conforming amendments to the reporting requirements in Part 104 of the regulations, should variation two be implemented.

Variation three of the core proposal would extend portions of the core proposal's treatment of national party committees to state and local party committees in order to ensure that state and local committees do not use soft money donations to influence federal elections. The core proposal would require national party committees to pay their expenses entirely with hard dollars. Similarly, variation three would require state and local party committees to pay the costs of their mixed activities entirely with hard dollars, regardless of whether the funds used were transferred from a national party committee. Under this approach, state and local party committees would be required to pay all of the costs they incur in the activities described in current section 106.5(a)(2) with funds that are permissible under the FECA. This is in contrast to the current rules, under which they allocate the costs of all of these activities, and is also in contrast to variation two, under which they would allocate the costs of any mixed activities not partially financed with funds transferred from a national party committee. Variation three would also amend section 106.1 to require state and local committees to use hard dollars for expenditures made on behalf of both federal and nonfederal candidates.

Variation three would contain two exceptions to the general requirement that state and local party committees pay the costs of their mixed activities entirely with hard dollars. First, national and state party committees could continue to defray their building fund expenses with funds in a building fund account established in accordance with section 102.5(c)(2). In addition, state and local party committees in states that do not hold federal and non-federal elections in the same year could continue to use funds that are not subject to the prohibitions and limitations of the Act to defray the costs of generic voter drive activity conducted in a calendar year in which no candidates for federal office appear on any primary, general, or special election ballot.

Comments are invited on variation three of the core proposal. The Commission recognizes that this would be a significant change for committees that operate on the state and local level, and would raise issues regarding the scope of the FECA. The concept underlying this approach is that all mixed activity, by its very nature, affects federal elections, and must be paid for with hard dollars. Commenters are encouraged to address the question of whether the Commission has the statutory authority to implement such a rule.

The Commission would like to emphasize that, under variations two and three, state and local party committees would be able to continue raising soft money to pay for activities that exclusively influence nonfederal elections.

Finally, the core proposal and all three variations of the core proposal would amend current section 106.5(a)(2)(iv) to address the allegation that party committees have transferred funds to nonprofit organizations in order to avoid the allocation requirements. The revised provisions are set out in section 106.5(c)(2)(iv) of the core proposal, variation one and variation two, and in section 106.5(b) of variation three. Section 106.5(c)(2)(iv) would indicate that the costs of generic voter drives must be allocated if the drive is conducted directly by a state or local party committee or is financed by the party committee and conducted by another entity. Section 106.5(b) of variation three would indicate that the costs of generic voter drives must be defrayed entirely with hard dollars, whether the drive is conducted directly by a state or local party committee or is financed by the party committee and conducted by another entity. The Commission invites comments on these proposals.

3. Other Proposed Rules

a. Party committee solicitations by federal candidates and officeholders

The Commission is considering changes to section 102.5(a)(3) to make it clear that contributions solicited by a federal candidate or officeholder are subject to the prohibitions and limitations of the Act. As discussed above, when a federal candidate or officeholder solicits a contribution, the contributor is likely to assume that his or her contribution will be used to benefit a federal candidate. Proposed revisions to section 102.5(a)(3) set out in the core proposal would make it clear that contributions resulting from a solicitation made by a federal candidate or officeholder are subject to the prohibitions and limitations of the Act. However, in the case of a solicitation for a national party committee, this presumption could be rebutted if the donor, in writing, expressly designates the contribution for the committee's building fund account, as described in section 102.5(c)(2). In the case of a solicitation for a state party committee, this presumption could be rebutted if the donor, in writing, expressly designates the contribution for the committee's building fund account, or for its non-federal account, as described in section 102.5(a)(1)(i). Donors to a local party committee could also designate their contributions for a nonfederal account. The core proposal also contains a conforming amendment to current section 102.5(a)(2), which would add to the list of contributions that may be deposited in a federal account those contributions that, due to the operation of proposed paragraph (a)(3), would be presumed to be for the purpose of influencing an election. The Commission invites comments on these proposals.

b. Allocating Joint Fundraising Expenses

Section 102.17 sets out rules for committees, other than separate segregated funds, that engage in joint fundraising. Generally, this provision only applies to joint fundraising activities conducted on behalf of more than one federal candidate or on behalf of multiple non-connected committees. Fundraising activities conducted by party committees for both their federal and nonfederal accounts are currently governed by 11 CFR 106.5(f), although under the core proposal of the second option, national party committee

fundraising would be governed by paragraph (b).

The core proposal of the second option would insert a cross reference into section 102.17(c)(7) directing party committees that collect both federal and nonfederal funds through a joint fundraiser to allocate their expenses for the fundraiser in accordance with section 106.5. Even though no comparable language appears in the current rule, this new language would merely make explicit the Commission's long-standing interpretation of these two provisions. Thus, this proposal would not be a change in Commission policy. Comments are invited on this proposed revision.

c. Curing prohibited and excessive contributions

Under section 103.3(b) of the Commission's rules, committee treasurers are responsible for examining all contributions received to ensure that they do not violate the prohibitions or limitations of the Act. Contributions that present genuine questions as to whether they are from a prohibited source may be deposited in the committee's account or returned to the contributor within ten days of receipt. However, if such a contribution is deposited, the treasurer has thirty days to determine the legality of the contribution. If unable to confirm that the contribution is legal, the treasurer must refund the contribution. 11 CFR 103.3(b)(1).

Similarly, if a treasurer receives a contribution that does not initially appear to be from a prohibited source, and subsequently determines that the contribution is from a prohibited source, the treasurer is required to refund the contribution within 30 days. 11 CFR 103.3(b)(2).

Paragraph (b)(3) contains similar rules for contributions that exceed the limitations in 2 U.S.C. § 441a, either on their face or when aggregated with other contributions from the same contributor. *See also* 11 CFR 110.1 or 110.2. The treasurer has the option of depositing the excessive contribution or returning it to the contributor. However, if the contribution is deposited, the treasurer has sixty days to seek redesignation of the contribution to another election, or reattribution to another contributor. If unable to obtain redesignation or reattribution, the treasurer is required to refund the contribution. 11 CFR 103.3(b)(3).

The Commission is considering the situation where a committee has received an excessive or prohibited contribution and wants to cure this problem by transferring the contribution to a nonfederal account. Proposed revisions to sections 103.3(b)(1), (2) and (3), as shown in the core proposal of the second option, would allow a treasurer to make such a transfer to a non-federal account established in accordance with 11 CFR 102.5(a)(1)(i) or 102.5(c), but only after obtaining an express written redesignation of the contribution to the non-federal account. If a written redesignation cannot be obtained within thirty days of receiving the contribution, the treasurer would be required to return the contribution to the contributor. The Commission invites comments on these proposals.

The treasurer's ability to transfer the prohibited or excessive contribution would also be subject to other applicable federal laws. For example, if a treasurer receives a contribution from a foreign national, he or she would not be able to cure the illegality of that contribution by transferring it to a non-federal account, because foreign nationals are prohibited from making contributions in connection with any election to any political office. Similarly, the transfer would be subject to applicable state laws. The proposed rule would not preempt, under 2 U.S.C. 453, any state-imposed contribution prohibitions or limitations. Comments on these limitations are welcome.

Conclusion

The Commission welcomes comments on the issues raised by the proposed rules, and on the general question of whether changes to the regulations relating to soft money are warranted at this time. As mentioned above, the Commission is also interested in comments on the issue of whether it has the authority to promulgate rules in this area. Those interested are also welcome to raise other issues that should be addressed if the Commission decides to issue final rules.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, state and local party committees of the two major political parties are not small entities under 5 U.S.C. § 601, and the number of other party committees to which the rule would apply is not substantial.

List of Subjects

11 CFR Part 102

Political committees and parties.

11 CFR Part 103

Campaign funds, Political committees and parties.

11 CFR Part 106

Campaign funds, Political committees and parties.

First Option

The Commission would make no changes to the existing regulations.

Second Option

The Commission is proposing to make the following changes to the regulations:

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

Core Proposal

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.5 would be amended by revising paragraph (a) and adding paragraph (c), to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers.

(a) *Organizations, other than national party committees, that are political committees under the Act.* (1) Except as provided in paragraph (c) of this section, any organization that finances political activity in connection with both federal and non-federal elections and that qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of this part and 11 CFR part 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. No transfers may be made to such federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-federal elections, except as

provided in 11 CFR 106.5(g) and 106.6(e). Administrative expenses shall be allocated pursuant to 11 CFR part 106 between such federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-federal elections; or

(ii) Establish one account, which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections. Such organization shall register as a political committee and comply with the requirements of the Act.

(2) Only contributions described in paragraphs (a)(2)(i), (ii), (iii) or (iv) of this section may be deposited in a federal account established under paragraph (a)(1)(i) of this section or may be received by a political committee established under paragraph (a)(1)(ii) of this section:

(i) Contributions designated for the federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a federal election;

(iii) Contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act; or

(iv) Contributions that, due to the operation of paragraph (a)(3) of this section, are presumed to be for the purpose of influencing an election.

(3) Any party committee solicitation that is made by a federal candidate or federal officeholder or that makes reference to a federal candidate or a federal election shall be presumed to be for the purpose of influencing a federal election. The full amount of any funds received as a result of that solicitation shall be presumed to be a contribution under 11 CFR 100.7(a) that is subject to the prohibitions and limitations in 11 CFR parts 110 and 114. However, this paragraph does not apply to a donation that is made payable to or is accompanied by a writing, signed by the donor, which clearly indicates that the donation is for a non-federal account or building fund account described in paragraphs (a)(1)(i) or (c) of this section.

* * * * *

(c) *National party committees.* (1) National party committees, including the Senate and House campaign committees of a national party, shall establish one or more federal account(s) in accordance with 11 CFR part 103. The federal account(s) shall receive only contributions subject to the prohibitions and limitations of the Act. Except as provided in paragraph (c)(2) of this section, national party committees shall not establish any nonfederal account or receive any contribution or donation of anything of value that is not subject to the prohibitions and limitations of the Act.

(2) National party committees, including the Senate and House campaign committees of a national party, may establish a building fund account to be used solely for the purpose of receiving gifts, subscriptions, loans, advances or deposits of money or anything of value described in 11 CFR 100.7(b)(12) or 11 CFR 100.8(b)(13).

3. Section 102.17 would be amended by revising paragraph (c)(7)(ii), redesignating current paragraph (c)(7)(iii) as paragraph (c)(7)(iv), and adding new paragraph (c)(7)(iii), to read as follows:

§ 102.17 Joint fundraising by committees other than separate segregated funds.

* * * * *

(c) * * *

(7) * * *

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) If the participants are party committees of the same political party, expenses need not be allocated among those participants, unless the committees collect both federal and non-federal funds, in which case, expenses must be allocated in accordance with 11 CFR 106.5. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

* * * * *

PART 103—CAMPAIGN DEPOSITORIES (2 U.S.C. 432(h))

4. The authority citation for part 103 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8)

5. Section 103.3 would be amended by adding a new sentence at the end of paragraphs (b)(1), (b)(2) and (b)(3), to read as follows:

§ 103.3 Deposit of receipts and disbursements (2 U.S.C. 432(h)(1)).

* * * * *

(b) * * *

(1) * * * Treasurers of committees that are not authorized by any candidate may also transfer the contribution to a non-federal account established in accordance with 11 CFR 102.5(a)(1) (i) or (c) and treat the funds as a contribution to the non-federal account, so long as the donor provides an express written redesignation of the contribution to the non-federal account within thirty days of the treasurer's receipt of the contribution.

(2) * * * Treasurers of committees that are not authorized by any candidate may also transfer the contribution to a non-federal account established in accordance with 11 CFR 102.5(a)(1) (i) or (c) and treat the funds as a contribution to the non-federal account, so long as the donor provides an express written redesignation of the contribution to the non-federal account within thirty days of the treasurer's receipt of the contribution.

(3) * * * Treasurers of committees that are not authorized by any candidate may also transfer the contribution to a non-federal account established in accordance with 11 CFR 102.5(a)(1)(i) or (c) and treat the funds as a contribution to the non-federal account, so long as the donor provides an express written redesignation of the contribution to the non-federal account within thirty days of the treasurer's receipt of the contribution.

* * * * *

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

6. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g)

7. Section 106.1 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee

for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates.

(2) (i) Except as provided in paragraph (a)(2)(ii) of this section, the methods described in paragraph (a)(1) of this section shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates. When such a payment is made by a political committee with separate federal and non-federal accounts, the payment shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate.

(ii) When a national party committee, including a Senate or House campaign committee of a national party, makes a payment involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates, the payment shall be made entirely from the committee's federal account(s), i.e., with funds subject to the prohibitions and limitations of the Act.

(b) *Reporting.* An expenditure made on behalf of more than one clearly identified federal candidate shall be reported pursuant to 11 CFR 104.10(a). A payment that includes amounts attributable to one or more non-federal candidates, and that is made by a political committee with separate federal and non-federal accounts, shall also be reported pursuant to 11 CFR 104.10(a). An authorized expenditure made by a candidate or political committee on behalf of another candidate shall be reported as a contribution in-kind to the candidate on whose behalf the expenditure was made, except that expenditures made by party committees pursuant to 11 CFR 110.7 need only be reported as an expenditure.

* * * * *

8. In § 106.5, the section heading and paragraphs (a), (b), (c), (d)(1) introductory text, (d)(2) heading, the first sentence of paragraph (e), and paragraph (f) heading, would be revised to read as follows:

§ 106.5 Party committee federal and non-federal activities; payments by national party committees; allocation by state and local party committees.

(a) *Scope and general rule.* This section covers payment of expenses by national party committees, general rules regarding federal and non-federal expenses incurred by state and local party committees, methods for allocation of administrative expenses, costs of generic voter drives, exempt activities, and fundraising costs by state and local party committees, and procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10. Party committees that make disbursements in connection with federal and non-federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate federal and non-federal accounts under 11 CFR 102.5(b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) shall also allocate their federal and non-federal expenses according to this section.

(b) *National party committees.* (1) Except as provided in paragraph (b)(2) of this section, national party committees, including the Senate and House campaign committees of a national party, shall defray their expenses entirely from funds subject to the prohibitions and limitations of the Act.

(2) National party committees may defray the expenses described in 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13) with funds from an account established in accordance with 11 CFR 102.5(c)(2).

(c) *State and local party committees.* (1) *General rule.* State and local party committees shall allocate the costs described in paragraph (c)(2) of this section in accordance with paragraphs (d) through (f) of this section.

(2) *Costs to be allocated.* Committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event, including disbursements for solicitation of funds and for planning and administration of actual fundraising events, through which a committee collects both federal and non-federal funds, whether the committee conducts the program or event individually or in conjunction with another committee;

(iii) State and local party activities exempt from the definitions of contribution and expenditure under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18) (exempt activities) including the production and distribution of slate cards and sample ballots, campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives on behalf of the party's presidential and vice-presidential nominees, where such activities are conducted in conjunction with non-federal election activities; and

(iv) Generic voter drives either conducted by the committee itself or paid for by the committee and conducted by another entity, including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(d) *State and local party committees; method for allocating administrative expenses and costs of generic voter drives*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, all state and local party committees shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (c)(2) of this section, according to the ballot composition method, described in paragraphs (d)(1)(i) and (ii) of this section as follows:

* * * * *

(2) *State and local party committees in states that do not hold federal and non-federal elections in the same year.* * * *

(e) *State and local party committees; method for allocating costs of exempt activities.* Each state or local party committee shall allocate its expenses for activities exempt from the definitions of *contribution* and *expenditure* under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18), when conducted in conjunction with non-federal election activities, as described in paragraph (c)(2) of this section, according to the proportion of time or space devoted in a communication. * * *

(f) *State and local party committees; method for allocating direct costs of fundraising.* * * *

* * * * *

Variation One

PART 102—REGISTRATION, ORGANIZATION AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.5 would be amended by revising paragraph (a) and adding paragraph (c), to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers.

(a) [Same as core proposal of second option.]

* * * * *

(c) *National party committees.* (1) National party committees, including the Senate and House campaign committees of a national party, shall establish one or more federal account(s) in accordance with 11 CFR part 103. The federal account(s) shall receive only contributions subject to the prohibitions and limitations of the Act. Except as provided in paragraphs (c)(2) and (3) of this section, national party committees shall not establish any nonfederal account or receive any contribution or donation of anything of value that is not subject to the prohibitions and limitations of the Act.

(2) National party committees, including the Senate and House campaign committees of a national party, may establish a building fund account to be used solely for the purpose of receiving gifts, subscriptions, loans, advances or deposits of money or anything of value described in 11 CFR 100.7(b)(12) or 11 CFR 100.8(b)(13).

(3) National party committees, other than the Senate and House campaign committees of a national party, may establish one or more accounts for receiving donations that are:

(i) Earmarked for and subsequently donated to a clearly identified non-federal candidate; or

(ii) Raised and spent solely in the form of donations to non-federal candidates, either directly or through an earmarked transfer to a state or local party committee.

3. Proposed § 102.17 would be the same as the core proposal of the second option.

PART 103—[AMENDED]

4. Proposed § 103.3 would be the same as the core proposal of the second option.

PART 106—[AMENDED]

5. Proposed §§ 106.1 and 106.5 would be the same as the core proposal of the second option.

Variation Two

PART 102—[AMENDED]

1. Proposed §§ 102.5 and 102.17 would be the same as the core proposal of the second option.

PART 103—[AMENDED]

2. Proposed § 103.3 would be the same as the core proposal of the second option.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

4. Section 106.1 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) [same as core proposal of second option.]

(2) (i) Except as provided in paragraph (a)(2)(ii) of this section and in 11 CFR 106.5(c)(1)(ii)(A), the methods described in paragraph (a)(1) of this section shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates. When such a payment is made by a political committee with separate federal and non-federal accounts, the payment shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate.

(ii) [Same as core proposal of second option.]

(b) [Same as core proposal of second option.]

* * * * *

5. In § 106.5, the section heading and paragraphs (a), (b), (c), (d)(1) introductory text, (d)(2) heading, the first sentence of paragraph (e), and paragraph (f) heading, would be revised to read as follows:

§ 106.5 Party committee federal and non-federal activities; payments and transfers by national party committees; allocation by state and local party committees.

(a) *Scope and general rule.* This section covers general rules regarding federal and non-federal expenses incurred by party committees, payment of expenses by national party committees and transfers of funds from national party committees to state and local party committees, methods for allocation of administrative expenses, costs of generic voter drives, exempt activities, and fundraising costs by state and local party committees, and procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10. Party committees that make disbursements in connection with federal and non-federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate federal and non-federal accounts under 11 CFR 102.5(b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) shall also allocate their federal and non-federal expenses according to this section.

(b) *National party committees*—(1) *Disbursements for mixed activities.* (i) Except as provided in paragraph (b)(1)(ii) of this section, national party committees, including the Senate and House campaign committees of a national party, shall defray their expenses entirely from funds subject to the prohibitions and limitations of the Act.

(ii) National party committees may defray the expenses described in 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13) with funds from an account established in accordance with 11 CFR 102.5(c)(2).

(2) *Transfers to state or local party committees.* Whenever a national party committee, including the Senate and House campaign committees of a national party, transfers funds from any account of the national party committee to any account of a state or local party committee, the transfer shall be accompanied by a written communication specifically identifying the state or local party committee activity or expense for which the transferred funds are to be used. The national party committee shall attach a copy of the written communication to the schedule of itemized disbursements submitted with its next regularly scheduled report.

(c) *State and local party committees.* (1)(i) *General rule.* Except as provided

in paragraph (c)(1)(ii) of this section, state and local party committees shall allocate the costs described in paragraph (c)(2) of this section in accordance with paragraphs (d) through (f) of this section.

(ii) *State and local party committees defraying expenses with funds transferred from a national party committee*—(A) *General rule.* A state or local party committee that receives a transfer from a national party committee shall:

(*1*) Use the funds transferred exclusively for the activity specifically identified by the national party committee in the written communication accompanying the transfer, except that no funds transferred from a non-federal account shall be used for any portion of the costs of any activity described in paragraph (c)(2) of this section;

(*2*) Defray 100% of the remaining costs of the specifically identified activity with funds drawn from the state or local party committee's federal account, i.e., with funds that are subject to the prohibitions and limitations of the Act; and

(*3*) Attach a copy of the written communication to the schedule of itemized receipts submitted with its next regularly scheduled report.

(B) *Exception for transfers to state and local party committees in states that do not hold federal and non-federal elections in the same year.* The requirements of paragraph (c)(1)(ii)(A) of this section shall apply to transfers made to state and local party committees in states that do not hold federal and non-federal elections in the same year, unless the funds transferred are used exclusively for generic voter drive activity conducted in a calendar year in which no candidates for federal office appear on any primary, general, or special election ballot.

(2) [Same as core proposal of second option.]

(d) [Same as core proposal of second option.]

(e) [Same as core proposal of second option.]

(f) [Same as core proposal of second option.]

* * * * *

Variation Three

PART 102—[AMENDED]

1. Proposed §§ 102.5 and 102.17 would be the same as the core proposal of the second option.

PART 103—[AMENDED]

2. Proposed § 103.3 would be the same as the core proposal of the second option.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g)

4. Section 106.1 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) [same as core proposal of second option.]

(2) Payments that involve both expenditures, in-kind contributions, independent expenditures, or coordinated expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates shall be made entirely from the committee's federal account(s), i.e., with funds subject to the prohibitions and limitations of the Act.

(b) [Same as core proposal of second option.]

* * * * *

5. Section 106.5 would be revised to read as follows:

§ 106.5 Federal and non-federal activities by party committees and use of party committee funds by other organizations.

(a) *National party committees.* (1) Except as provided in paragraph (a)(2) of this section, national party committees, including the Senate and House campaign committees of a national party, shall defray their expenses entirely from funds subject to the prohibitions and limitations of the Act.

(2) National party committees may defray the expenses described in 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13) with funds from an account established in accordance with 11 CFR 102.5(c)(2).

(b) *State and local party committees*—(1) *General rule.* Except as provided in paragraph (b)(3) of this section, state and local party committees, and other party committees that are not national party committees but that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i), shall defray the following expenses entirely from funds subject to the prohibitions and limitations of the Act:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event, including disbursements for solicitation of funds and for planning and administration of actual fundraising events, through which a committee collects federal funds or a combination of federal and non-federal funds, whether the committee conducts the program or event individually or in conjunction with another committee;

(iii) State and local party activities exempt from the definitions of contribution and expenditure under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18) (exempt activities) including the production and distribution of slate cards and sample ballots, campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives on behalf of the party's presidential and vice-presidential nominees, whether or not such activities are conducted in conjunction with non-federal election activities; and

(iv) Generic voter drives either conducted by the committee itself or paid for by the committee and conducted by another entity, including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(2) *Use of party committee funds by other organizations.* When a state or local party committee pays for a generic voter drive conducted by another entity, such as a voter identification, voter registration, get-out-the-vote drive, or any other activity that urges the general public to register, vote or support candidates of a particular party or associated with a particular issue without mentioning a specific candidate, the costs of the voter drive shall be defrayed entirely from funds subject to the prohibitions and limitations of the Act.

(3) *Generic voter drives in exclusively non-federal elections.* State and local party committees in states that do not hold federal and non-federal elections in the same year may use funds that are not subject to the prohibitions and limitations of the Act to defray the costs of generic voter drive activity conducted in a calendar year in which no candidates for federal office appear on any primary, general, or special election ballot.

Dated: July 8, 1998.

Lee Ann Elliott,

Commissioner, Federal Election Commission.

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federal register

Monday
July 13, 1998

Part VI

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

Posting of Signs and Written Notification to Purchasers of Handguns; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–402; Ref: Notice No. 855]

RIN 1512–AB68

Posting of Signs and Written Notification to Purchasers of Handguns

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

ACTION: Final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the firearms regulations to require that signs be posted on the premises of Federal firearms licensees and that written notification be issued with each handgun sold advising of the provisions of the Youth Handgun Safety Act.

EFFECTIVE DATE: September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Marsha D. Baker, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

The Youth Handgun Safety Act (YHSA), 18 U.S.C. 922(x), generally makes it unlawful for a person to transfer a handgun to anyone under 18 years of age or for anyone under 18 years of age to knowingly possess a handgun. Certain exceptions are set forth in the statute.

In enacting the YHSA in 1994, Congress found that criminal misuse of firearms often starts with the easy availability of guns to juvenile gang members. In addition, Congress found that individual States and localities may find it difficult to control this problem by themselves. Therefore, Congress found it necessary and appropriate to assist the States in controlling violent crime by stopping the commerce in handguns with juveniles nationwide and allowing the possession of handguns by juveniles only when handguns are possessed and used under certain limited circumstances.

In a memorandum to the Secretary of the Treasury dated June 11, 1997, the President stated that a major problem in our nation is the ease with which young people gain illegal access to guns. The President observed that firearms are now responsible for 12 percent of fatalities among American children and teenagers.

The President's memorandum directed the Secretary of the Treasury to propose regulations that would require the posting of signs and issuance of written notices warning handgun purchasers of the provisions of the YHSA.

Notice of Proposed Rulemaking

In response to the concerns raised by the President's memorandum, ATF published Notice No. 855 in the **Federal Register** (62 FR 45364) on August 27, 1997. To enforce the provisions of the YHSA and to ensure that handgun purchasers are familiar with its provisions, the Notice of Proposed Rulemaking (NPRM) proposed regulations requiring that signs be posted on the premises of Federal firearms licensees and that written notification be issued by licensees to nonlicensed handgun purchasers warning as follows:

(1) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18;

(2) A violation of the prohibition against transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison;

(3) Handguns are a leading contributor to juvenile violence and fatalities; and

(4) Safely storing and locking handguns away from children can help ensure compliance with Federal law.

The proposed rule stipulated that signs provided by ATF must be posted by licensed importers, manufacturers and dealers on their licensed premises where prospective handgun purchasers can readily see them. In addition, the written notification to be issued to each handgun purchaser must be made available either by providing the purchaser with an ATF Publication or some other type of written notification that contains the same language, e.g., a manufacturer's or importer's instruction manual or brochure provided to the handgun purchaser.

Analysis of Comments

ATF received sixty-two (62) comments during the comment period in response to Notice No. 855. These comments were received from fifty-three (53) members of the public, one (1) Member of Congress, four (4) Federal firearms licensees (FFLs), and four (4) firearms industry organizations. Five (5) of the respondents were in agreement with the proposed regulations. Fifty-seven (57) respondents opposed certain provisions of the proposed regulations.

Comments in Support of the Proposed Rule

The American Academy of Pediatrics (AAP) commented in favor of the proposed regulations. The AAP stated that "Firearms play a major role in childhood morbidity and mortality in the United States." They went on to comment that "the surest way to reduce the effects of firearm-trauma on children is to remove handguns from the environments in which children live and play." The Academy also supported the inclusion of curios and relics in the proposed rule as well as the notification at the time that weapons are returned to their owners by an FFL (for example, when a firearm is redeemed from pawn).

Handgun Control Inc. (HCI) also commented in support of the proposed regulations. They agreed that ATF had the authority to issue regulations necessary to implement the Gun Control Act (GCA). They stated that "notification to handgun buyers at the point of purchase of the need to safely secure handguns away from children is certainly necessary to implement the provisions of the statute."

HCI suggested that the written notice provided to the purchasers of handguns not be included as part of a larger Federal form, but should instead be separately contained in one publication. In response to this comment, it should be noted that the NPRM did not specify the publication number of the proposed required written notice since one had not yet been assigned. However, the final rule clarifies that the written notice will appear on an ATF publication (ATF I 5300.2) that is separate from any existing ATF form.

Seven (7) additional respondents agreed with the general purpose of the proposed regulations; to reduce the ease with which juveniles have access to handguns which are then used to commit crimes or which result in youth fatalities. However, they were opposed to the wording of the provisions outlined in the proposed rule. Rephrasing of the provisional language and certain deletions were suggested.

For example, Sturm, Ruger & Company, Inc., a manufacturer of firearms, commented that "while we have no objection to reminding dealers of their serious responsibilities regarding sales of firearms to unauthorized persons, the proposed language goes far beyond that." Accordingly, they suggested several revisions of the proposed regulations. The suggested revisions to the language of the notice and sign will be discussed in detail below.

Comments in Opposition to the Proposed Rule

Several commenters challenged ATF's authority under the GCA to require any sort of warning or notification to purchasers of handguns regarding the requirements of the YHSA. A comment from Rep. John Dingell urged ATF to withdraw the proposed rule for several reasons, including his view that the statutory basis for ATF's action is "uncertain." He noted that ATF has not required notices or signs to warn purchasers about other GCA provisions and the statutory prohibitions on the possession of firearms by certain categories of people, including felons.

ATF does not agree that requiring licensees to inform prospective handgun purchasers about the requirements of the law goes beyond its authority to enforce the GCA. Furthermore, this type of requirement is not unprecedented. While ATF has not required licensees to post signs or hand out notices regarding other GCA provisions, many of these provisions are made known to purchasers through other means. For example, licensees are required to have unlicensed purchasers complete an ATF Form 4473, Firearms Transaction Record. On this form, purchasers certify that they do not fall within one of the categories of persons prohibited from purchasing a firearm. The Form 4473 contains a detailed explanation of various GCA provisions.

ATF believes that it is important to advise handgun purchasers of the still relatively new requirements of the YHSA to ensure that adult purchasers who are purchasing a handgun from a licensee are made aware that it is unlawful to transfer handguns to juveniles. This statutory provision is not addressed on the Form 4473. ATF believes that the final rule will accomplish the goal of preventing inadvertent violations of the law without unduly burdening licensees or handgun purchasers. Furthermore, ATF's statutory authority to issue regulations to implement the GCA is clear. *See* 18 U.S.C. 926(a).

Revisions Made in Response to Comments

After carefully considering the comments received following the publication of the NPRM, ATF has decided that certain revisions should be made to the written notification and sign required by the regulations. These modifications are discussed in more detail below.

In reference to the first paragraph of the proposed notice and sign, forty-seven (47) commenters suggested that the language was vague and that the sign Federal firearms licensees would be required to post, as well as the written notification, should accurately explain the exceptions included in the YHSA that would allow the lawful transfer to, or possession by, an individual under the age of 18 years. For example, the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) suggested that this item should "include a thorough, accurate and objective explanation of these circumstances and/or include the language of the statute itself." The National Rifle Association (NRA) commented that "[a]t the very least, the entire text of the law should be given, especially outlining the full text of these exceptions * * *"

ATF recognizes that there are exceptions listed in the YHSA that allow persons under 18 years of age to receive and possess a handgun, and the proposed language referred to these limited circumstances. However, ATF believes that a detailed discussion of the exceptions would have been too long to include in the notice and sign. Nonetheless, ATF agrees with the respondents who suggested that the proposed language of the notice and sign might raise questions in the minds of purchasers as to when it was lawful for a juvenile to possess a handgun.

Accordingly, ATF is adopting the suggestion of those commenters who advocated that the written notification set forth the entire language of the statute. The final rule provides that the required written notification (ATF I 5300.2) will include the complete language of the statutory provision appearing at 18 U.S.C. section 922(x), including the exceptions. Owing to the length of this statutory language, the sign will merely refer the purchaser to the ATF I 5300.2 for the complete provisions of the law. The sign will also advise the public that a copy of this publication may be obtained from the licensee posting the sign or from the ATF Distribution Center.

In reference to the second provision of the notice and sign, forty-three (43) of the respondents again stated that the language was vague and that the sign and written notification should more specifically set forth the exceptions included in the YHSA that would allow the lawful possession of a handgun by a juvenile in certain limited circumstances. In addition, four (4) respondents stated that the reference to the maximum penalty provided by law for a violation of section 922(x) was misleading, since the maximum penalty only applied in limited circumstances.

As previously noted, the final rule provides that the written notification will contain the entire language of section 922(x), so that interested handgun purchasers may read for themselves the exceptions outlined in the statute. ATF has also included in the written notification the full text of the penalty provision set forth in 18 U.S.C. 924(a)(6) for violations of section 922(x). Again, the sign will refer the purchaser to the complete language of the law as outlined in the written notification. We believe that this will ensure that purchasers of handguns receive complete and accurate information as to the statutory penalties imposed on violations of section 922(x).

The NRA noted that the proposed regulations do not mention the statutory restrictions on the transfer to juveniles and use by juveniles of ammunition that is suitable only in a handgun. As noted previously, the entire provisions of the law will be set forth in the written notification. This includes the statutory provisions regarding handgun ammunition.

In reference to the third provision of the proposed regulations, seventeen (17) respondents opposed the inclusion of the language that "handguns are a leading contributor to juvenile violence and fatalities." Another fifteen (15) stated that this provision should be deleted entirely. Many commenters suggested that the entire statement offered value judgments, and argued that it was the perpetrators of the shooting, not the handguns used in the shooting, that contributed to juvenile violence and fatalities.

The proposed language was not intended to convey the message that handguns alone are responsible for juvenile violence. In fact the language noted that handguns were a "contributor" to juvenile violence. However, ATF agrees with the commenters who suggested that this provision could be clarified. For example, Sturm, Ruger & Company suggested that the language be modified to refer to the misuse of illegally possessed firearms. ATF has partially adopted this comment. As set forth in the final rule, this provision now states that "The *misuse* of handguns is a leading contributor to juvenile violence and fatalities."

In reference to the fourth and final provision of the proposed statement, fifteen (15) of the respondents believed that it was unnecessary to have safety warning notices for firearms. Another twelve (12) stated that this provision should be deleted entirely.

Many of the commenters noted that there is no Federal law mandating a specific type of storage or locking requirement for handguns. For example,

the NRA commented that "the proposed warning concerning the safe storage and locking of handguns is not only superfluous, but also implies that there is a Federal law requiring these safety measures."

However, some comments supported the inclusion of a generic statement encouraging the safe storing and securing of firearms in order to prevent accidents. For example, SAAMI stated that they would support the "[i]nclusion of a statement that safely storing and securing firearms can prevent accidents." On the other hand, HCI suggested that the notice be revised to more explicitly state what is meant by "safely storing and locking handguns away from children."

ATF does not agree that the original proposed language implied that there was a Federal law requiring that handguns be stored or locked in a particular fashion. However, in response to the comments received on this issue, the final rule modifies the language of this provision to state that "Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives." This statement encourages handgun owners to ensure compliance with the law as well as to promote general gun safety.

Finally, the order of the four provisions has been rearranged for purposes of clarity. The revised language of the sign and notice is reflected in the regulations portion of this Treasury Decision.

Regulatory Flexibility Act

It is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. The notices and signs that are required in this document will be provided free of charge by the Federal Government to Federal firearms licensees. Licensees may choose to provide the required written notice in another format; however, they always have the option of using the notices provided by ATF. Moreover, the new requirements relating to the posting of signs and the distribution of notices will place only a minimal burden on firearms licensees. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this regulation is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no new reporting or recordkeeping requirements are imposed.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspections, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

PART 178—[AMENDED]

Part 178—Commerce in Firearms and Ammunition is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.103 is added to Subpart F to read as follows:

§ 178.103 Posting of signs and written notification to purchasers of handguns.

(a) Each licensed importer, manufacturer, dealer, or collector who delivers a handgun to a nonlicensee shall provide such nonlicensee with written notification as described in paragraph (b) of this section.

(b) The written notification (ATF I 5300.2) required by paragraph (a) of this section shall state as follows:

(1) The misuse of handguns is a leading contributor to juvenile violence and fatalities.

(2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives.

(3) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18.

(4) A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

FEDERAL LAW

The Gun Control Act of 1968, 18 U.S.C. Chapter 44, provides in pertinent part as follows:

18 U.S.C. 922(x)

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i) a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State, or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the

Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

18 U.S.C. 924(a)(6)

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(c) This written notification shall be delivered to the nonlicensee on ATF I 5300.2, or in the alternative, the same written notification may be delivered to the nonlicensee on another type of written notification, such as a manufacturer's or importer's brochure accompanying the handgun; a manufacturer's or importer's operational manual accompanying the handgun; or a sales receipt or invoice applied to the handgun package or container delivered to a nonlicensee. Any written notification delivered to a nonlicensee other than on ATF I 5300.2 shall include the language set forth in paragraph (b) of this section in its entirety. Any written notification other than ATF I 5300.2 shall be legible, clear, and conspicuous, and the required language shall appear in type size no smaller than 10-point type.

(d) Except as provided in paragraph (f) of this section, each licensed importer, manufacturer, or dealer who delivers a handgun to a nonlicensee shall display at its licensed premises (including temporary business locations at gun shows) a sign as described in paragraph (e) of this section. The sign shall be displayed where customers can readily see it. Licensed importers, manufacturers, and dealers will be provided with such signs by ATF. Replacement signs may be requested from the ATF Distribution Center.

(e) The sign (ATF I 5300.1) required by paragraph (d) of this section shall state as follows:

(1) The misuse of handguns is a leading contributor to juvenile violence and fatalities.

(2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives.

(3) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18.

(4) A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

Note: ATF I 5300.2 provides the complete language of the statutory prohibitions and exceptions provided in 18 U.S.C. 922(x) and the penalty provisions of 18 U.S.C. 924(a)(6). The Federal firearms licensee posting this sign will provide you with a copy of this publication upon request. Requests for additional copies of ATF I 5300.2 should be mailed to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950.

(f) The sign required by paragraph (d) of this section need not be posted on the premises of any licensed importer, manufacturer, or dealer whose only dispositions of handguns to nonlicensees are to nonlicensees who do not appear at the licensed premises and the dispositions otherwise comply with the provisions of this part.

Signed: May 28, 1998.

John W. Magaw,

Director.

Approved: June 6, 1998.

John P. Simpson,

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

[FR Doc. 98–18546 Filed 7–10–98; 8:45 am]

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Monday
July 13, 1998

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Rotorcraft Load Combination Safety Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 29277; Notice No.98–6]

RIN 2120–AG59

Rotorcraft Load Combination Safety Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes the amendment of the airworthiness standards for rotorcraft load combination (RLC) certification. This proposal would revise the safety requirements for RLC's to address advances in technology and to provide an increased level of safety in the carriage of humans. These proposed amendments would provide an improvement in the safety standards for RLC certification and lead to a harmonized international standard.

DATES: Comments must be submitted on or before October 13, 1998.

ADDRESSES: Comments on this proposed rule may be delivered or mailed in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 29277, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 29277. Comments may also be sent electronically to the following internet address: 9-nprm-cmts@.faa.dot.gov. Comments may be examined in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Rotorcraft Directorate, Aircraft Certification Service, Regulations Group, FAA, Fort Worth, Texas 76193–0111, telephone (817) 222–5123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit written data, views, or arguments on this proposed rule. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket number and should be submitted in triplicate to the Rules Docket address specified above.

All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 29277." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's web page at http://www.access.gpo.gov/su—docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

History

For many years the design standards for external load attaching means for normal and transport category rotorcraft were contained in Subpart D, Airworthiness Requirements of 14 CFR part 133 (part 133), Rotorcraft External Load Operations. However, these design standards more appropriately belonged under parts 27 and 29. Amendments 27–11 (41 FR 55469, December 20, 1976) and 29–12 (41 FR 55454, December 20, 1976) added new §§ 27.865 and 29.865 and moved some of these design standards from the operational rules of part 133 to the certification rules of parts 27 and 29.

Rotorcraft-load combination classes (RLC) are defined in 14 CFR 1.1. Part 133 prohibits the carrying of humans, except for crewmembers, external to the aircraft under all existing RLC's (A, B, or C). However, on April 5, 1978, Exemption No. 2534 was granted to permit carrying harbor pilots external to the rotorcraft using a hoist and sling.

Because of the proven public utility of the operations conducted with Exemption No. 2534, in January 1987, after notice and a public meeting, Amendment 133–9 (51 FR 40707, November 7, 1986) was adopted. Amendment 133–9 established provisions for a new Class D RLC for transporting external loads other than Classes A, B, or C. Class D may apply to either human or nonhuman external cargo operations; however, under Amendment 133–9, § 133.45(e) specifies that only certain Transport Category A rotorcraft can be used for RLC Class D external load operations. Also, Amendment 133–9 added § 133.35 to establish specific limitations and the necessary safety requirements for routine external load transportation under Class D.

Aviation Rulemaking Advisory Committee (ARAC) involvement

In 1991 the FAA requested that ARAC study the need to revise the regulations on RLC in light of advancements in technology and operational procedures and to develop regulatory recommendations. The ARAC was established on February 5, 1991 (56 FR 2190, January 22, 1991), to assist the FAA in the rulemaking process by providing advice from the private sector on major regulatory issues affecting aviation safety. The ARAC includes representatives of manufacturers, air carriers, general aviation, industry associations, labor groups, universities, and the general public. The ARAC's formation has given the FAA additional opportunities to solicit information directly from significantly affected parties who meet and exchange ideas about proposed and existing rules that should be either created, revised, or eliminated.

On November 27, 1992, following an announcement in the **Federal Register** (56 FR 63546, December 4, 1991), the ARAC charged The External Load

Working Group with making a recommendation to the ARAC concerning whether new or revised airworthiness standards are appropriate for Class D rotorcraft external loads, as follows: "Should parts 27 or 29 be amended to incorporate Class D external load attaching means, to complement Amendment 133–9, which authorizes the transport of passengers external to the rotorcraft, with certain conditions and limitations?"

The working group, chaired by a representative from McDonnell Douglas Helicopter Systems, included technical specialists knowledgeable in both military and civil external load operations, in external load and emergency rescue equipment design and manufacturing, and in both FAA and industry external load design and operational requirements. This broad participation is consistent with FAA policy to have all known interested parties involved as early as practicable in the rulemaking process.

The working group reviewed unpublished data regarding external loads safety issues developed by the FAA as the starting point for their discussions. After reviewing the unpublished data, the working group determined that it was necessary to do further research and to include consideration of more diverse design configurations and operating procedures.

The working group reviewed current methods that the military and other nations' airworthiness authorities use to certificate aircraft conducting external load operations. The group also evaluated current operational practices with aircraft certificated in all categories and public aircraft operations involving human and nonhuman external loads. The working group researched available military and domestic safety standards and guidance, the accident and incident history of external load operations conducted under current certification standards, and the specific safety requirements necessary for human and nonhuman external load operations in each RLC class.

Technical Research

The following material was researched by the ARAC working group and contributed significantly to formulating these proposals. Copies may be found in Rules Docket No. 29277.

1. United States Army Material Command (USA, AMC) Pamphlet No. 706–203, "Engineering Design Handbook Helicopter Engineering, Part Three, Qualification Assurance," Headquarters United States Army Material Command, Washington, D.C. 20315.

2. USAAVSCOM TR 89–D–22A, "Aircraft Crash Survival Design Guide; Volume IV—Aircraft Seats, Restraints, Litters, and Cockpit/Cabin Delethalization."

3. MIL–STD–882B, "Military Standard-System Safety Program Requirements," March 30, 1984.

4. MIL–STD–1472D, "Military Standard-Human Engineering Design Criteria for Military Systems, Equipment, and Facilities," March 14, 1989.

5. British Civil Airworthiness Requirements 29, Issue 1, December 17, 1986.

6. Advisory Circular 133–1A, "Rotorcraft External-Load Operations in Accordance with part 133," October 16, 1979.

7. "Rotorcraft Use in Disaster Relief and Mass Casualty Incidents-Case Studies," DOT/FAA/RD–90/10, June 1990.

8. "Guidelines for Integrating Helicopter Assets into Emergency Planning," DOT/FAA/RD–90/11, July 1991.

9. FAA Order 8700.1, "General Aviation Operations Inspector's Handbook" Chapter 96, Change 8, March 1, 1992.

The research centered on the following:

(1) Current methods used by the military to qualify external loads;

(2) Current methods used by the world's airworthiness authorities for certification of external loads;

(3) Current practice in restricted category and public use operations regarding human and nonhuman external load operations;

(4) Load retention and release devices that exist and are certifiable;

(5) Current military and domestic safety standards and guidance;

(6) Accident and incident history of external load operations that relate to the current certification standards; and

(7) Specific certification safety requirements that are necessary for human versus nonhuman external load operations.

Statement of the Issues

Although rotorcraft external load operations are routinely conducted in a safe manner under the existing safety standards, several preventable accidents and incidents have occurred during the preceding decade. For example, several preventable inadvertent releases of humans being carried external to the rotorcraft have occurred due to the lack of specific safety standards for quick-release systems (QRS). Additionally, the equipment employed in external load operations has changed significantly since the existing safety standards were promulgated. Examples of these equipment changes are more diverse, maneuverable, and powerful rotorcraft designs, new QRS designs, new personnel carrying device systems (PCDS) designs, and new methods of rigging external loads to the rotorcraft.

Because of the need for both modernization and a higher level of safety, this proposal would address safety requirements for human external cargo (HEC) and nonhuman external cargo (NHEC); update load-to-vertical-angle certification requirements; add reliability and durability requirements for external load retention and release systems and devices; and add electromagnetic interference and lightning protection requirements because these items are not specifically addressed in the existing regulations.

In addition, this proposal would amend part 29 by adding new certification requirements that are compatible with the operating requirements of current part 133 for RLC Class D external loads. This proposal would provide a clearly specified certification safety standard for RLC Class D external loads in part 29. The change to part 29 would respond to increasing public demand for specific RLC Class D provisions that meet operational needs through standardized certification criteria.

Studies and analyses of service difficulty reports and the introduction of modern external load equipment and operational practices have shown a need for updating the regulations to (1) significantly decrease the potential for future accidents and incidents; (2) ensure that external cargo load carrying devices, their release mechanisms, their load carrying systems, and their flight performance, reflect modern operational needs; and (3) provide updated standards that can be harmonized with the Joint Airworthiness Regulations (JAR).

Current Requirements

Currently, §§ 27.865 and 29.865 contain identical provisions and apply only to RLC Class A, B, and C loads at the gross weights and associated load factors common for relatively heavy NHEC loads. Primary and secondary quick-release devices are required; however, specific safety features and test and reliability requirements for the entire QRS are not specified. In-flight handling qualities and release (i.e., jettisonability) characteristics of NHEC and HEC are not currently addressed.

Part 29 Transport Category A rotorcraft are eligible under part 133 for Class D RLC operations. However, part 29 design standards do not exist for certification of Class D RLC's.

FAA Evaluation of ARAC Recommendation

After reviewing the External Load Working Group's work product and the ARAC recommendations, the FAA has determined that parts 27 and 29 should be revised to establish an increased margin of safety in rotorcraft external load operations. These revisions are necessary to implement modern safety standards that accommodate current and anticipated operational RLC applications and procedures and provide separate levels of safety for NHEC and HEC RLC's. These new safety standards are more fully described in the General Discussion of Proposals section. These changes to parts 27 and 29 include the addition of: (1) increased load factors for HEC; (2) increased QRS safety standards for both NHEC and HEC; (3) new PCDS standards for HEC; (4) new flight-handling characteristic standards for both NHEC and HEC; (5) increased fatigue substantiation standards for both NHEC and HEC; and (6) to part 29 only, the RLC Class D standard. These improvements to the safety standards should prevent many accidents and incidents. The proposal would provide identical, improved external load standards for rotorcraft certificated under parts 27 and 29 and would provide RLC Class D certification standards under part 29.

General Discussion of Proposals

These proposals would provide essentially identical external load standards in parts 27 and 29. In addition, both the part 27 and 29 proposals would provide certification standards for all RLC's that are compatible with the operational requirements in part 133.

Proposed Amendments to §§ 27.25(c) and 29.25(c)

The proposed amendments to §§ 27.25 and 29.25 would limit the availability of increased gross weights to those RLC's that involve the carriage of nonhuman loads. For applications for certification with human loads, the applicant would be limited by subparagraph (c)(1) to the maximum weight established in § 27.25(a). The changes would be a new limitation to reflect the distinction being made between those operations involving the carrying of humans externally for which a higher level of safety is needed.

Proposed Amendments to §§ 27.865 and 29.865

Because the proposed amendments would address more than just the attachment means for external loads, the undesignated center headings and the section titles of proposed §§ 27.865 and 29.865 would be changed from "External Load Attaching Means" to "External Loads."

Proposed Amendments to §§ 27.865(a) and 29.865(a)

The addition of new human external cargo certification requirements (HEC) and additional requirements for nonhuman external cargo (NHEC) certification results in modification of §§ 27.865(a) and 29.865(a). The most significant modification is a change in the current load factor specification to distinguish between and provide the required additional level of safety for HEC.

Current §§ 27.865(a) and 29.865(a) require the use of a 2.5g vertical limit load factor or a lesser value (derived from current §§ 27.337 through 27.341 or 29.337 through 29.341) at the maximum external load value for which certification is requested. This 2.5g limit load factor would be retained for NHEC applications in the proposals.

However, for HEC applications that are typically lower gross weight configurations, proposed §§ 27.865(a) and 29.865(a) contain a higher vertical limit load factor to be applied to the external load attachment and the entire attached PCDS. The higher vertical limit load factor is specified by these proposals as either the analytically derived maximum vertical limit load factor for the proposed operating envelope or a vertical limit load factor of 3.5 (derived from §§ 27.337 and 29.337). However, in no case would these proposals allow the maximum vertical limit load factor for HEC to be less than 2.5. Linear interpolation between minimum and maximum vertical design load factors and standard operating gross weight is one simple, acceptable means to determine design limit load factors.

Proposed §§ 27.865(a) and 29.865(a) would also require the limit static load for any RLC, either HEC or NHEC, to be determined and applied in both the vertical direction, and for jettisonable external loads in any direction, making the maximum angle that can be achieved in service (but not less than 30°) with the vertical axis of the rotorcraft. The term "maximum angle that can be achieved in service" means the largest angle expected to occur during normal operation. This term is added to the vertical angle requirement to ensure that sidepull (or other) configurations used for jettisonable RLC applications, such as wire stringing, that typically involve angles greater than the current 30°, would be addressed at the time of certification. The current 30° angle requirement was established based on the rule-of-thumb design limit for winch or hoist applications typical when the rule was promulgated and applications using larger angles were unforeseen. The proposed rule would not change the 30° angle limitation for winch or hoist applications. The existing rule does not specifically address RLC applications such as sidepull configurations. These proposed section changes would more closely match the needed safety standards to the type of RLC operations in the industry.

Proposed Amendments to §§ 27.865(b) and 29.865(b)

The terms "quick-release system," "primary quick release subsystem," and "backup quick release subsystem" are substituted throughout proposed §§ 27.865(b) and 29.865(b) for the current terminology of quick-release device, primary quick-release device, and mechanical backup quick-release device to require certification of the entire QRS, not just the quick-release devices. The proposals would also require that the primary and backup QRS be isolated from one another to ensure fail safety.

Also to facilitate harmonization with the Joint Aviation Authorities (JAA), the FAA proposes to delete the current references to RLC Classes B and C from §§ 27.865(b) and 29.865(b). These references are not necessary to the proposed new §§ 27.865(b) and 29.865(b) because the design distinctions necessary to provide the required level of safety would be made during certification without a need to refer to the operations based RLC classes. These distinctions are made by specifying whether or not an external load is jettisonable or non-jettisonable and whether or not an external load is human or non-human.

Proposed Amendments to §§ 27.865(b)(1) and 29.865(b)(1)

Proposed §§ 27.865(b)(1) and 29.865(b)(1) would allow the primary quick release control to be mounted either on a primary control or in any equivalently accessible location. This proposed change is intended to liberalize design options and allow a more realistic workload distribution among larger dedicated crews while maintaining the same level-of-safety.

The proposals would allow the control to be operated by a crewmember without necessarily being reachable by the pilot. The rotorcraft's approved operating procedures must address the responsibilities and procedures for the control of the QRS.

Proposed Amendments to §§ 27.865(b)(2) and 29.865(b)(2)

Proposed §§ 27.865(b)(2) and 29.865(b)(2) would change the current requirement that the backup control for the quick-release device be only a manual mechanical control. These proposals would require that a backup quick release subsystem of an approved design be readily available to the pilot or other crewmember.

Proposed Amendments to §§ 27.865(b)(3)(i) and 29.865(b)(3)(i)

Because of adverse service history and the need to specifically distinguish the levels of safety for HEC and NHEC, proposed §§ 27.865(b)(3)(i) and 29.865(b)(3)(i) would require that both the primary and backup quick release subsystems be reliable, durable, and functional. Reliability would be demonstrated by use of design features and by use of failure modes and effects analysis. Both reliability and durability would be demonstrated by use of repetitive functional tests. These proposed reliability and durability criteria would apply only to newly modified or type certificated helicopters equipped with external load attachment provisions or devices or both.

Proposed Amendments to §§ 27.865(b)(3)(ii) and 29.865(b)(3)(ii)

Proposed §§ 27.865(b)(3)(ii) and 29.865(b)(3)(ii) would require protection of the quick-release subsystems against potential internal and external sources of electromagnetic interference (EMI) and lightning. The new requirements are necessary to prevent inadvertent jettison of NHEC and HEC from sources such as stray electromagnetic signals, static electricity, and lightning strikes. Proposed field intensity levels are 200 volts per meter for applicable portions of QRS used for HEC and 20 volts per meter for applicable portions of QRS used for NHEC. The purpose of the requirements is for those applicable portions of the QRS to withstand these field intensity levels without inadvertent load release.

Proposed Amendments to §§ 27.865(b)(3)(iii) and 29.865(b)(3)(iii)

Proposed §§ 27.865(b)(3)(iii) and 29.865(b)(3)(iii) would require that the quick-release subsystems be protected against failures that could occur as a result of an electrical or mechanical malfunction of other rotorcraft components.

Proposed Amendments to §§ 27.865(c) and 29.865(c).

This proposal would redesignate existing §§ 27.865(c) and 29.865(c) as §§ 27.865(e) and 29.865(e), respectively. New §§ 27.865(c) and 29.865(c) are proposed to separately address the safety requirements for HEC carriage. The new requirements would ensure that the HEC certification requirements are clearly and properly identified.

Proposed Amendments §§ 27.865(c)(1) and 29.865(c)(1)

Proposed §§ 27.865(c)(1) and 29.865(c)(1) would require that the HEC load release primary and backup controls meet the requirements of §§ 27.865(b) and 29.865(b), respectively, and that both controls be designed to require dual actuation (i.e., require two distinct actions) for load release. This is necessary to mitigate inadvertent HEC release.

Proposed Amendments to §§ 27.865(c)(2) and 29.865(c)(2)

Proposed §§ 27.865(c)(2) and 29.865(c)(2) would require that the applicant demonstrate that the PCDS is reliable in accordance with the HEC provisions of §§ 27.865(b)(3)(i) and 29.865(b)(3)(i), respectively; has the structural capability required under §§ 27.865(a) and 29.865(a), respectively; and has the essential personnel safety provisions (based on the design configuration of the PCDS) to minimize hazards to occupants carried external to the rotorcraft.

Proposed Amendments to §§ 27.865(c)(3) and 29.865(c)(3)

Proposed §§ 27.865(c)(3) and 29.865(c)(3) would require that all necessary placards and markings be provided and be properly located to facilitate their proper use and, for the PCDS, to clearly specify the ingress and egress instructions.

Proposed Amendments to §§ 27.865(c)(4) and 29.865(c)(4)

Proposed §§ 27.865(c)(4) and 29.865(c)(4) would require that an intercom system or other approved equipment be installed to ensure proper communication among crewmembers and occupants during an emergency. For simple rescue systems that do not have intercom systems mandated by operating regulations, voice signals or hand signals to PCDS occupants may be acceptable. In more complex systems, it is intended that more sophisticated communication systems, such as intercoms, be provided.

Proposed Amendments to §§ 27.865(c)(5) and 29.865(c)(5)

Proposed §§ 27.865(c)(5) and 29.865(c)(5) would require that all flight limitations and procedures for HEC operations be identified and incorporated in the flight manual.

Proposed Amendment to § 29.865(c)(6)

To be compatible with part 133.45(e), proposed § 29.865(c)(6) would require, for HEC operations that require the use of Category A rotorcraft only (Class D RLC), that one-engine-inoperative hover performance capability information based on a dynamic engine failure (simulated engine failure in an actual test rotorcraft) be provided in the flight manual for the operating weights, altitudes, and temperatures for which external load approval is requested.

Proposed Amendments §§ 27.865(d) and 29.865(d).

Proposed new §§ 27.865(d) and 29.865(d) would require that critically configured jettisonable external loads (class and type) must be shown to be both transportable and releasable without hazard to the rotorcraft during normal flight conditions. In addition, these external loads must be shown to be releasable without hazard to the rotorcraft during emergency flight conditions. Compliance with the proposed requirements can be accomplished by using a combination of analysis, ground tests, and flight tests. This is necessary to ensure that the extremities of the operating range are thoroughly explored without unnecessary risk and cost. The new provisions would mitigate HEC transport problems such as entanglements with the rotorcraft in flight and will provide a mandatory flight test validation of the QRS. Current §§ 27.865(d) and 29.865(d) would be revised and redesignated as §§ 27.865(f) and 29.865(f), respectively.

Proposed Amendments to §§ 27.865(e) and 29.865(e)

Current §§ 27.865(c) and 29.865(c) would be revised and redesignated as §§ 27.865(e) and 29.865(e), respectively. The proposals would amend these sections by adding a requirement to install a placard next to the external load attaching means that specifies any operational limitations in addition to the maximum authorized external load weight that can be attached.

Proposed Amendments to §§ 27.865(f) and 29.865(f)

Sections 27.865(d) and 29.865(d) would be revised and redesignated as §§ 27.865(f) and 29.865(f), respectively. These paragraphs would require that for NHEC, all critical structural elements such as those in the external load attachment and carrying system whose failure would result in a hazard to the rotorcraft (not just the cargo hook) have a fatigue analysis in accordance with §§ 27.571 and 29.571, as applicable. The proposals would also require that for HEC, the entire QRS and PCDS and their attachments to the rotorcraft have a fatigue analysis in accordance with §§ 27.571 or 29.571, as applicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)), there are no requirements for information collection associated with this final rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities regulations, where they exist, and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). In conducting these analyses, which are summarized as follows (and available in the docket), the FAA has determined that this NPRM is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget. This NPRM is not considered significant under Department of Transportation's Policies and Procedures (44 FR 11034, February 26, 1979). In addition, for the reasons stated under the "Trade Impact Statement" and the "Regulatory Flexibility Determination," the FAA certifies that this NPRM will not have a significant economic impact on a substantial number of small entities and would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually.

The FAA invites the public to provide comments (and related data) on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

Costs and Benefits

Costs

The costs of the proposed rule, which would be borne by manufacturers and operators, are evaluated for the time period extending from its implementation date through the operating lives of 75 rotorcraft assumed to be produced under four new type certificates (involving 15-year production runs of 5 rotorcraft per year total under all four new type certificates) and placed into part 133 service. Over the course of this evaluation period, incremental costs would total approximately $388,500 (1996 dollars), or $203,000 discounted to present value (using an interest rate of seven percent and letting "present" be the date of initial type certification application). Of the $388,500 total cost, $156,000 is attributable to incremental design, analysis, test, and other certification costs, $30,000 to incremental production costs (75 rotorcraft at $400 each), and $202,500 to incremental weight penalty fuel costs ($180 per year per rotorcraft over 15-year operating lives of 75 rotorcraft). On a per-rotorcraft basis, costs would average approximately $5,200, or $2,700 discounted. These incremental costs would be offset to some extent by potential cost savings associated with the harmonization of these proposals with the JAA and eventual creation of identical JAA airworthiness standards, streamlining of certification approvals for part 133 operators, and some relaxed requirements for parts 27 and 29 manufacturers (see Benefits section, below).

Benefits

To estimate the safety benefits of the proposed rule, the FAA reviewed records of accidents involving part 133 operators that occurred between mid-1983 and mid-1994 that could have been prevented or the losses reduced if the proposed changes were in effect. During the 11-year period, there were 17 such accidents involving fatal and/or non-fatal injuries, or damage to equipment, or both. Eight of the accidents resulted in harm to persons (either inside or outside of the rotorcraft), totaling eight fatalities and two serious injuries. Fifteen of the 17 accidents involved either substantial damage (seven) or destruction of the rotorcraft (eight).

To provide a basis for comparing the safety benefits and costs of rulemaking actions, the FAA currently uses a minimum statistical value of $2.7 million for a fatality avoided and $518,000 for a serious injury avoided. Applying these standards to the casualty losses summarized above and making allowances for the costs of rotorcraft damage, the total cost of the 17 accidents was approximately $27.2 million.

The FAA estimates that the proposed rule could prevent at least 50 percent of the type of accidents summarized above. Applying it retrospectively would yield dollar benefits of approximately $13.6 million (one-half of $27.2 million). Over the 11-year accident evaluation period, the part 133 fleet averaged approximately 300 active rotorcraft. Therefore, the benefits would average approximately $4,100 per year per rotorcraft ($13.6 million/11 years/300 operating part 133 rotorcraft per year). Applying this per-rotorcraft safety benefit to the cumulative number of complying rotorcraft results in total safety benefits of $4.6 million (or $1.3 million discounted to present value). On a per-rotorcraft basis, these benefits would average approximately $61,500, or $17,300 discounted.

In addition to improving safety, the proposed rule would provide some cost-relief in certain respects. New production rotorcraft would be delivered with standardized procedures for external load operations, and could result in a small savings to part 133 operators. Further, changes to current regulations that relate to the primary and backup quick-release devices would reduce production costs for parts 27 and 29 rotorcraft manufacturers. The changes would also increase harmonization and commonality between U.S. and European airworthiness standards. Harmonization would eliminate unnecessary differences in airworthiness requirements, thus reducing manufacturers' certification costs.

Comparison of Costs and Benefits

The proposed rule would generate benefits in the form of increased safety and cost relief (see preceding paragraph—the potential cost relief has not been included in the cost/benefit calculation). On a per-rotorcraft basis, the life-cycle safety benefits would average approximately $17,300 (discounted) and the costs would average approximately $2,700 (discounted), yielding a benefit-to-cost ratio of 6.4 to 1. On this basis alone, the proposed rule is cost-beneficial; additional quantified efficiency and harmonization benefits would increase this ratio.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The entities that would be affected by the proposed rule consist of rotorcraft manufacturers (included in Standard Industrial Classification (SIC 3721, Aircraft and Aircraft Parts Manufacturers) and external load operators (SIC 4512, 4513, 4522). Manufacturers would incur additional development, certification, and production costs. In addition to indirectly incurring all or part of these costs in the form of higher rotorcraft acquisition costs, operators would incur increased fuel costs resulting from weight penalties. Although the certification costs (non-recurring) would be either fully absorbed by the manufacturer(s), passed on in-total to operator(s) (purchasers), or more likely, absorbed in some proportion by both, the FAA in this analysis adopts a conservative approach and allocates total certification costs to each category in assessing significant economic impact. Incremental per-unit production costs, however, are assumed to be fully passed on to purchasers (operators).

For manufacturers, a small entity is one with 1,500 or fewer employees. Only five rotorcraft manufacturers have 1,500 or fewer employees and therefore qualify as small entities. However, three of these are not currently producing new type-certificated rotorcraft, and a fourth does not produce rotorcraft used for external loads. The fifth small manufacturer produces specialized smaller rotorcraft, a minority of which are configured for external load operations; this producer does not compete with the larger manufacturers. Annualized certification costs imposed by the proposed rule are estimated to be $3,800 per manufacturer for each certification and is not considered significant within the meaning of the RFA.

There are numerous external load operators. The FAA has not determined how many of these are small operators and if a substantial number would potentially be impacted by the proposal. However, most external load operations involve specialized activities such as logging, offshore oil drilling, or emergency rescue operations, the demand for which is highly price-inelastic; the operators can readily pass on the incremental costs to their customers. Notwithstanding, the maximum annualized cost per rotorcraft would most likely not be greater than $314 (includes manufacturers' certification and production costs passed on to the purchaser and increased fuel costs, but excludes potential offsetting cost-savings). This amount probably equates to less than the cost of two hours' operating time (representing a de minimus portion of annual revenues) and is not considered significant within the meaning of the RFA. In addition, no small manufacturer or small operator would bear a disproportionate cost burden nor have a greater likelihood of failing in business compared to larger entities.

Based on the findings delineated above and consistent with the objectives and requirements of the RFA as amended, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA invites comments on this finding (and the underlying assumptions) during the public comment period following publication of the subject NPRM.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to United States' companies doing business in foreign markets, and foreign companies doing business in the United States.

This proposed rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European Joint Aviation Requirements. The result would be a positive step toward removing impediments to international trade.

Federalism Implications

The regulations proposed 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected

officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this proposed rule does not contain a significant intergovernmental or private sector mandate as defined by the Act.

List of Subjects

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 27 and 29 of Title 14, Code of Federal Regulations (14 CFR parts 27 and 29) as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

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

2. Section 27.25 is amended by revising paragraph (c) to read as follows:

§ 27.25 Weight limits

* * * * *

(c) *Total weight with jettisonable external load.* A total weight for the rotorcraft with a jettisonable external load attached that is greater than the maximum weight established under paragraph (a) of this section may be established for any rotorcraft-load combination if—

(1) The rotorcraft-load combination does not include human external cargo,

(2) Structural component approval for external load operations under either § 27.865, or under equivalent operational standards is obtained,

(3) The portion of the total weight that is greater than the maximum weight established under paragraph (a) of this section is made up only of the weight of all or part of the jettisonable external load,

(4) Structural components of the rotorcraft are shown to comply with the applicable structural requirements of this part under the increased loads and stresses caused by the weight increase over that established under paragraph (a) of this section, and

(5) Operation of the rotorcraft at a total weight greater than the maximum certificated weight established under paragraph (a) of this section is limited by appropriate operating limitations under § 27.865 (a) and (d) of this part.

3. The undesignated center heading preceding § 27.865 is revised as set forth below, and in § 27.865 the section heading, paragraph (a) introductory text and paragraph (b) are revised; paragraphs (c) and (d) are redesignated as paragraphs (e) and (f) and revised; and new paragraphs (c) and (d) are added to read as follows:

External Loads

§ 27.865 External loads.

(a) It must be shown by analysis, test, or both, that the rotorcraft external load attaching means for rotorcraft-load combinations to be used for nonhuman external cargo applications can withstand a limit static load equal to 2.5, or some lower load factor approved under §§ 27.337 through 27.341, multiplied by the maximum external load for which authorization is requested. It must be shown by analysis, test, or both that the rotorcraft external load attaching means and corresponding personnel carrying device system for rotorcraft-load combinations to be used for human external cargo applications can withstand a limit static load equal to 3.5 or some lower load factor, not less than 2.5, approved under §§ 27.337 through 27.341, multiplied by the maximum external load for which authorization is requested. The load for any rotorcraft-load combination class, for any external cargo type, must be applied in the vertical direction. For jettisonable external loads of any applicable external cargo type, the load must also be applied in any direction making the maximum angle with the vertical that can be achieved in service but not less than 30°. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(b) The external load attaching means, for jettisonable rotorcraft-load combinations, must include a quick-release system to enable the pilot to release the external load quickly during flight. The quick-release system must consist of a primary quick release subsystem and a backup quick release subsystem that are isolated from one another. The quick-release system, and the means by which it is controlled, must comply with the following:

(1) A control for the primary quick release subsystem must be installed either on one of the pilot's primary controls or in an equivalently accessible location and must be designed and located so that it may be operated by either the pilot or a crewmember without hazardously limiting the ability to control the rotorcraft during an emergency situation.

(2) A control for the backup quick release subsystem, readily accessible to either the pilot or another crewmember, must be provided.

(3) Both the primary and backup quick release subsystems must—

(i) Be reliable, durable, and function properly with all external loads up to and including the maximum external load for which authorization is requested.

(ii) Be protected against electromagnetic interference (EMI) from external and internal sources and against lightning to prevent inadvertent load release.

(A) The minimum level of protection required for jettisonable rotorcraft-load combinations used for nonhuman external cargo is a radio frequency field strength of 20 volts per meter.

(B) The minimum level of protection required for jettisonable rotorcraft-load combinations used for human external cargo is a radio frequency field strength of 200 volts per meter.

(iii) Be protected against any failure that could be induced by a failure mode of any other electrical or mechanical rotorcraft system.

(c) For rotorcraft-load combinations to be used for human external cargo applications, the rotorcraft must—

(1) For jettisonable external loads, have a quick-release system that meets the requirements of paragraph (b) of this section and that—

(i) Provides a dual actuation device for the primary quick release subsystem, and

(ii) Provides a separate dual actuation device for the backup quick release subsystem.

(2) Have a reliable, approved personnel carrying device system that has the structural capability and

personnel safety features essential for external occupant safety,

(3) Have placards and markings at all appropriate locations that clearly state the essential system operating instructions and, for the personnel carrying device system, the ingress and egress instructions.

(4) Have equipment to allow direct intercommunication among required crewmembers and external occupants, and

(5) Have the appropriate limitations and procedures incorporated in the flight manual for conducting human external cargo operations.

(d) The critically configured jettisonable external loads must be shown by a combination of analysis, ground tests, and flight tests to be both transportable and releasable throughout the approved operational envelope without hazard to the rotorcraft during normal flight conditions. In addition, these external loads must be shown to be releasable without hazard to the rotorcraft during emergency flight conditions.

(e) A placard or marking must be installed next to the external-load attaching means clearly stating any operational limitations and the maximum authorized external load as demonstrated under § 27.25 and this section.

(f) The fatigue evaluation of § 27.571 of this part does not apply to rotorcraft-load combinations to be used for nonhuman external cargo except for the failure of critical structural elements that would result in a hazard to the rotorcraft. For rotorcraft-load combinations to be used for human external cargo, the fatigue evaluation of § 27.571 of this part applies to the entire quick release and personnel carrying device structural systems and their attachments.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

4. The authority citation for part 29 continues to read as follows:

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

§ 29.25 [Amended]

5. Section 29.25 is amended by revising paragraph (c) to read as follows:

* * * * *

(c) *Total weight with jettisonable external load.* A total weight for the rotorcraft with a jettisonable external load attached that is greater than the maximum weight established under paragraph (a) of this section may be established for any rotorcraft-load combination if—

(1) The rotorcraft-load combination does not include human external cargo,

(2) Structural component approval for external load operations under either § 29.865 or under equivalent operational standards is obtained,

(3) The portion of the total weight that is greater than the maximum weight established under paragraph (a) of this section is made up only of the weight of all or part of the jettisonable external load,

(4) Structural components of the rotorcraft are shown to comply with the applicable structural requirements of this part under the increased loads and stresses caused by the weight increase over that established under paragraph (a) of this section, and

(5) Operation of the rotorcraft at a total weight greater than the maximum certificated weight established under paragraph (a) of this section is limited by appropriate operating limitations under § 29.865 (a) and (d) of this part.

6. The undesignated center heading preceding § 29.865 is revised as set forth below, and in § 29.865 the section heading, paragraph (a) introductory text and paragraph (b) are revised; paragraphs (c) and (d) are redesignated as paragraphs (e) and (f) and revised; and new paragraphs (c) and (d) are added to read as follows:

External Loads

§ 29.865 External loads.

(a) It must be shown by analysis, test, or both, that the rotorcraft external load attaching means for rotorcraft-load combinations to be used for nonhuman external cargo applications can withstand a limit static load equal to 2.5, or some lower load factor approved under §§ 29.337 through 29.341, multiplied by the maximum external load for which authorization is requested. It must be shown by analysis, test, or both that the rotorcraft external load attaching means and corresponding personnel carrying device system for rotorcraft-load combinations to be used for human external cargo applications can withstand a limit static load equal to 3.5 or some lower load factor, not less than 2.5, approved under §§ 29.337 through 29.341, multiplied by the maximum external load for which authorization is requested. The load for any rotorcraft-load combination class, for any external cargo type, must be applied in the vertical direction. For jettisonable external loads of any applicable external cargo type, the load must also be applied in any direction making the maximum angle with the vertical that can be achieved in service but not less than 30°. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(b) The external load attaching means, for jettisonable rotorcraft-load combinations, must include a quick-release system to enable the pilot to release the external load quickly during flight. The quick-release system must consist of a primary quick release subsystem and a backup quick release subsystem that are isolated from one another. The quick release system, and the means by which it is controlled, must comply with the following:

(1) A control for the primary quick release subsystem must be installed either on one of the pilot's primary controls or in an equivalently accessible location and must be designed and located so that it may be operated by either the pilot or a crewmember without hazardously limiting the ability to control the rotorcraft during an emergency situation.

(2) A control for the backup quick release subsystem, readily accessible to either the pilot or another crewmember, must be provided.

(3) Both the primary and backup quick release subsystems must—

(i) Be reliable, durable, and function properly with all external loads up to and including the maximum external load for which authorization is requested.

(ii) Be protected against electromagnetic interference (EMI) from external and internal sources and against lightning to prevent inadvertent load release.

(A) The minimum level of protection required for jettisonable rotorcraft-load combinations used for nonhuman external cargo is a radio frequency field strength of 20 volts per meter.

(B) The minimum level of protection required for jettisonable rotorcraft-load combinations used for human external cargo is a radio frequency field strength of 200 volts per meter.

(iii) Be protected against any failure that could be induced by a failure mode of any other electrical or mechanical rotorcraft system.

(c) For rotorcraft-load combinations to be used for human external cargo applications, the rotorcraft must—

(1) For jettisonable external loads, have a quick-release system that meets the requirements of paragraph (b) of this section and that—

(i) Provides a dual actuation device for the primary quick release subsystem, and

(ii) Provides a separate dual actuation device for the backup quick release subsystem.

(2) Have a reliable, approved personnel carrying device system that has the structural capability and personnel safety features essential for external occupant safety.

(3) Have placards and markings at all appropriate locations that clearly state the essential system operating instructions and, for the personnel carrying device system, ingress and egress instructions,

(4) Have equipment to allow direct intercommunication among required crewmembers and external occupants,

(5) Have the appropriate limitations and procedures incorporated in the flight manual for conducting human external cargo operations, and

(6) For human external cargo applications requiring use of Category A rotorcraft, have one-engine-inoperative hover performance data and procedures in the flight manual for the weights, altitudes, and temperatures for which external load approval is requested.

(d) The critically configured jettisonable external loads must be shown by a combination of analysis, ground tests, and flight tests to be both transportable and releasable throughout the approved operational envelope without hazard to the rotorcraft during normal flight conditions. In addition, these external loads must be shown to be releasable without hazard to the rotorcraft during emergency flight conditions.

(e) A placard or marking must be installed next to the external-load attaching means clearly stating any operational limitations and the maximum authorized external load as demonstrated under § 29.25 and this section.

(f) The fatigue evaluation of § 29.571 of this part does not apply to rotorcraft-load combinations to be used for nonhuman external cargo except for the failure of critical structural elements that would result in a hazard to the rotorcraft. For rotorcraft-load combinations to be used for human external cargo, the fatigue evaluation of § 29.571 of this part applies to the entire quick release and personnel carrying device structural systems and their attachments.

Issued in Washington, DC, on July 6, 1998.

Thomas E. McSweeney,

Director, Aircraft Certification Service.

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Vol. 63, No. 133

Monday, July 13, 1998

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FEDERAL REGISTER PAGES AND DATES, JULY

35787–36150 1
36151–36338 2
36339–36540 6
36541–36830 7
36831–37058 8
37059–37242 9
37243–37474 10
37475–37754 13

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7107 36531

Executive Orders:
11958 (Amended by EO 13091) 36153
12163 (Amended by EO 13091) 36153
13090 36151
13091 36153

Administrative Orders:
Presidential Orders:
No. 98–31 36149

5 CFR

Proposed Rules:
2420 35882
2421 35882
2422 35882
2423 35882
2470 35882
2472 35882

7 CFR

2 35787
301 36155
457 ..... 36156, 36157
911 37475
915 37475
1980 36157

Proposed Rules:
958 36194
1755 36377

8 CFR

3 36992

9 CFR

3 37480
78 37243
93 37483

10 CFR

34 37059

11 CFR

Proposed Rules:
102 37721
103 37721
106 37721

12 CFR

208 37630
209 37659
216 37665
250 37630
611 36541
614 36541
620 36541
630 36541
904 37483

14 CFR

39 ..... 35787, 35790, 35792, 35793, 35794, 35796, 36158, 36549, 36551, 36553, 36831, 36832, 36834, 36835, 36836, 37061, 37063
71 ..... 36161, 36554, 36838, 36839, 36840, 36841, 36843, 36844, 36845, 37065, 37489
95 37243
97 ..... 36162, 36165, 36170

Proposed Rules:
27 37745
29 37745
39 ..... 35884, 36377, 36619, 36621, 36622, 36624, 36626, 36628, 36630, 36864, 37072, 37074, 37078, 37080, 37083, 37508
65 ..... 37171, 37210
66 ..... 37171, 37210
71 37510
147 37171

15 CFR

280 37170
902 37246
922 36339

16 CFR

0 36339
1 36339
3 36339
303 36171
304 36555
432 37233

Proposed Rules:
432 37237

17 CFR

240 ..... 37567, 37688

Proposed Rules:
210 35886
229 35886
230 36136
240 ..... 35886, 36138, 37746
249 35886
275 36632
279 36632

19 CFR

162 ..... 35798, 36992
178 ..... 35798, 36992

Proposed Rules:
4 036379

20 CFR

404 36560
416 36560

21 CFR

101 37029

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 11, 1998

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Dornier; published 5-28-98¶

RULES GOING INTO EFFECT JULY 13, 1998

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Ports of entry—

Harry S Truman Animal Import Center, FL; anticipated closure; published 7-13-98

Interstate transportation of animals and animal products (quarantine):

Equine infectious anemia; livestock markets; handling of reactors; published 6-12-98

COMMERCE DEPARTMENT

Export Administration Bureau

National security industrial base regulations:

Defense priorities and allocations system; published 6-11-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Halibut donation program; published 6-12-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Perchloroethylene emissions from dry cleaning facilities

California; published 5-13-98

Air quality implementation plans; approval and promulgation; various States:

Oregon; published 5-13-98

Maryland; published 5-13-98

New Hampshire; published 5-13-98

New Mexico; published 7-13-98

Air quality planning purposes; designation of areas:

Alaska; published 6-12-98

Hazardous waste program authorizations:

New Mexico; published 4-28-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Telephone services disruptions; notifications; published 7-13-98

Radio services, special:

Personal communications services; fixed satellite and local multipoint distribution services; published 5-13-98

FEDERAL HOUSING FINANCE BOARD

Freedom of Information Act; implementation; published 7-13-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

New animal drugs—

Milk-producing animals; drug labeling; published 6-17-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Agusta S.p.A.; published 6-26-98

Eurocopter Deutschland GmbH; published 6-26-98

Eurocopter France; published 6-26-98

Pilatus Aircraft Ltd.; published 5-28-98

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Natural gas transportation, etc.—

Metric equivalents; published 7-13-98

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:

Veterans education—

Service Members Occupational Conversion and Training Act; certification deadlines; published 5-13-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Mediterranean fruit fly; comments due by 7-20-98; published 5-19-98

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Women, infants, and children; special supplemental nutrition program—

Vendor disqualification; comments due by 7-20-98; published 4-20-98

Food stamp program:

Electronic benefits transfer system; adjustments; comments due by 7-20-98; published 5-19-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Bottomfish and seamount groundfish; comments due by 7-20-98; published 6-3-98

Pacific coast groundfish; comments due by 7-22-98; published 7-7-98

Pacific Halibut Commission, International:

Pacific halibut fisheries—

Halibut charterboat fishery; control date; comments due by 7-24-98; published 6-24-98

DEFENSE DEPARTMENT

Vocational rehabilitation and education:

Veterans education—

Educational assistance; advance payments and lump-sum payments; comments due by 7-20-98; published 5-20-98

EDUCATION DEPARTMENT

Postsecondary education:

Fulbright-Hays doctoral dissertation research abroad fellowship program, etc.; comments due by 7-20-98; published 6-19-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Primary copper smelters; comments due by 7-20-98; published 6-2-98

Wood furniture manufacturing operations; comments due by 7-24-98; published 6-24-98

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 7-20-98; published 6-18-98

Georgia; comments due by 7-24-98; published 6-24-98

Ohio; comments due by 7-20-98; published 6-18-98

Air quality planning purposes; designation of areas:

Idaho; comments due by 7-20-98; published 6-19-98

Clean Air Act:

Acid rain program—

Continuous emission monitoring; rule streamlining; comments due by 7-20-98; published 5-21-98

Hazardous waste:

Project XL program; site-specific projects—

OSi Specialities, Inc. plant, Sisterville, WV; comments due by 7-24-98; published 7-10-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bacillus thuringiensis subspecies tolworthi Cry9C protein and genetic material necessary for production in corn; comments due by 7-21-98; published 5-22-98

Hydroxyethylidine diphosphonic acid; comments due by 7-21-98; published 5-22-98

Radiation protection programs:

Idaho National Enviromental and Engineering Laboratory; transuranic radioactive waste proposed for disposal at Waste Isolation Pilot Plant; DOE documents availability; comments due by 7-24-98; published 6-24-98

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1, 2 (2 Reserved)	(869-034-00001-1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869-034-00002-9)	19.00	[1] Jan. 1, 1998
4	(869-034-00003-7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1-699	(869-034-00004-5)	35.00	Jan. 1, 1998
700-1199	(869-034-00005-3)	26.00	Jan. 1, 1998
1200-End, 6 (6 Reserved)	(869-034-00006-1)	39.00	Jan. 1, 1998
7 Parts:			
1-26	(869-034-00007-0)	24.00	Jan. 1, 1998
27-52	(869-034-00008-8)	30.00	Jan. 1, 1998
53-209	(869-034-00009-6)	20.00	Jan. 1, 1998
210-299	(869-034-00010-0)	44.00	Jan. 1, 1998
300-399	(869-034-00011-8)	24.00	Jan. 1, 1998
400-699	(869-034-00012-6)	33.00	Jan. 1, 1998
700-899	(869-034-00013-4)	30.00	Jan. 1, 1998
900-999	(869-034-00014-2)	39.00	Jan. 1, 1998
1000-1199	(869-034-00015-1)	44.00	Jan. 1, 1998
1200-1599	(869-034-00016-9)	34.00	Jan. 1, 1998
1600-1899	(869-034-00017-7)	58.00	Jan. 1, 1998
1900-1939	(869-034-00018-5)	18.00	Jan. 1, 1998
1940-1949	(869-034-00019-3)	33.00	Jan. 1, 1998
1950-1999	(869-034-00020-7)	40.00	Jan. 1, 1998
2000-End	(869-034-00021-5)	24.00	Jan. 1, 1998
8	(869-034-00022-3)	33.00	Jan. 1, 1998
9 Parts:			
1-199	(869-034-00023-1)	40.00	Jan. 1, 1998
200-End	(869-034-00024-0)	33.00	Jan. 1, 1998
10 Parts:			
0-50	(869-034-00025-8)	39.00	Jan. 1, 1998
51-199	(869-034-00026-6)	32.00	Jan. 1, 1998
200-499	(869-034-00027-4)	31.00	Jan. 1, 1998
500-End	(869-034-00028-2)	43.00	Jan. 1, 1998
11	(869-034-00029-1)	19.00	Jan. 1, 1998
12 Parts:			
1-199	(869-034-00030-4)	17.00	Jan. 1, 1998
200-219	(869-034-00031-2)	21.00	Jan. 1, 1998
220-299	(869-034-00032-1)	39.00	Jan. 1, 1998
300-499	(869-034-00033-9)	23.00	Jan. 1, 1998
500-599	(869-034-00034-7)	24.00	Jan. 1, 1998
600-End	(869-034-00035-5)	44.00	Jan. 1, 1998
13	(869-034-00036-3)	23.00	Jan. 1, 1998
14 Parts:			
1-59	(869-034-00037-1)	47.00	Jan. 1, 1998
60-139	(869-034-00038-0)	40.00	Jan. 1, 1998
140-199	(869-034-00039-8)	16.00	Jan. 1, 1998
200-1199	(869-034-00040-1)	29.00	Jan. 1, 1998
1200-End	(869-034-00041-0)	23.00	Jan. 1, 1998
15 Parts:			
0-299	(869-034-00042-8)	22.00	Jan. 1, 1998
300-799	(869-034-00043-6)	33.00	Jan. 1, 1998
800-End	(869-034-00044-4)	23.00	Jan. 1, 1998
16 Parts:			
0-999	(869-034-00045-2)	30.00	Jan. 1, 1998
1000-End	(869-034-00046-1)	33.00	Jan. 1, 1998
17 Parts:			
1-199	(869-032-00048-4)	21.00	Apr. 1, 1997
200-239	(869-032-00049-2)	32.00	Apr. 1, 1997
240-End	(869-034-00050-9)	40.00	Apr. 1, 1998
18 Parts:			
1-399	(869-034-00051-7)	45.00	Apr. 1, 1998
400-End	(869-034-00052-5)	13.00	Apr. 1, 1998
19 Parts:			
1-140	(869-034-00053-3)	34.00	Apr. 1, 1998
141-199	(869-032-00054-9)	30.00	Apr. 1, 1997
200-End	(869-032-00055-7)	15.00	Apr. 1, 1998
20 Parts:			
1-399	(869-032-00056-5)	26.00	Apr. 1, 1997
400-499	(869-034-00057-6)	28.00	Apr. 1, 1998
500-End	(869-034-00058-4)	44.00	Apr. 1, 1998
21 Parts:			
1-99	(869-034-00059-2)	21.00	Apr. 1, 1998
100-169	(869-032-00060-3)	27.00	Apr. 1, 1997
170-199	(869-034-00061-4)	28.00	Apr. 1, 1998
200-299	(869-034-00062-2)	9.00	Apr. 1, 1998
300-499	(869-032-00063-8)	50.00	Apr. 1, 1997
500-599	(869-032-00064-6)	28.00	Apr. 1, 1997
600-799	(869-034-00065-7)	9.00	Apr. 1, 1998
800-1299	(869-032-00066-2)	31.00	Apr. 1, 1997
1300-End	(869-034-00067-3)	12.00	Apr. 1, 1998
22 Parts:			
1-299	(869-034-00068-1)	41.00	Apr. 1, 1998
300-End	(869-032-00069-7)	31.00	Apr. 1, 1997
23	(869-032-00070-1)	26.00	Apr. 1, 1997
24 Parts:			
0-199	(869-034-00071-1)	32.00	Apr. 1, 1998
200-499	(869-034-00072-0)	28.00	Apr. 1, 1998
500-699	(869-034-00073-8)	17.00	Apr. 1, 1998
700-1699	(869-034-00074-6)	45.00	Apr. 1, 1998
1700-End	(869-034-00075-4)	17.00	Apr. 1, 1998
25	(869-032-00076-0)	42.00	Apr. 1, 1997
26 Parts:			
§§ 1.0-1-1.60	(869-034-00077-1)	26.00	Apr. 1, 1998
§§ 1.61-1.169	(869-032-00078-6)	44.00	Apr. 1, 1997
§§ 1.170-1.300	(869-032-00079-4)	31.00	Apr. 1, 1997
§§ 1.301-1.400	(869-034-00080-1)	23.00	Apr. 1, 1998
§§ 1.401-1.440	(869-032-00081-6)	39.00	Apr. 1, 1997
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501-1.640	(869-032-00083-2)	27.00	Apr. 1, 1998
§§ 1.641-1.850	(859-032-00084-1)	33.00	Apr. 1, 1997
§§ 1.851-1.907	(869-034-00085-1)	36.00	Apr. 1, 1998
§§ 1.908-1.1000	(869-034-00086-0)	35.00	Apr. 1, 1998
§§ 1.1001-1.1400	(869-034-00087-8)	38.00	Apr. 1, 1998
§§ 1.1401-End	(869-032-00088-3)	45.00	Apr. 1, 1997
2-29	(869-032-00089-1)	36.00	Apr. 1, 1998
30-39	(869-032-00090-5)	25.00	Apr. 1, 1997
40-49	(869-034-00091-6)	16.00	Apr. 1, 1998
50-299	(869-034-00092-4)	19.00	Apr. 1, 1998
300-499	(869-034-00093-2)	34.00	Apr. 1, 1998
500-599	(869-034-00094-1)	10.00	Apr. 1, 1998
600-End	(869-034-00095-9)	9.00	Apr. 1, 1998
27 Parts:			
1-199	(869-032-00096-4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1997
28 Parts:			
1–42	(869–032–00098–1)	36.00	July 1, 1997
43–end	(869–032–00099–9)	30.00	July 1, 1997
29 Parts:			
0–99	(869–032–00100–5)	27.00	July 1, 1997
100–499	(869–032–00101–4)	12.00	July 1, 1997
500–899	(869–032–00102–2)	41.00	July 1, 1997
900–1899	(869–032–00103–1)	21.00	July 1, 1997
1900–1910 (§§ 1900 to 1910.999)	(869–032–00104–9)	43.00	July 1, 1997
1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
1911–1925	(869–032–00106–5)	19.00	July 1, 1997
1926	(869–032–00107–3)	31.00	July 1, 1997
1927–End	(869–032–00108–1)	40.00	July 1, 1997
30 Parts:			
1–199	(869–032–00109–0)	33.00	July 1, 1997
200–699	(869–032–00110–3)	28.00	July 1, 1997
700–End	(869–032–00111–1)	32.00	July 1, 1997
31 Parts:			
0–199	(869–032–00112–0)	20.00	July 1, 1997
200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–032–00114–6)	42.00	July 1, 1997
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–032–00116–2)	33.00	July 1, 1997
630–699	(869–032–00117–1)	22.00	July 1, 1997
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–032–00122–7)	31.00	July 1, 1997
34 Parts:			
1–299	(869–032–00123–5)	28.00	July 1, 1997
300–399	(869–032–00124–3)	27.00	July 1, 1997
400–End	(869–032–00125–1)	44.00	July 1, 1997
35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
1–199	(869–032–00127–8)	20.00	July 1, 1997
200–299	(869–032–00128–6)	21.00	July 1, 1997
300–End	(869–032–00129–4)	34.00	July 1, 1997
37	(869–032–00130–8)	27.00	July 1, 1997
38 Parts:			
0–17	(869–032–00131–6)	34.00	July 1, 1997
18–End	(869–032–00132–4)	38.00	July 1, 1997
39	(869–032–00133–2)	23.00	July 1, 1997
40 Parts:			
1–49	(869–032–00134–1)	31.00	July 1, 1997
50–51	(869–032–00135–9)	23.00	July 1, 1997
52 (52.01–52.1018)	(869–032–00136–7)	27.00	July 1, 1997
52 (52.1019–End)	(869–032–00137–5)	32.00	July 1, 1997
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87–135	(869–032–00145–6)	40.00	July 1, 1997
136–149	(869–032–00146–4)	35.00	July 1, 1997
150–189	(869–032–00147–2)	32.00	July 1, 1997
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260–265	(869–032–00149–9)	29.00	July 1, 1997
266–299	(869–032–00150–2)	24.00	July 1, 1997
300–399	(869–032–00151–1)	27.00	July 1, 1997
400–424	(869–032–00152–9)	33.00	[5] July 1, 1996
425–699	(869–032–00153–7)	40.00	July 1, 1997
700–789	(869–032–00154–5)	38.00	July 1, 1997
790–End	(869–032–00155–3)	19.00	July 1, 1997
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
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101	(869–032–00157–0)	36.00	July 1, 1997
102–200	(869–032–00158–8)	17.00	July 1, 1997
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
0–19	(869–032–00179–1)	34.00	Oct. 1, 1997
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
70–79	(869–032–00182–1)	33.00	Oct. 1, 1997
80–End	(869–032–00183–9)	43.00	Oct. 1, 1997
48 Chapters:			
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1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–032–00187–1)	29.00	Oct. 1, 1997
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–032–00189–8)	33.00	Oct. 1, 1997
29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
49 Parts:			
1–99	(869–032–00191–0)	31.00	Oct. 1, 1997
100–185	(869–032–00192–8)	50.00	Oct. 1, 1997
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
1000–1199	(869–032–00196–1)	19.00	Oct. 1, 1997
1200–End	(869–032–00197–9)	14.00	Oct. 1, 1997
50 Parts:			
1–199	(869–032–00198–7)	41.00	Oct. 1, 1997
200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

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