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

WASHINGTON, DC

WHEN: Tuesday, May 22, 2001 at 9:00 a.m.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7435 of May 8, 2001

Peace Officers Memorial Day and Police Week, 2001

By the President of the United States of America

A Proclamation

Each day, law enforcement officers encounter grave risk to protect the rights and freedoms we enjoy as Americans. Their commitment and sacrifice make our streets safer, our neighborhoods stronger, and our families more secure. Police Week provides an opportunity to recognize the selfless dedication of the brave men and women who devote their lives to protecting and serving our communities.

This Nation owes a considerable debt of gratitude to all law enforcement officers who protect the lives and property of their fellow Americans. From patrolling our highways, to investigating crime, to protecting victims' rights, these committed professionals make a valuable difference in our communities. We look to them to uphold the principle that no one is beyond the protection or reach of the law. These men and women, through their patriotic service and dedicated effort, have earned our gratitude and respect.

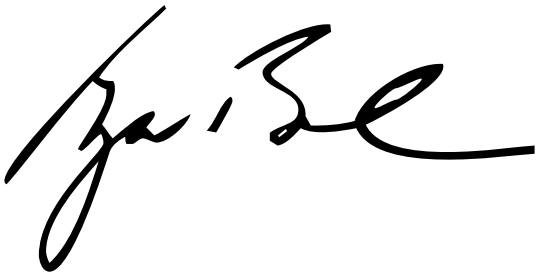
We pause during Police Week, and in particular on Peace Officers Memorial Day, to honor those officers who made the ultimate sacrifice while performing their sworn duty. I urge all Americans to use this occasion to pay tribute to these fallen heroes by recalling their devotion, celebrating their lives, and honoring their service.

Tragically, making America safer often requires great sacrifice. According to the National Law Enforcement Officers Memorial Fund, 150 law enforcement officers lost their lives in the line of duty in 2000. Although we can never repay the debt we owe these valiant officers and their families, we pay tribute to their memory by committing ourselves to being law-abiding citizens, working to lower crime in our communities, and investing time and love in our Nation's young people.

By a joint resolution approved October 1, 1962 (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as ''Peace Officers Memorial Day'' and the week in which it falls as ''Police Week,'' and, by Public Law 103-322 (36 U.S.C. 136), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 15, 2001, as Peace Officers Memorial Day and May 13 through May 19, 2001, as Police Week. I call upon all the people of the United States to observe this day with appropriate ceremonies and activities. I also call upon Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I also encourage all Americans to display the flag at half-staff from their homes on that day.

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



[FR Doc. 01–12078
Filed 5–10–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7436 of May 8, 2001

National Salvation Army Week, 2001

By the President of the United States of America

A Proclamation

Since its founding in Great Britain in 1865, the Salvation Army has provided humanitarian relief and spiritual guidance to people throughout the world. Its members continue its compassionate tradition of helping wherever there is hunger, disease, destitution, and spiritual need.

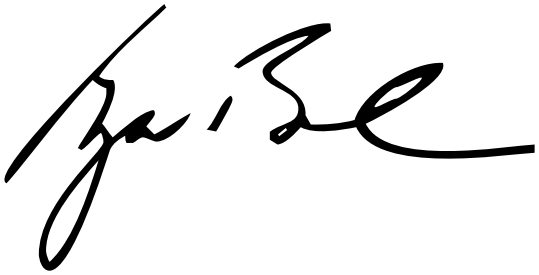
Through countless acts of service, members of the Salvation Army actively assist those who suffer in body and spirit. Their victories result in shelter for the homeless, food for the hungry, and self-sufficiency for the disabled. In more than 100 countries, speaking more than 140 languages, the Salvation Army follows Christ's call to ''love your neighbor as yourself.''

Members of the Salvation Army demonstrate this love in many ways. Perhaps the best-known services they provide involve meeting the needs of the homeless. However, they also offer assistance to countless other individuals seeking help. Those addicted to drugs or alcohol find a vast network of rehabilitation programs; children born into poverty discover camps and educational opportunities; and those who are ill receive care.

I commend the Salvation Army officers, soldiers, and those who support its mission for their continued dedication to helping meet the physical and spiritual needs of people across the Nation. During this week, I encourage Americans to express their appreciation for the Salvation Army's good works and to follow their example of serving a cause greater than themselves.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 14 through May 20, 2001, as National Salvation Army Week. I call upon all the people of the United States to honor the Salvation Army during that week for its faithful ministry in the United States for over 120 years.

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



[FR Doc. 01–12079
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Presidential Documents

Proclamation 7437 of May 9, 2001

Mother's Day, 2001

By the President of the United States of America

A Proclamation

No matter what direction life takes us, a mother's love and guidance are a tremendous blessing that help us to grow up as stable, responsible, and caring individuals. As nurturers, teachers, and protectors, mothers' unconditional affection helps their children to blossom into mature adults. In partnership with fathers, mothers play a critical role in building healthy families.

Anna M. Jarvis is credited with influencing the Congress in 1914 to establish an official Mother's Day as a tribute to her beloved mother and to all mothers. She conceived of the day as a time when children could formally demonstrate respect for their mothers and reinforce family bonds.

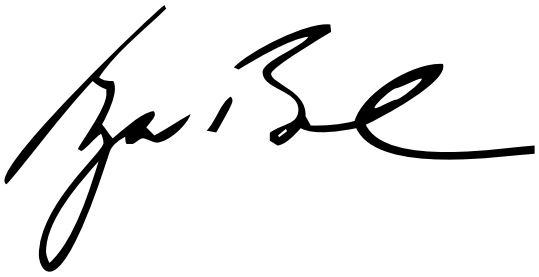
Mothers who teach us right from wrong and to love our neighbors merit our deepest gratitude and appreciation. Beyond their more traditional role in rearing children, many mothers also face responsibilities outside the home as members of the workforce. At the same time, they may be caring not only for their biological or adopted children but also for stepchildren or foster children.

Many American families are now headed solely by women, and these women shoulder enormous responsibilities. For the good of their families and our Nation, we must strive to provide support and assistance to those mothers, such as, opportunities for training and employment; early childhood education for their young ones; and safe, affordable, and high-quality childcare. But fathers must also remain committed and involved in the lives of their children. By fulfilling their financial and nurturing responsibilities, fathers help ensure the well-being of their children and ease the burden on those women who carry the primary responsibility of caring for their families.

Whatever their circumstances, mothers demonstrate daily how their devotion, strength, and wisdom make all the difference in the lives of their children. To honor mothers, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as ''Mother's Day'' and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 13, 2001, as Mother's Day. I encourage all Americans to honor the importance of mothers and to celebrate how their love and devotion are crucial to the well-being of children, families, and our society.

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



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Rules and Regulations

Federal Register

Vol. 66, No. 92

Friday, May 11, 2001

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

RIN 3150–AE95

Clarification of Decommissioning Funding Requirements; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document corrects a misreference appearing in a final rule that was published in the Federal Register on July 26, 1995 (60 FR 38235). This action is to correct this typographical error for clarity and consistency in the regulations.

DATES: Effective May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 [telephone (301) 415–6219, e-mail *JMM2@nrc.gov*].

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1995 (60 FR 38235), a final rule entitled ''Clarification of Decommissioning Funding Requirements'' was published in the Federal Register. The purpose of the final rule was to amend the regulations applicable to decommissioning funding assurance and the expiration and termination of licenses for nonreactor licensees. In that final rule, paragraph (e) of § 30.36, Expiration and termination of licensees and decommissioning of sites and separate buildings or outdoor areas,'' referenced § 30.35, Financial assurance and recordkeeping for decommissioning.'' Similarly, paragraph (e) to § 40.42, Expiration and termination of licenses and decommissioning of sites and separate or outdoor areas, referenced § 40.36, Financial assurance and recordkeeping for decommissioning. However, paragraph (e) to § 70.38, Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas, erroneously referenced § 30.35 instead of § 70.25, Financial assurance and recordkeeping for decommissioning. This typographical error needs to be corrected.

Need for Corrections

As published, the final rule entitled ''Clarification of Decommissioning Funding Requirements'' (60 FR 38235; July 26, 1995) contains a typographical error in § 70.38(e) which needs to be corrected.

List of Subjects in 10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR part 70.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

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

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1 and 70.20a(b) also issued under secs. 134, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d. Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. In § 70.38, the introductory text of paragraph (e) is revised to read as follows

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 70.25 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

* * * * *

Dated at Rockville, Maryland, this 7th day of May, 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Rules and Directives Branch, Division of Administrative Services,Office of Administration.

[FR Doc. 01–11901 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–123–AD; Amendment 39–12226; AD 2001–10–01]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 series airplanes. This action requires revising the FAA-approved Airplane Flight

Manual to prohibit in-flight auxiliary power unit (APU) starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flight crew. This action is necessary to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment. This action is intended to address the identified unsafe condition.

DATES: Effective May 29, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 11, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–123–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2001–NM–123–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and EMB–145 series airplanes. The DAC advises that it has received a report of occurrences of auxiliary power unit (APU) flame backflow into the APU compartment through the exhaust eductor, during in-flight APU starts.

The airplane manufacturer (EMBRAER) has reported to the DAC and FAA that two APU fire alarms were triggered during in-flight APU starts at 30,000 feet on two airplanes. As a result, the fire sensors were replaced, but the same event occurred again in one of the airplanes. EMBRAER then inspected all APU's on the production fleet at its manufacturing facility, and found evidence of flame backflow (flames ingested back into the APU compartment) and minor damage (singed harness ties and discoloration) on four airplanes.

EMBRAER and Hamilton Sunstrand Power Systems (the APU manufacturer) further investigated the APU flame backflow events to determine the cause. Based on theoretical analysis and field data, the two manufacturers reached the following conclusions:

- The root cause is due to flames (that were generated during in-flight APU starts) being ingested into the APU compartment through the eductor.
- The event is only possible during in-flight APU start attempts at high altitudes where the fuel mixture tends to be rich. In that case, torching flames can occur when excessive fuel exits the combustor and is burned in the exhaust as the new air mixes with the hot gases.
- For APU ground starts only, none of the EMBRAER production airplanes showed burn marks. When the APU was used on approach for landing at lower altitudes (5,000 to 10,000 feet), field inspections of all affected airplanes (five airplanes with the APU model specified in the applicability of this AD) showed no burn marks.
- The probability of having a flame backflow event increases during high speeds. The APU manufacturer has found that if a large amount of pressure is present on the exhaust, the compressor may not have enough efficiency to overcome this pressure during the first stages of an in-flight APU start. In this case, the flame backflow would be diverted into the tailcone.

Even though there have been no occurrences of this flame backflow event at low altitudes, the DAC and FAA have determined that it is still possible for the flame backflow to occur. For that reason, both the DAC and FAA consider that any inflight starts of the APU could adversely affect the safety of flight.

Explanation of Relevant Foreign Airworthiness Information

The DAC issued Brazilian emergency airworthiness directive 2001–04–02, dated April 12, 2001, in order to assure the continued airworthiness of these airplanes in Brazil. The Brazilian airworthiness directive references procedures for installing the APU placard in EMBRAER Alert Service Bulletin 145–49–A017, dated April 12, 2001.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment. This AD requires revising the FAA-approved Airplane Flight Manual to prohibit in-flight APU starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flight crew.

Differences Between the Brazilian Airworthiness Directive and This AD

Operators should note that the service bulletin referenced in the Brazilian airworthiness directive specifies installing the decal (placard) in the ''pedestal panel'' of the airplane, and the Brazilian airworthiness directive specifies such installation in the ''main instrument panel.'' However, paragraph (b) of this AD specifies installing the placard ''on or near the APU start/stop switch panel.''

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–123–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

2001–10–01 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–12226. Docket 2001–NM–123–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category, equipped with Hamilton Sundstrand Power Systems auxiliary power unit (APU) model T–62T–40C14 (APS 500R).

Compliance: Required as indicated, unless accomplished previously.

To prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 25 flight hours or 10 days after the effective date of this AD, whichever occurs first, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a placard on or near the APU start/stop switch panel that reads:

''Caution: In-Flight APU Starts are Prohibited''

(2) Revise the Limitations Section of the FAA-approved AFM to include the information on the placard, as specified in paragraph (a)(1) of this AD, and to limit APU starts to ground conditions only. This may be accomplished by inserting a copy of this AD in the AFM.

Note 1: Because APU starts are prohibited in flight when an engine-driven generator is inoperative, the APU must be started on the ground in order to dispatch, and the APU must be kept operational for the entire flight.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Brazilian emergency airworthiness directive 2001–04–02, dated April 12, 2001.

Effective Date

(d) This amendment becomes effective on May 29, 2001.

Issued in Renton, Washington, on May 7, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11899 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 010410087–1087–01; I.D. 031401B]

RIN 0648–AO07

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 14

Republication

Editorial Note: Federal Register Rule document 01-10783 originally appeared in the issue of Tuesday, May 1, 2001 at 66 FR 21639-21648. Due to numerous errors the document is being reprinted in its entirety.

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 14 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This final rule implements management measures for the 2001 and 2002 fishing years, including a days-at-sea (DAS) adjustment, a Sea Scallop Area Access Program (Area Access Program) for two areas that have been closed to scallop fishing in the Mid-Atlantic, and a 50–bu (17.62 hectoliters (hl)) possession restriction of in-shell scallops on vessels shoreward of the vessel monitoring system (VMS) demarcation line. The intent of this action is to achieve the goals and objectives of the FMP and to achieve optimum yield in the scallop fishery. In addition, NMFS publishes the Office of Management and Budget (OMB) control numbers for collection-of-information requirements contained in this final rule.

DATES: Effective May 1, 2001.

ADDRESSES: Copies of Framework Adjustment 14, its Final Supplemental Environmental Impact Statement (FSEIS), and Regulatory Impact Review (RIR) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at http://www.nefmc.org.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9280; fax 978–281–9135; e-mail peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 7 to the FMP (64 FR 14835, March 29, 1999) redefined overfishing and revised the fishing mortality (F) reduction schedule through fishing year 2008. The reductions in F and associated sea scallop DAS schedule were intended to rebuild the sea scallop stock within 10 years. Amendment 7 also established an annual monitoring and review process to adjust management measures to meet the stock rebuilding objectives as conditions in the resource change. In addition, Amendment 7 included a measure that continued the closures of two sea scallop closed areas in the Mid-Atlantic region, known as the Hudson Canyon South and Virginia Beach Closed Areas, through March 1, 2001. These closed areas were originally implemented by interim rules (63 FR 15324, March 31, 1998; 63 FR 51862, September 29, 1998) to prevent the harvest of juvenile scallops and to allow time for scallop growth and rebuilding. Framework 14 renames the Hudson Canyon South Closed Area as the Hudson Canyon Area to avoid confusion that the ''South'' description may cause.

Based on information from the 29th Northeast Regional Stock Assessment Workshop (September 1999) and on the updated catch and survey data, the New England Fishery Management Council (Council) included new biological projections in its 2000 Stock Assessment and Fishery Evaluation (SAFE) Report for sea scallops (September 8, 2000) that conclude that scallop rebuilding is ahead of the rebuilding schedule specified in Amendment 7. As reported in the 2000 SAFE Report, the accelerated rebuilding has occurred primarily because of strong year classes of scallops in 1998 and 2000. The Scallop Plan Development Team (PDT), which completed the analysis in the 2000 SAFE Report, determined that DAS allocations could be increased from the Amendment 7 levels while still meeting the 2001 and 2002 F targets, provided that the Georges Bank and Southern New England multispecies closed areas remain closed to scallop fishing and that access to scallops in the Hudson Canyon and Virginia Beach Areas in the Mid-Atlantic is controlled. The PDT also recommended closing four new areas to scallop fishing to protect high concentrations of juvenile scallops.

At its January 25, 2001, meeting, the Council took final action on management measures for Framework 14. The Council recommended the following measures for fishing years 2001 and 2002: An annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional vessels, respectively; an Area Access Program for the Hudson Canyon and Virginia Beach Areas to control fishing effort, catch, and fishing mortality in these two previously closed areas; and a prohibition on the possession of more than 50 U.S. bushels (17.62 hl) of in-shell scallops inside the VMS demarcation line for vessels that fish in or transit the area south of 42°20′ N. latitude. Although the Scallop Oversight Committee supported two additional closures in Framework 14, the Council ultimately decided to recommend that no new closures (beyond the continuation of the Georges Bank and Southern New England multispecies closed areas) be implemented because such closures had the potential for unnecessary hardships on the industry and that new closures are not necessary to achieve the goals of the FMP given the improved condition of the resource.

Approved Measures

This action implements an annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional vessels, respectively, for the 2001 and 2002 fishing years. This allocation represents an increase over the DAS allocations that became effective March 1, 2001, as scheduled under Amendment 7 (i.e., 49 full-time, 19 part-time, and 4 occasional).

Framework 14 implements a system (Area Access Program) for allowing controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, similar to programs implemented under Frameworks 11 and 13 to the FMP that allowed scallop fishing in the multispecies closed areas. Vessels are prohibited from fishing for scallops in the Sea Scallop Access Areas unless they are fishing under the Area Access Program. The intent of this access program is to derive biological, social, and economic benefits from fishing in the areas over the course of 2 years. Measures included in the Area Access Program are described below.

This action also implements a prohibition on the possession of more than 50 U.S. bu (17.62 hl) of in-shell

scallops inside the VMS demarcation line for vessels that fish in or transit the area south of 42°20′ N. latitude. Without this restriction, vessels could avoid the limitations of the seven-man crew and DAS restrictions by bringing in-shell scallops shoreward of the VMS demarcation line and shucking inside the line. Because DAS stop accruing once a vessel is inside the VMS demarcation line, vessels are able to bank this saved time for future trips. This measure also may have the incidental benefit of helping to prevent possible contamination of inshore habitats caused by any large discards of scallop viscera as a result of shucking near shore. Vessels fishing north of 42°20′ N. latitude will be exempt from this restriction, provided they do not enter the area south of 42°20′ N. latitude. This exemption is intended to allow a limited fishery to continue north of 42°20 N. latitude by some vessels that have traditionally landed in-shell scallops.

Finally, this final rule corrects a reference to the stowage provisions in the regulations for Closed Area I that inadvertently references a paragraph that formerly included gear stowage provisions but is now reserved. This regulation is found at § 648.81(b)(2)(ii).

Sea Scallop Area Access Program Measures

The 2001 Area Access Program begins on May 1, 2001 and ends when the TAC is caught or when vessels have used up their allocated number of trips. The 2002 Area Access Program begins on March 1, 2002, unless the fishery is closed prior to February 28, 2002, in which case it will begin on April 1, 2002. A delay in the start date is intended to reduce possible bycatch of finfish that could occur in late winter and early spring.

The Area Access Program includes a TAC of 13.96 million lb (6,331 mt) and 0.62 million lb (283 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for 2001, and 14.14 million lb (6,415 mt) and 0.60 million lb (273 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for 2002. These TACs include set-asides of 2 percent and 1 percent to defray the costs of observers and research, respectively. The TACs achieve an F of 0.2 in each of the two areas.

All limited access scallop vessels, including vessels that replace vessels that hold a scallop Confirmation of Permit History, are eligible to fish for the sea scallop TAC under the Area Access Program. Full-time and part-time scallop vessels are restricted to a total of three annual trips to the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. A trip to either of the areas counts as one of the allowed trips. Vessels participating in the Area Access Program are allowed to take only one of the three allocated trips before May 1 and only two of the three allocated trips before June 1. At least one trip must be started before September 1 to be eligible to fish the remainder of the allocated trips or any additional trips that may be authorized on or after October 1. This measure is meant to prevent a derby style fishery from occurring and may reduce the potential for bycatch by limiting trips in late spring when bycatch, particularly of summer flounder, could be problematic. Vessels in the occasional permit category may conduct only one trip and may fish in the area of their choice.

Participating scallop vessels are allowed to possess and land from the areas up to 17,000 lb (7,711.1 kg) of scallop meats per trip in fishing year 2001 and 18,000 lb (8,164.7 kg) of scallop meats per trip in fishing year 2002. Limits on both the amount of scallops possessed and landed and the number of trips are intended to help to control fishing mortality of scallops in the areas. These limits are also intended to increase social benefits by allowing all limited access vessels an opportunity to fish in the areas without creating a derby fishery, and to increase economic benefits by promoting an orderly fishery and reducing the possibility of market gluts that could be caused by high initial catches in these areas.

After taking into account data on the number of eligible vessels participating and on the total number of trips taken, the Administrator, Northeast Region, NMFS (Regional Administrator) may adjust the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season and on or after October 1 for fishing year 2001 and 2002 may allocate one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips allocated on or after October 1, that vessel must have started at least one Area Access Program trip prior to September 1 of the current fishing year. Vessels with occasional permits will not be allocated any additional trips.

Any trip of 10 DAS or less for a vessel fishing in the Area Access Program will count as 10 DAS. Any trip of over 10 DAS will count as the actual DAS (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The intended effect of the minimum 10 DAS count is to reduce the amount of days that are available to be fished in the 2001–2002 fishing years in other areas, where scallops are generally smaller, thereby reducing fishing mortality by potentially reducing the number of scallops caught under DAS.

Vessels will be allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear is required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Recent research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10-inch (25.40 cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program must have installed on board an operational VMS unit that meets the minimum performance criteria as specified in the regulations at § 648.9(b). (Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit). Scallop vessels planning to fish in the Area Access Program must so declare by notifying the Regional Administrator through the VMS as described here.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system to facilitate placement of observers (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25).

The following information must be reported to the Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the number of trips anticipated to be taken in the area in question. Vessels will be provided additional information by mail regarding all notification requirements.

Each vessel participating in the Area Access Program is required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel must report the daily pounds (kg) of scallop

meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessels on observed trips must provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed.

Vessels that have declared a trip into the Area Access Program are prohibited from possessing more than 50 U.S. bu (17.62 hl) (400 lb (181.4 kg) of meats) of shell stock when outside the Sea Scallop Access Areas. This limit for shell stock (i.e., unshucked scallops) is considered part of the overall possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, whole scallops, yet not compromise the enforceability of the conservation intent of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS are allowed to fish in the Sea Scallop Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Sea Scallop Access Areas. These vessels are prohibited from possessing in-shell scallops while inside the Sea Scallop Access Areas, except they may possess an equivalent of in-shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program may transit the Sea Scallop Access Areas with more than these possession limits on board, provided their gear is properly stowed according to the regulations at § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels are required to stow all dredge or trawl gear while transiting to and from the Sea Scallop Access Areas and must land their scallop catch at one location for each trip.

Vessels are required to carry observers when requested. The Council has recommended, as a goal, a 10-percent observer coverage for the Hudson Canyon Sea Scallop Access Area and a 20-percent observer coverage for the Virginia Beach Sea Scallop Access Area. Observers will obtain information on catch, catch rates, and bycatch and may obtain information on gear efficiency and selectivity and on other characteristics of the fishery. The vessel owner will be responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip. At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops, not to exceed a cumulative total of 127 mt or 6 mt in 2001 for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, and 128 mt or 5 mt in 2002 for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for each trip on which an observer is taken, to help defray the cost of the observer. Additional scallops to fund observers cannot exceed 2 percent of the overall scallop TAC. A TAC set-aside of 1 percent to fund research is also included as part of the Area Access Program. This research program for the Sea Scallop Access Areas is modeled after the research program in the 2000 Georges Bank Sea Scallop Exemption Program. A Request for Proposals notice will be published in the Federal Register that will provide information on the submission process, eligibility criteria, proposal requirements and priorities, project evaluation, application deadlines and other requirements. A report of the project results must be submitted to the Council and NMFS. Successful applicants will receive grant awards to help defray the costs of the sea scallop research. Grant awards will be made consistent with the Department of Commerce's grant policy and procedures. Amounts over the trip limits for sea scallop meats to be allocated for defraying research costs shall be limited by area up to 63 mt or 3 mt in 2001 for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, and 64 mt or 3 mt in 2002 for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and with an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule or as a proposed rule if additional public comment is determined to be needed.

Because this action was determined to have a significant impact on the human environment, the Council prepared a Draft SEIS (DSEIS) to consider a range of impacts of the proposed action and its alternatives. The public was provided the opportunity to comment on the measures contained in Framework 14, during the development of the framework, at the following meetings:

Date	Meeting
2000	
June 5–6	Scallop PDT
June 21–22	Scallop PDT
July 24–25	Scallop PDT
August 4	Scallop Oversight Committee
August 15	Scallop PDT
August 28	Scallop PDT
September 18-19	Joint Scallop Oversight Committee and Advisory Committee
September 27	Council
October 4	Scallop Oversight Committee
October 5	Scallop PDT
October 27	Scallop PDT
November 14	Council
2001	
January 22	Scallop Oversight Committee
January 25	Council

The public also was provided with the opportunity to comment on the Council's Notice of Intent to Prepare an SEIS (NOI) (65 FR 60396, October 11, 2000), and during the public comment period following the Notice of Availability (NOA) of the DSEIS (65 FR 77025, December 8, 2000, corrected in 65 FR 78484, December 15, 2000), which ended on January 24, 2001.

Documents summarizing the Council's proposed action, the draft FSEIS, and economic impacts analysis of the preferred and alternative actions, were available for public review 1 week prior to the final Council meeting on January 25, 2001, as is required under the framework adjustment process. Written and oral comments were accepted up to and during that meeting. Comments pertaining specifically to the NOI, DSEIS, and framework measures are included and responded to in the FSEIS.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control numbers for 0648–0202, 0648–0307, and 0648–0416 for § 648.58.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA (AA), the authority to sign material for publication in the **Federal Register**.

Classification

The Council prepared an FSEIS for this framework adjustment; an NOA was published on March 9, 2001 (66 FR 14141). Subsequent to the publication of the NOA on the FSEIS, NMFS received a comment letter on the FSEIS requesting that NMFS reject the environmental analysis because it failed to comply with the National Environmental Policy Act (NEPA) and the Magnuson-Stevens Fishery Conservation and Management Act. The commenter indicated that there were numerous procedural deficiencies during the FSEIS development and approval process, most notably that the Council failed to analyze the environmental impacts of Framework 14 and a range of alternatives to minimize the environmental effects before the Council took final action. The commenter also indicated that the FSEIS fails to analyze the environmental consequences of Framework 14 and a range of alternatives that would minimize the environmental impacts.

NMFS has determined, upon review of the framework, FSEIS, and upon consideration of all public comments received on the DSEIS, FSEIS, and framework measures that the Council considered an adequate analysis of the impacts and range of alternatives when it voted to submit Framework 14 to the agency for its consideration. NMFS, in making the decision to approve and implement Framework 14, also considered a broad range of alternatives in the FSEIS, which addresses measures to achieve objectives established by Amendment 7 and to achieve optimum yield. The Council is considering alternative ways to manage the resource and the fishery in its current development of Amendment 10. Many of the alternatives suggested in the comment letter on the FSEIS are more appropriate for consideration in this larger context.

The AA finds that, because public meetings held by the Council to discuss the management measures implemented by this final rule provided adequate prior notice and opportunity for public comment, further notice and opportunity to comment on this final rule is unnecessary. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive prior notice and additional opportunity for public comment.

It is contrary to the public interest to delay for 30 days the effective date for the prohibition on the possession limit of more than 50 U.S. bu (17.62 hl) of in-shell scallops shoreward of the VMS demarcation line. Currently, some vessels are shucking their scallop catch inside the VMS demarcation line and thus compromising the conservation objectives of both the DAS and crew size restrictions of the FMP. To allow this activity to continue unrestricted could undermine the effects of the scallop management measures. In addition, a 30 day delay in effectiveness would delay the potential incidental benefits of reducing contamination of inshore waters that may be associated with high discards of scallop viscera from vessels shucking inshore of the VMS demarcation line. For these reasons, the AA finds, under 5 U.S.C. 553(d)(3), good cause not to delay for 30 days the effective date of this provision.

Because the annual DAS allocations implemented in this final rule are higher than the DAS allocations that went into effect on March 1, 2001, and because the Area Access Program (and associated information collection requirements as published in 15 CFR 902) allows access to areas that would otherwise be closed to scallop fishing, these measures relieve restrictions, and are therefore not subject to a 30–day delay in effectiveness under 5 U.S.C. 553(d)(1).

Also, this final rule corrects a reference to the stowage provisions in the regulations for Closed Area I that inadvertently references a paragraph that formerly included gear stowage provisions but is now reserved (§ 648.81(b)(2)(ii)). The correction to this crossreference imposes no new requirements and is not subject to the 30-day delay in effective date provisions of 5 U.S.C. 553 (d).

Because a prior notice and opportunity for public comment is not required for this rule under 5 U.S.C. 533, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule has been determined to be significant for the purposes of Executive Order 12866.

For purposes of the Congressional Review Act, this rule has been determined to be major within the meaning of 5 U.S.C. 804 (2). Because this rule establishes a regulatory program for a commercial activity related to fishing under 5 U.S.C. 808 (1), it is not subject to the Congressional Review Act 60–day delay in effective date.

This rule contains collection-of-information requirements subject to the PRA and which have been approved by OMB. The estimated response times and the OMB Control Numbers for these requirements are: 1 hour for installation of a vessel monitoring system (VMS) (0648–0416); 2 minutes for a monthly VMS declaration of an intent to fish during the next month (0648–0416); 2 minutes for notification at least 5 days prior to departure on a fishing trip (0648–0416); 10 minutes for a daily VMS catch report (0648–0416); 2 minutes for a notification of intent to leave on a fishing trip (0648–0202); and 5 seconds for VMS polling (0648–0416 and 0648–0307). The submission requirements for research proposals are cleared under OMB Control Numbers 0348–0043 and 0348–0044.

The response time estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 25, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX, part 902 and 50 CFR chapter VI, part 648 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order an entry for § 648.58 with new OMB control numbers to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b)* * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
648.58	–0202, –0307, and –0416
* * * * *	

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.10, the first sentence of paragraph (b)(1), introductory text, is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) A scallop vessel issued a full-time or part-time limited access scallop permit; or issued an occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.58; or a scallop vessel fishing under the small dredge program specified in § 648.51(e); or a vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit whose owner elects to provide the notifications required by paragraph (b) of this section using a VMS that meets the minimum performance criteria specified in § 648.9(b) or as modified pursuant to § 648.9(a), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified pursuant to § 648.9(a). * * *

* * * * *

3. In § 648.14, revise paragraphs (a)(38), (a)(39), (a)(40), and (h)(27); and add paragraphs (a)(110), (a)(111), (h)(29), (h)(30), (h)(31), (h)(32), (h)(33), (i)(8), and (i)(9) to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (d).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (d).

* * * * *

(110) Fish for, possess, or land sea scallops in or from the areas described in § 648.57, except as allowed under §§ 648.52(e) and 648.58.

(111) Transit or be in the areas described in § 648.57 when fishing under a scallop DAS, except: As allowed under § 648.58; or when all scallop gear is unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

* * * * *

(h) * * *

(27) Enter or be in the areas described in § 648.57 when fishing with scallop dredge gear under the Sea Scallop Area Access Program specified in § 648.58, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in § 648.58(c)(7).

* * * * *

(29) Possess or land per trip more than 50 bu (17.62 hectoliters (hl)) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20′ N. Latitude, except as provided in § 648.54.

(30) Land per trip more than 100 lb (45.36 kg) of scallop meats as specified in § 648.52(e) in or from the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program.

(31) Possess more than 100 lb. (45.36 kg) of scallop meats in the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program, unless the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(32) Except as allowed in § 648.52(e), land in-shell scallops in or from the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program.

(33) Except as allowed in § 648.52(e), possess in-shell scallops in the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program, unless the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

* * * * *

(i) * * *

(8) Possess, retain, or land per trip no more than 100 lb (45.36 kg) of shucked scallops in or from the areas described in § 648.57.

(9) Except as allowed in § 648.52(e), possess or land in-shell scallops in or from the areas described in § 648.57.

* * * * *

4. In § 648.52, the section heading and paragraphs (a) and (c) are revised, and paragraphs (d) and (e) are added to read as follows:

§ 648.52 Possession and landing limits.

(a) Except as provided in paragraph (e) of this section, owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10 or that have used up their DAS allocations, and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops with no

more than one scallop trip of 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops, allowable in any calendar day.

* * * * *

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.58 are prohibited from fishing for, possessing or landing per trip more than the sea scallop possession and landing limit specified in § 648.58(c)(6).

(d) Owners or operators of vessels issued limited access or general category scallop permits fishing in or transiting the area south of 42°20′ N. Latitude at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(e) Owners or operators of vessels with a general category scallop permit and vessels with a limited access scallop permit that are not fishing under a scallop DAS may land per trip no more than 100 lb (45.36 kg) of sea scallop meats in or from the areas described in § 648.57, and may possess no more than 100 lb (45.63 kg) of sea scallop meats in or from the areas described in § 648.57, unless the vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. No in-shell scallops from the Hudson Canyon and Virginia Beach Sea Scallop Access Areas may be landed. In-shell scallops up to 12.5 bu (4.41 hl) taken by such vessels from the Hudson Canyon and Virginia Beach Sea Scallop Access Areas may be possessed only for the purpose of shucking in order to provide no more than 100 lb of scallop meats. Any combination of scallop meats and in-shell scallops possessed by such vessels must be equivalent to no more than 100 lb (45.36 kg) of scallop meats.

5. In § 648.53, paragraph (b) is amended by revising the table to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Full-time	120	120	120	120	45	34	35	38	36	60
Part-time	48	48	48	48	18	14	14	15	17	24
Occasional	10	10	10	10	4	3	3	3	4	5

* * * * *

6. In § 648.57, the section heading and the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area*. Through February 28, 2003, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

(b) *Virginia Beach Sea Scallop Access Area*. Through February 28, 2003, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

7. Section 648.58 is revised to read as follows:

§ 648.58 Sea Scallop Area Access Program.

(a) *Eligibility*. Vessels issued a limited access scallop permit are eligible to participate in the Sea Scallop Area Access Program, and may fish in the Sea Scallop Access Areas, as described in § 648.57 of this section, for the times specified in paragraph (c)(1) of this section, when fishing under a scallop DAS, and while complying with the requirements of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(b) *Sea Scallop Access Areas*—(1) *Hudson Canyon Sea Scallop Access Area*. Eligible vessels, as specified in paragraph (a) of this section, may fish for, possess, and retain sea scallops in excess of the possession limit specified in § 648.52(e) in or from in the Hudson Canyon Sea Scallop Access Area, which is the area described in § 648.57(a).

(2) *Virginia Beach Sea Scallop Access Area*. Eligible vessels, as specified in paragraph (a) of this section, may fish for, possess, and retain sea scallops in excess of the possession limit specified in § 648.52(e) in or from the Virginia Beach Sea Scallop Access Area, which is the area described in § 648.57(b).

(c) *Sea Scallop Area Access Season and Requirements*. To fish in the Sea Scallop Access Areas under the Sea Scallop Area Access Program, eligible vessels must fish during the Season specified in paragraph (c)(1) of this section and must comply with the requirements specified in paragraphs (c)(2) through (c)(4) of this section:

(1) *Season*—(i) *Fishing year 2001*. From May 1, 2001 through February 28, 2002, vessels participating in the Sea Scallop Area Access Program may fish for or possess sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57 of this section, unless access to these areas is terminated as specified in paragraph (f) of this section.

(ii) *Fishing year 2002*. From March 1, 2002, through February 28, 2003, vessels participating in the Sea Scallop Area Access Program may fish in the respective Sea Scallop Access Areas specified in § 648.57 of this section, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2001 fishing year season be closed early, as described in paragraph (c)(1) of this section, the Sea Scallop Area Access Program season

for fishing year 2002 will begin on April 1, 2002.

(2) *VMS*. The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 and paragraph (h) of this section.

(3) *Declaration*. (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in the Hudson Canyon or Virginia Beach Sea Scallop Access Areas, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas in April or May, 2001. Notification of this waiver of a portion of the notification period will be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Area Access Program.

(iii) On the day the vessel leaves port to fish under the Sea Scallop Area Access Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to the vessel leaving port.

(4) *Number of trips*—(i) *Full and part-time vessels*. Full and part-time vessels are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either area counts as one trip.

(A) *Distribution of trips for the 2001 fishing year*. For fishing year 2001, full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than two of their three allowed Area Access Program trips before June 1, 2001. To be eligible for any additional trips allocated under paragraph (e)(4) of this section, at least one trip must begin by September 1, 2001.

(B) *Distribution of trips for 2002 fishing year*. For fishing year 2002, full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2002, and no more than two of their three allowed Area Access Program trips before June 1, 2002.

(ii) *Occasional scallop vessels*. Occasional vessels may fish only one trip per fishing year in 2001 and 2002 under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 of this section at any time during the season, as specified in paragraph (c)(1) of this section.

(5) *Area fished*. A vessel that has declared a trip into the Sea Scallop Area Access Program must not fish for, possess, or land scallops from outside the specific Sea Scallop Access Area fished during that trip and must not enter or exit the specific Sea Scallop Access Area fished more than once per trip. A vessel that has declared a trip into the Sea Scallop Area Access Program must not exit one Sea Scallop Access Area and transit to, or enter, the other Sea Scallop Access Area on the same trip.

(6) *Possession and landing limits*—(i) *Fishing year 2001*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2001 a vessel owner or operator may fish for, possess and land up to 17,000 lb (7,711.1 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

(ii) *Fishing year 2002*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2002, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (8,164.7 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

(7) *Gear restrictions*. The vessel must fish with or possess scallop dredge or trawl gear only in accordance with the restrictions specified in § 648.51(a) and (b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting*. While outside of the Sea Scallop Access Areas specified in § 648.57, all fishing gear must be unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason.

(9) *Off-loading restrictions*. The vessel may not off-load its sea scallop catch from a trip at more than one location per trip.

(10) *Reporting*. The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24–hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

(i) Total pounds/kilograms of scallop meats kept, total number of tows and the Fishing Vessel Trip Report log page number.

(ii) [Reserved]

(d) *Accrual of DAS*. A scallop vessel that has declared a fishing trip into the Sea Scallop Area Access Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Adjustments to possession limits and number of trips*—(1) *Adjustment process for sea scallop possession limits for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas*. The Regional Administrator may adjust the sea scallop possession limit at any time during the Sea Scallop Area Access Program. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the possession limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(2) *Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas*. On or after October 1 for fishing years 2001 and 2002, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing years 2001 and 2002 in paragraphs (f)(1) and (f)(2) of this section, respectively, the Regional Administrator may allocate one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop

Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1 for the respective fishing year. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Unused trips after September 30, 2001, may not be carried over into the 2002 Sea Scallop Area Access Program. Vessels with occasional permits would not be allocated an additional trip.

(3) *Increase of possession limit to defray costs of observers*—(i) *Defraying the costs of observers*. The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section to defray costs of observers by areas subject to the limits specified in paragraph (e)(3)(ii) of this section and to the limit on the cumulative amount of sea scallops allocated for a vessel that has declared a fishing trip into the Sea Scallop Area Access Program with a NMFS-approved observer on board. Notification of this increase of the possession limit will be provided to the vessel through a Letter of Authorization issued by the Regional Administrator which must be kept on board the vessel. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip.

(ii) *Observer set-aside limits on increases of possession limits by area*. The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2-percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area, 2001 area access program - 127 mt;

(B) Virginia Beach Sea Scallop Access Area, 2001 area access program - 6 mt;

(C) Hudson Canyon Sea Scallop Access Area, 2002 area access program - 128 mt;

(D) Virginia Beach Sea Scallop Access Area, 2002 area access program - 5 mt.

(iii) *Notification of observer set-aside limit*. NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that the observer set-aside limit will be caught.

(4) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(i) *Defraying the costs of sea scallop research*. The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section or allow additional trips into a Sea Scallop Access Area, subject to the limits on the cumulative amount of sea scallops allocated to defray costs for sea scallop research specified in paragraph (e)(4)(ii) of this section.

(ii) *Research set-aside limits on adjustments to possession limits and number of trips by area*. The cumulative amount of scallops authorized to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section for purposes of defraying the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area, 2001 area access program - 63 mt;

(B) Virginia Beach Sea Scallop Access Area, 2001 area access program - 3 mt;

(C) Hudson Canyon Sea Scallop Access Area, 2002 area access program - 64 mt;

(D) Virginia Beach Sea Scallop Access Area, 2002 area access program - 3 mt.

(iii) NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that the scallop research set-aside limits will be caught.

(iv) *Adjustment procedure*. (A) Determinations as to which vessel may be authorized to take more than the trip limits specified in paragraph (c)(6) of this section, or to take additional trips for the purposes of defraying sea scallop research costs, shall be made by NMFS, in cooperation with the Council. At a minimum, applicants shall submit a scallop proposal under this program and a project summary that includes: The project goals and objectives, relationship of sea scallop research to management needs or priorities identified by the Council, project design, participants other than applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested.

(B) NMFS will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits or additional trips. Authorization to increase possession limits and/or number of trips will be provided to the vessel by Letter of Authorization issued by the Regional Administrator which must be kept on board the vessel.

(v) *Project Report Procedure*. Upon completion of his/her sea scallop research, the researcher of approved projects must provide the Council with a report of his/her findings, which include:

(A) A detailed description of methods of data collection and analysis;

(B) A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and

(C) A detailed final accounting of all funds used to conduct the sea scallop research.

(f) *Termination of the Sea Scallop Area Access Program*—(1) *Fishing year 2001 area access program*—(i) *Hudson Canyon Sea Scallop Access Area*. The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2001 shall be terminated as of the date the Regional Administrator projects that 6,204 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Virginia Beach Sea Scallop Access Area*. The Virginia Beach Sea Scallop Access Area fishery for fishing year 2001 shall be terminated as of the date the Regional Administrator projects that 277 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Fishing year 2002 area access program*. (i) Hudson Canyon Sea Scallop Access Area. The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2002 shall be terminated as of the date the Regional Administrator projects that 6,287 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Virginia Beach Sea Scallop Access Area*. The Virginia Beach Sea Scallop Access Area fishery for fishing year 2002 shall be terminated as of the date the Regional Administrator projects that 268 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area

described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(g) *Transiting*. Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Area Access Program may not fish in the areas known as the Hudson Canyon and Virginia Beach Sea Scallop Access Areas described in § 648.57, and may not enter or be in such areas unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(h) *VMS Polling*. For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program.

8. In § 648.80, paragraph (h)(1) is revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(h) * * *

(1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

* * * * *

9. In § 648.81, the introductory text of paragraphs (a)(1), (b)(1), and (c)(1) and paragraph (b)(2)(ii) are revised to read as follows:

§ 648.81 Closed areas.

(a) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

* * * * *

(b) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

* * * * *

(2) * * *

(ii) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

* * * * *

10. In § 648.86, paragraph (a)(2)(iii) is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(a) * * *

(2) * * *

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg), of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

11. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(c)*Scallop multispecies possession limit permit*. A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

[FR Doc. 01–10783 Filed 4–26–01; 4:30 pm]
BILLING CODE 3510–22–S

Editorial Note: Federal Register Rule document 01-10783 originally appeared in the issue of Tuesday, May 1, 2001 at 66 FR 21639-21648. Due to numerous errors the document is being reprinted in its entirety.

[FR Doc. R1–10783 Filed 5–10–01; 8:45 am]
BILLING CODE 1505–05–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AB68

Privacy of Consumer Financial Information; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Friday, April 27, 2001 (66 FR 21236). The regulations related to notice requirements and restrictions on the ability of certain financial institutions to disclose nonpublic personal information about consumers to nonaffiliated third parties.

DATES: Effective on June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, 202–418–5120 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction require certain financial institutions to provide their consumers with notice of their privacy policies and practices, and provide that the financial institutions may not disclose nonpublic personal information about a consumer to nonaffiliated third parties unless the institution provides certain information to the consumer and the consumer has not elected to opt out of the disclosure.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and needs to be clarified.

List of Subjects in 17 CFR Part 160

Brokers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

Accordingly, 17 CFR Part 160 is corrected by making the following correcting amendment:

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 160 continues to read as follows:

Authority: U.S.C. 7g and 8a(5); 15 U.S.C. 6801 *et seq.*

2. Revise paragraph (b)(1) of § 160.18 to read as follows:

§ 160.18 Effective Date; compliance date; transition rule.

* * * * *

(b)(1) *Notice requirement for consumers who are your customers on the effective date.* By March 31, 2002, you must have provided an initial notice, as required by § 160.4, to consumers who are your customers on March 31, 2002.

Dated: May 7, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–11861 Filed 5–10–01; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TN–T5–2001–02; FRL–6977–6]

Clean Air Act Full Approval of Operating Permit Program; Tennessee and Memphis-Shelby County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comments, EPA is withdrawing the direct final rule published in the **Federal Register** on March 20, 2001, promulgating full approval of the operating permit programs submitted by the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department.

DATES: The direct final rule published on March 20, 2001, in the **Federal Register** (66 FR 15635) is withdrawn as of May 11, 2001.

ADDRESSES: The docket containing supporting information used in the development of this notice is available for inspection during normal business hours at EPA Region 4, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909. Anyone wanting to examine these documents should make an appointment by calling the person listed below at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA Region 4, at (404) 562–9124 or *pierce.kim@epa.gov/.*

SUPPLEMENTARY INFORMATION: On March 20, 2001, EPA published a direct final rule (66 FR 15635) and a parallel proposal (66 FR 15680) to fully approve the operating permit programs of the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department. The Tennessee and Memphis-Shelby County operating permit programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to the Tennessee and Memphis-Shelby County operating permit programs on July 29, 1996. Tennessee and Memphis-Shelby County revised their programs to satisfy the conditions of the interim approval and the direct final rule published on March 20, 2001, would have approved those revisions along with other program changes made by Tennessee since the interim approval was granted.

The EPA stated in the March 20, 2001, action that if adverse comments were received by April 19, 2001, EPA would publish a timely withdrawal of the direct final rule. The EPA did receive adverse comments and is, therefore, withdrawing the March 20, 2001, action and informing the public that the direct final rule will not take effect on May 21, 2001. The commenter expressed concern that Tennessee is issuing operating permits that do not provide for compliance with all applicable requirements. The EPA will address the specific comments in a subsequent final action based on the parallel proposal published on March 20, 2001.

As stated in the parallel proposal, EPA will not institute a second comment period on this action. However, in response to a request from George Hays as counsel for the National Parks Conservation Association, EPA is publishing a notice in the proposed rules section of this **Federal Register** to reopen the public comment period in the March 20, 2001, proposal.

Dated: May 2, 2001.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 01–11910 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301123; FRL–6781–6]

RIN 2070–AB78

Bacillus Thuringiensis Cry3Bb1 and Cry2Ab2 Protein and the Genetic Material Necessary for its Production in Corn and Cotton; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited exemption from the requirement of a tolerance for residues of the plant-pesticides Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn and the plant-pesticides Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in corn on field corn, sweet corn, popcorn, or in cotton on cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts when applied/used as a plant-pesticide. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This exemption from the requirement of a tolerance will expire on May 1, 2004.

DATES: This regulation is effective May 11, 2001. Objections and requests for hearings, identified by docket control number [OPP–301123], must be received by EPA, on or before July 10, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301123 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, c/o Product Manager (PM) 90, Biopesticides and

Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–8715; and e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301123. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 10, 1997 (62 FR 52998) (FRL–5748–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition, petition number 7F4888, by Monsanto Company, 700 Chesterfield Parkway, North, St. Louis, MO 63198. This notice included a summary of the petition prepared by the petitioner Monsanto Company. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the plant pesticides consisting of *Bacillus thuringiensis* Cry1, Cry2, and Cry3 classes of proteins and the genetic material necessary for the production of these proteins in or on all raw agricultural commodities. In August and November of 1999, Monsanto amended their petition to narrow its scope to the following Cry proteins: Cry1Ab, Cry1Ac, Cry2Aa, Cry2Ab, Cry3Aa, and Cry3Bb in or on all plant raw agricultural commodities. While this final rule is limited to particular Cry3Bb in or on corn and Cry2Ab proteins in or on corn and cotton (Cry3Bb1 and Cry2Ab2), the Agency may at future dates issue final rules for the other specified Cry protein plant-pesticides on particular plant agricultural commodities.

III. Risk Assessment

Pursuant to section 408(c)(2)(A)(i) of the FFDCA, EPA may establish or leave in effect an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance exemption is ''safe.'' With respect to an exemption for a pesticide chemical residue, section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *'' Additionally, section 408(b)(2)(D) requires that the Agency consider ''available information'' concerning, *inter alia*, the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Pursuant to section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry3Bb1 and Cry2Ab2 proteins. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-pesticide was derived

(See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

Two acute oral studies were submitted for Cry3Bb1 proteins. These studies were done with two variants of the Cry3Bb1 protein engineered with either four or five internal amino acid sequence changes to enhance activity against the corn rootworm. The acute oral toxicity data submitted support the prediction that the Cry3Bb1 protein would be non-toxic to humans. Male and female mice (10 of each) were dosed with 36, 396, or 3,780 milligrams/kilograms bodyweight (mg/kg bwt) of Cry3Bb1 protein for one variant. The mice were dosed with 38.7, 419, or 2,980 mg/kg bwt of Cry3Bb1 protein for the other variant. In one study, two animals in the high dose group died within a day of dosing. These animals both had signs of trauma probably due to dose administration (i.e., lung perforation or severe discoloration of lung, stomach, brain and small intestine). No clinical signs were observed in the surviving animals and body weight gains were recorded throughout the 14–day study for the remaining animals. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance in either study. No other mortality or clinical signs attributed to the test substance were noted during either study.

The acute oral toxicity data submitted support the prediction that the Cry2Ab2 protein would be non-toxic to humans. Male and female mice (10 of each) were dosed with 67, 359, and 1,450 mg/kg bwt of Cry2Ab2 protein. Outward clinical signs were observed and body weights recorded throughout the 14–day study. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance. No mortality or clinical signs attributed to the test substance were noted during the study. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)). Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the Cry3Bb1 and Cry2Ab2 proteins are not considered toxic. Further, amino acid sequence comparisons showed no similarity between Cry3Bb1 and Cry2Ab2 proteins to known toxic proteins available in public protein data bases.

Since Cry3Bb1 and Cry2Ab2 are proteins, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, may be glycosylated and present at high concentrations in the food.

Data have been submitted that demonstrate that the Cry3Bb1 protein is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid (pH 1.2 - U.S. Pharmacopeia), complete degradation of detectable Cry3Bb1 protein occurred within 30 seconds. Insect bioassay data indicated that the protein loss insecticidal activity within 2 minutes of incubation in SGF. Incubation in simulated intestinal fluid resulted in a~59 kDa protein digestion product. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry3Bb1, even at the level of 8 contiguous amino acids residues.

Data have been submitted that demonstrate that the Cry2Ab2 delta-endotoxin is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid (pH 1.2 - U.S. Pharmacopeia), complete degradation of detectable Cry2Ab2 protein occurred within 15 seconds. Incubation in simulated intestinal fluid resulted in a ~50 kDa protein digestion product. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry2Ab2, even at the level of 8 contiguous amino acids residues.

The potential for the Cry3Bb1 and Cry2Ab2 proteins to be food allergens is minimal. Regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that the Cry3Bb1 and Cry2Ab2 proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)). Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the Cry3Bb1 and Cry2Ab2 proteins are not considered toxic.

V. Aggregate Exposures

Pursuant to FFDCA section 408(b)(2)(D)(vi), EPA considers available information concerning aggregate exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-pesticide chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-pesticide is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However a lack of mammalian toxicity and the digestibility of the plant-pesticides have been demonstrated. The use sites for the Cry3Bb1 and Cry2Ab2 proteins are all agricultural for control of insects. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity demonstrated for the Cry3Bb1 and Cry2Ab2 proteins.

VI. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-pesticides, we conclude that there are no cumulative effects for the Cry3Bb1 and Cry2Ab2 proteins.

VII. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the Cry3Bb1 and Cry2Ab2 proteins include the characterization of the expressed Cry3Bb1 protein in corn and the

expressed Cry2Ab2 protein in corn and cotton, as well as the acute oral toxicity, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the Cry3Bb1 test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-pesticide ingredients in corn. Adequate information was submitted to show that the Cry2Ab2 test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-pesticide ingredients in corn and cotton. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted supports the prediction that the Cry3Bb1 and Cry2Ab2 proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)). Since no effects were shown to be caused by Cry3Bb1 and Cry2Ab2 proteins, even at relatively high dose levels (3,780 mg Cry3Bb1/kg bwt and 1,450 mg/kg bwt of Cry2Ab2 protein), the Cry3Bb1 and Cry2Ab2 proteins are not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-pesticide was derived. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

Cry3Bb1 and Cry2Ab2 residue chemistry data were not required for a human health effects assessment of the subject plant-pesticide ingredients because of the lack of mammalian toxicity.

Both available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children); and safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry3Bb1 and Cry2Ab2 proteins demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-pesticides active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. ''Regulatory regions'' are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the proteins. DNA and RNA are common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids, as they appear in the subject active ingredient, have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject active plant pesticidal ingredients.

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(B)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Cry3Bb1 and Cry2Ab2 proteins and the genetic material necessary for their production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry3Bb1 and Cry2Ab2 proteins and the genetic material necessary for their production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-pesticides.

VIII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredients are proteins, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of these plant-pesticides at this time.

B. Analytical Method(s)

Validated methods for extraction and direct ELISA analysis of Cry3Bb1 in corn grain, Cry2Ab2 in corn grain, and Cry2Ab2 in cotton seed have been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exists for the plant-pesticides*Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn and *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in corn or cotton.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations that govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409.

However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301123 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 10, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301123, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food

retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 27, 2001.

Anne E. Lindsay,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1214 is added to subpart D to read as follows:

§ 180.1214 Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production in corn; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production in corn are exempt from the requirement of a tolerance when used as plant-pesticides in the food and feed commodities of field corn, sweet corn and popcorn. *Genetic material necessary for its production* means the genetic material which comprise genetic material encoding the Cry3Bb1 protein and its regulatory regions. *Regulatory regions* are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry3Bb1 protein.This exemption from the requirement of a tolerance will expire on May 1, 2004.

3. Section 180.1215 is added to subpart D to read as follows:

§ 180.1215 Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in corn or cotton; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in corn or cotton are exempt from the requirement of a tolerance when used as plant-pesticides in the food and feed commodities of field corn, sweet corn, popcorn, cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. *Genetic material necessary for its production* means the genetic material which comprise genetic material encoding the Cry2Ab2 protein and its regulatory regions. *Regulatory regions* are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry2Ab2 protein. This exemption from the requirement of a tolerance will expire on May 1, 2004.

[FR Doc. 01–11917 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 372

[OPPTS–400134A; FRL–6722–9]

RIN 2025–AA00

Chromite Ore from the Transvaal Region of South Africa; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting a petition to delete both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the chromite ore processing residue (COPR) from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These chemicals are currently reported as part of the category ''chromium compounds'' on the list of toxic chemicals in section 313(c) of EPCRA. The action is based on EPA's conclusion that this particular chromite ore from the Transvaal Region and the unreacted ore component of the COPR (in the case of this delisting decision, COPR includes the solid waste remaining after the aqueous extraction of oxidized chromite ore that has been combined with soda ash and kiln roasted at approximately 2,000 °F) meet the deletion criterion under EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR that occurred during the 2000 reporting year, and for activities in the future.

EFFECTIVE DATE: This rule is effective May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions Coordinator, (202) 260–3882, e-mail: bushman.daniel@epa.gov, for specific information on this document, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave.,

NW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: (703) 412–9877 or Toll free TDD: 1–800–553–7672. Information concerning this notice is also available on EPA's Web site at http://www.epa.gov/tri.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this notice if you kiln roast chromite ore in the production of chromium chemicals or if you process chromite ore (e.g., metal finishers, leather tanning, etc.). Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/fedrgstr/.

2.*In person.* The Agency has established an official record for this action under docket control number OPPTS–400134. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Introduction

A. What is the Statutory Authority for this Action?

This action is being taken under EPCRA sections 313(d) and (e)(1), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. What is the General Background for this Action?

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. These facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA, 42 U.S.C. 13106. Section 313 of EPCRA established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Chromium compounds (which include chromite ore) were included on the initial list. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991, (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compounds categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for modifying the section 313 list of toxic chemicals (59 FR 61432, November 30, 1994) (FRL–4922–2).

III. What Does this Petition and Related Past Petitions Request of the Agency?

A. What Does this Petition Request?

On January 26, 1998, EPA received a petition from Elementis Chromium LP (ECLP) (formerly American Chrome & Chemicals, Inc.) requesting that EPA delete from the chromium compounds

category both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR. COPR is the solid waste remaining after aqueous extraction of oxidized chromite ore that has been combined with soda ash and kiln roasted at approximately 2,000 °F. Elementis believes that the chemical and toxicological properties of chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR do not meet the statutory listing criteria of EPCRA 313(d)(2) and therefore should be removed from the reporting requirements of EPCRA section 313 and PPA section 6607. The EPCRA section 313 list of toxic chemicals includes a category listing for chromium compounds, thus, all chromium compounds are subject to the annual reporting requirements of EPCRA section 313 and PPA section 6607. This petition decision is specific to chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from this particular process.

B. What Other Petitions for Chromium Compounds Have Been Filed?

EPA has received two other petitions requesting the deletion of certain chromium compounds. On January 8, 1990, a petition to delist chromium antimony titanium buff rutile (CATBR) from the EPCRA section 313 list of toxic chemicals was denied based on EPA's determination that CATBR is a potential carcinogen via inhalation (55 FR 650). Based on test data on chromium (III) oxide, EPA determined that CATBR, an insoluble crystalline chromium (III) compound, could be retained in the lung and taken up by cells. EPA denied this petition due to the determination that CATBR was a potential carcinogen, and that it could reasonably be anticipated to cause cancer in humans.

Since then, EPA published a statement of policy and guidance for petitions under EPCRA section 313 (56 FR 23703, May 23, 1991). In that notice, EPA set forth its policy concerning petitions to delist individual members of the metal compound categories. In response to concerns with respect to individual members of categories that do not meet the toxicity criteria of section 313, EPA has stated that it will ''grant petitions on individual members providing that the petitioner establishes and EPA concludes that the intact species does not meet the criteria of section 313(d)(2), and that the metal ion will not become available at a level that can be expected to induce toxicity.''

On November 22, 1991, a petition to delist Chromium (III) Oxide from the EPCRA section 313 list of chemicals was denied based on the evidence that chromium (III) oxide may be oxidized to carcinogenic chromium (VI) compounds in soil (56 FR 58859). The petition response also discussed the possibility that chromium (III) oxide is a potential carcinogen via inhalation.

IV. What is EPA's Summary of its Proposed Action?

Following a review of the petition (Ref. 1), EPA granted the petition and issued a proposed rule in the **Federal Register** of February 23, 1999 (64 FR 8774) (FRL–6030–6) proposing to delete both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from reporting under the EPCRA section 313 chromium compounds category. EPA's proposal was based on its preliminary conclusion that both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR met the deletion criteria of EPCRA section 313(d)(3). With respect to deletions, EPCRA provides at section 313(d)(3) that ''[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)–(C)].'' In the proposed rule, EPA preliminarily concluded that, while many concerns exist for the hazards associated with soluble Cr(III) compounds and all Cr(VI) compounds, these concerns do not appear to be pertinent to the chromite ore from the Transvaal Region of South Africa and the unreacted ore component of the COPR. The available data indicate that this particular chromite ore does not leach chromium of any oxidation state nor does it oxidize to produce any Cr(VI) compounds under any biotic or abiotic processes. EPA preliminarily determined that there are no human health or environmental hazard concerns for this particular chromite ore that meet the toxicity criterion of EPCRA section 313(d)(2)(A), (B), or (C). A more detailed discussion of the technical information can be found in the proposed rule and the supporting EPA technical reports (Refs. 2, 3, 4, 5, 6, and 7) and other references contained or cited in the docket.

V. What is EPA's Response to the Submitted Petition and Rationale?

A. What is EPA's Response to the Submitted Petition?

EPA is granting the ECLP petition by delisting both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the reporting requirements under the EPCRA section 313 chromium compounds category. Note that this delisting does not include any of the Cr(III) or Cr(VI) compounds that are also part of the COPR. This delisting only applies to the unreacted ore component of the COPR.

B. What is EPA's Rationale for the Delisting?

EPA has concluded that the assessment set out in the proposed rule should be affirmed. The available data indicate that the chromite ore from the Transvaal Region of South Africa and the insoluble Cr(III) unreacted ore component of the COPR do not leach ionic chromium of any oxidation state nor do they oxidize to produce Cr(VI) compounds under any biotic or abiotic processes. EPA has determined that there are no human health or environmental hazard concerns for this particular chromite ore that meet the toxicity criterion of EPCRA section 313(d)(2)(A), (B), or (C). EPA believes that the deletion of this particular chromite ore and the unreacted ore component of the COPR is consistent with the Agency's published guidance on how it willreview petitions to delete members of EPCRA section 313 metal compound categories (56 FR 23703, May 23, 1991). Specifically, chromium is not available or bioavailable from this particular chromite ore or the unreacted ore component of the COPR through any biotic or abiotic processes and there is no evidence that the intact chromite ore or the unreacted ore component of the COPR causes any adverse effects that meet the EPCRA section 313(d)(2)(A), (B), or (C) toxicity criterion. EPA is therefore modifying the current chromium compounds listing to exclude both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR. However, EPA is not removing any other Cr(III) compounds or any Cr(VI) compounds from the chromium compounds category. As EPA has previously determined, if Cr(III) is available from a chromium compound, it can be converted to Cr(VI) compounds in the environment (56 FR 58859, November 22, 1991). While EPA is delisting this specific chromite ore and the unreacted ore component of COPR from reportingunder EPCRA section 313, all other chromium compounds contained in the COPR will continue to be reportable.

VI. What are EPA's Responses to the Public Comments?

A. What Comments Did EPA Request in the Proposed Rulemaking?

EPA requested both general and specific comments in the proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607. EPA requested specific comments on three issues relating to chromium compounds, including: (1) Possible carcinogenicity of insoluble crystalline chromium (III) compounds via inhalation and uptake in the lung cell by phagocytosis; (2) possible indirect effects of chromium (III) competing with other cations in ligand sites in siderophore complexes; and (3) the availability of toxicity and fate information that would support excluding all chromite ores from reporting under EPCRA section 313.

B. What Comments Did EPA Receive in Support of the Proposed Rulemaking?

EPA received comments from five organizations supporting EPA's proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607. The five commenters are: Elementis Chromium; Exponent Environmental Group; Chemical Land Holdings Inc.; Collier, Shannon, Rill, and Scott (representing the Specialty Steel Industry of North America (SSINA)); and Occidental Chemical Corporation.

1. *Did EPA receive comments relating to EPA's finding that the carcinogenicity potential is insignificant for insoluble crystalline chromium (III) compounds that may enter lung cells via phagocytosis?* Several commenters agreed with EPA that while insoluble crystalline Cr(III) may be taken up in cells via phagocytosis, there is no evidence of carcinogenicity. One commenter provided additional literature to support this point. Another commenter noted several studies that suggest a potential for biologically available Cr(III) to oxidize to Cr(VI) in the presence of peroxy or oxygen radicals. The commenter stated that oxidation under such conditions is unlikely, however, since Cr(III) readily forms a variety of inert complexes *in vivo*. Another commenter stated that bacterial genotoxicity studies have been found to be overwhelmingly negative, and that mammalian and avian studies have also been found to be negative, concurring that Cr(III) is not carcinogenic via inhalation based on available testing and sampling data.

EPA agrees with the commenters and restates that the carcinogenicity data from the available studies of inhaled, insoluble, crystalline trivalent chromium compounds are inadequate to support listing this particular chemical under EPCRA Section 313 (Ref. 8).

2. *What comments did EPA receive relating to the possible indirect effects of Cr(III) on siderophore complexes and the availability of studies (in vivo) that address the competition of Cr(III) with other ions?* Several commenters contend that, since *in vivo* biological effects of Cr(III) are unknown and unreported, the ability of Cr(III) to inhibit the ability of cells to uptake iron *in vitro* is not relevant. Another commenter responded to the possible indirect effects of Cr(III) on siderophore complexes by referring to the binding of DNA material to Cr(III). The commenter noted, however, that Cr(III) is impermeable to cell membranes and that Cr(VI) is transported into the cell then reduced to Cr(III) before any toxic effects are observed. Thecommenter concludes that this reduction of Cr(VI) to Cr(III) should not be misinterpreted ''as evidence that Cr(III) is responsible for the adverse effects of Cr(VI) * * *.''

EPA notes that the commenters focused on the potential cationic exchange as a possible mechanism for carcinogenicity. In requesting comments on the possible indirect effects of Cr(III) on siderophore complexes, EPA was not necessarily implying a concern for carcinogenicity. Rather, EPA's primary concern for siderophoric ion exchange relates to environmental exposures to heavy metal cations displaced from soils that are exposed to soluble chromium ions (64 FR 8778). As was stated in the proposal, EPA has determined that there are inadequate data to determine the potential carcinogencity of Cr(III) (Ref. 8).

In addition to the direct leaching as a function of water solubility, metal ions have been found to be transported via macromolecules and siderphoric complexes. The addition of certain metal ions to contaminated soil plots or experimental samples produce equilibrium effects on the ability of these materials to ''carry'' the heavy metal cations. In certain studies, metals ions (specifically zinc (II) and cadmium (II)) have been found to compete for sites and exchange ions ''even when only a few percentage of all surface sites were occupied'' (Ref. 9).

EPA requested comment in the proposed rule to determine if releases of chromium, particularly from COPR sites, would exchange with the existing metal contaminants and thereby cause both a direct and indirect environmental release (e.g., elevated chromium levels) (Ref. 10). EPA did not receive any comments on this topic. The Agency believes, however, that the chromium in this specific chromite ore and corresponding unreacted ore portion of the COPR is neither available nor soluble and therefore these issues will have no bearing on the delisting of these two chemical compounds based on the current available information (56 FR 23703).

3. *What comments did EPA receive relating to whether all chromite ore and COPR behaves similarly to the chromite ore from the Transvaal Region of South Africa and the unreacted ore portion of the COPR remaining from the process described in the proposed rule?* EPA received comments that addressed four aspects of this topic including: conversion of Cr(III) to Cr(VI); biological activity of Cr(III); carcinogenic effects of Cr(III); and environmental fate of chromium compounds. In general, the commenters state specific known chemical characteristics for individual chemicals and apply them to the entire class. A broad structure-activity relationship (SAR) approach to justify delisting insoluble Cr(III) chemicals in general appears to be the overall goal of the approach submitted by commenters. The SAR approach examines the structure of a chemical to predict the chemical's toxicity.

Although the Agency requested comments on the ''availability of toxicity and fate information that would support excluding all chromite ores from reporting under EPCRA section 313,'' EPA proposed to delist only the chromite ore mined in the Transvaal region of South Africa and the associated unreacted chromite ore component of the COPR. The Agency is delisting only these two chemicals. EPA's purpose for soliciting information regarding the broader class of chromite ore was to gather information to determine whether a future rulemaking including other chemicals would be appropriate.

In response to the comments received, the Agency believes that test results for a variety of Cr(III) compounds (including toxicity, oxidation, and fate) are insufficient to support any broad determinations concerning chromium compounds. The chromium compounds category listing is based on the well established toxicity of chromium. As EPA stated in its EPCRA section 313

metals policy, the Agency will consider delisting a chemical or chemical compound if the intact metal compound is not toxic and the metal from that compound cannot become available through any abiotic or biotic process (56 FR 23703). In reviewing the four areas of concern described by commenters, including conversion of Cr(III) to Cr(VI); biological effects of Cr(III);carcinogenicity of Cr(III); and environmental fate of chromium compounds, the commenters did not submit sufficient evidence to support the delisting of all chromite ores or any other specific Cr(III) compound.

For example, commenters submitted data for chromium trioxide. Chromium trioxide is insoluble and has chemical characteristics attributed to this class of insoluble chromium compounds. However, in 1991, EPA denied a petition to delist this chemical (58 FR 58859, Nov. 22, 1991) due to availability of the Cr(III), and the potential of Cr(III) to oxidize to Cr(VI). The four individual comments and corresponding EPA responses follow.

a. *What comments did EPA receive relating to the conversion of Cr(III) to Cr(VI)?* One commenter contends that studies show that chromium oxide (the component of concern in chromite ore) does not oxidize to form hexavalent chromium under biological conditions. In addition, several commenters believe that the oxidation of Cr(III) to Cr(VI) requires relatively harsh conditions that do not occur naturally in biological systems (i.e., the presence of strong oxidants or low pH levels).

EPA disagrees with the commenters. There are environmental conditions that will oxidize Cr(III) to Cr(VI) (e.g., those used by the petitioner in the leaching studies including soil having a high manganese oxide content and low pH). The commenters did not provide adequate evidence to conclude that the findings of the petitioner could be extended to any other chromium containing compound. This delisting decision applies only to the chromite ore and the unreacted chromite ore component of COPR that were tested by the petitioner. After reviewing the petitioner's studies, EPA concluded that the chromite ore and COPR tested were both insoluble and are not biologically available. Arguments that Cr(III) does not readily oxidize in the body unless under harsh conditions is not sufficient to claim that the chromium present from other sources will not oxidize or will not pose human health or environmental hazards.

Commenters submitted no evidence to justify this conclusion for any other chromium containing compounds. There is only evidence for the specified ore and the unreacted ore portion of the COPR associated with that particular processing described previously. All other data comparisons are speculative and unsatisfactory for delisting. The Agency would, therefore, require data from similar testing (compared to that done in support of this delisting petition) on any other ore or COPR from another process in order to remove it from the EPCRA section 313 list of toxic chemicals. The particular chromite ore and the unreacted ore component of COPR discussed in this action were studied in depth. Samples were subjected to a variety of tests that provided conclusive evidence that these materials would not produce hexavalent chromium via oxidation in the environment. There was no evidence that Cr(III) was available through either abiotic or biotic processes. The petitioner based their argument on the testing data provided in the original submission.

b. *What comments did EPA receive relating to the biological activity of Cr(III)?* Several commenters suggest that the biological activity of Cr(III) compounds are not associated with adverse health effects due principally to the inability of Cr(III) to pass through cell membranes. The commenters cite the daily requirement of chromium as an essential element fornutritional health as evidence for the stability of Cr(III) in the body. The commenters reported that Cr(VI) intracellular reduction to form Cr(III), suggested to be the active toxicant in the proposed rule, would have to form via other chromium oxidation states (i.e., Cr(IV) and Cr(V)). The commenters contend that it is these highly reactive forms of chromium that are responsible for the adverse biological reactivity. Therefore, the commenters conclude that all Cr(III) compounds are biologically unreactive.

EPA agrees with the commenters that insoluble Cr(III) *in vivo* is unlikely to pass through the cellular membrane. EPA also agrees that Cr(VI) readily passes through the cell membrane, and produces a variety of potentially hazardous products following reduction to an active species other than Cr(III). EPA stated in the proposed rule that Cr(III) is an essential mineral that has not been demonstrated to have carcinogenic, genotoxic, or adverse health effects under the conditions discussed. With regard to the biological reactivity of Cr(III) compounds with hydroxy or peroxy radicals, EPA agrees that the oxidative conditions described by the commenters maynot be present in biological systems. These facts do not support delisting all Cr(III) compounds. It simply reinforces the notion that Cr(III) once in the body may not pose a hazard to human health. As stated in the response in Unit VI.B.3.a., there are other concerns for Cr(III) compounds.

c. *What comments did EPA receive relating to the carcinogenic effects of Cr(III)?* Several commenters contend that the presentation of the historical review of chromium compounds is misleading. To date, EPA has historically not ruled on the carcinogenicity of Cr(III) compounds and, as more data has become available, the Agency has determined that insoluble Cr(III) compounds (the chemical class as a whole) have not been found to becarcinogenic via inhalation. The commenters state that the overall scientific view reflects the conclusion that Cr(III) is not carcinogenic or genotoxic. They contend, however, that the presentation of the historical review on chromium compounds, while providing context, is misleading. The commenters imply that past references to potential carcinogenicity will be misinterpreted to imply some hidden potential concern for insoluble Cr(III) compounds.

EPA disagrees that the presentation of the historical treatment and concerns for Cr(III) as part of the record for the chromium compounds category is misleading. In the past, EPA has stated that there was a potential human health concern for the carcinogenic effects of Cr(III). EPA has since made the determination that there is no evidence to support a concern for thecarcinogenicity of inhaled insoluble Cr(III) compounds. There are, however, other concerns for chromium (including certain forms of Cr(III)). This delisting will also be part of that historical record and will help inform the public of those remaining concerns for the human health and environmental hazards of chromium.

In the review of the current scientific evidence, EPA has determined that there is no evidence to support a concern for carcinogenicity of inhaled insoluble Cr(III) compounds. Should new credible scientific evidence indicate that a hazard exists, the Agency would have to consider reversing this determination. If new data support the delisting of other forms of Cr(III),EPA would consider eliminating such chemicals from reporting. EPA considers the listing and delisting of chemicals a dynamic process that can change as new information is obtained. There is nothing misleading in educating the public about what had been believed and what new facts have caused a change in EPA's assessment.

d. *What comments did EPA receive relating to environmental fate of chromium compounds?* One commenter contends that it is inappropriate to compare the oxidation of soluble chromium compounds that occur naturally in the presence of manganese oxides under specified conditions with the environmental fate of chromite ore. The commenter maintains that the environmental conditions of such soils are equally likely to reduce Cr(VI) as they would oxidize Cr(III), and that this equilibrium favors Cr(III) formation (i.e., if Cr(III) ions were released by chromite ore or the processing residue, they would not pose an environmental or human health hazard under typical conditions). No references were provided by this commenter.

Several commenters agree that chromite ore does not readily oxidize under natural conditions. These commenters further elaborate on the health impacts of residues from chromite ore processing in New Jersey stating that the New Jersey residues are characteristically different from that generated by the petitioner, yet no ''appreciable health effect that may be attributable to chromium'' has been identified. The commenters state that in addition to health risks, ecological risks associated with the residues from chromite ore processing in New Jersey were also evaluated. The commenters contend that from the data, it is clear that chromium ions migrate from areas high in process residue to contaminate adjacent areas, and while mobile, it appearsthat much of this migratory chromium is tightly bound to the soil. However, the commenters claim that there did not appear to be a correlation between levels of chromium in the soil samples and the ability of this tightly associated metal (soil:Cr complexation) to dissociate and bind to the available biota.

Another commenter contends that residues from chromite ore processing differ substantially by noting that certain chromium remediation activities are still on-going due to the concern for the exposure to hexavalent chromium contamination from process residue fill sites. This commenter reiterates the idea suggested by the other commenters that these residues (and by inference that certain sources of chromite ore and other chromite ore process residues) are, in fact, different. The commenters state that the chromite ore and unreacted COPR discussed in the petition are not considered a risk to human health or the environment.

EPA does not believe that the commenters have provided sufficient information to conclude that other chromite ore sources or other chromite ore processing residues share the same properties as the chromite ore and unreacted ore component of COPR that are the subject of this rulemaking. EPA believes that these comments support the Agency's position that all Cr(III)compounds are not identical. With regard to chromite ore processing residues, such as the COPR that is the subject of this rulemaking, EPA notes that it contains at least three components: (1) Unreacted chromite ore (the portion that will be delisted for ore originating from the Transvaal Region); (2) Cr(III) present as a result of reduction treatment of unleached Cr(VI) (still reportable under the chromium compounds category of EPCRA section 313); and (3) the unreduced Cr(VI) from oxidized Cr(III) (also still reportable under the chromium compounds category of EPCRA section 313). Other chromite ore processing residues are also likely to contain various amounts of chromium compounds other than the unreacted ore component and thus may be sources ofenvironmentally available chromium.

EPA believes that the information discussed in the proposed rule concerning the observed oxidation of soluble Cr(III) to Cr(VI) by manganese rich soils is a concern and that such conversions can lead to environmentally available and bioavailable forms of chromium. The fact that under certain conditions this conversion may result in an equilibrium that favors the Cr(III) form does not change the fact the Cr(VI) can be produced. In addition, since the publication of the proposed rule, EPA has reviewed a study that has addressed the potential of a second pathway for the oxidation of Cr(III) to Cr(VI) in the presence of ferric salts which further supports EPA'sconcerns for the conversion of Cr(III) to Cr(VI) (Ref. 11). The Agency therefore reasserts its position that, under the appropriate conditions, Cr(III) can readily oxidize to form Cr(VI) in the environment.

The Agency agrees with the commenters that the ability of Cr(III) to be oxidized in the environment to Cr(VI) is not relevant to the consideration of whether or not to delist chromite ore from the Transvaal region of South Africa and the unreacted ore component of the COPR. However, this oxidation is irrelevant only because the petitioner conclusively demonstrated that the chromium in these compounds is unavailable for chemical reaction and therefore does not produce Cr(VI) under the oxidizing conditions. In order to extend such a determination to other chromium compounds the unavailability of the chromium and lack of oxidation would have to be clearly demonstrated for these other chromium compounds.

B. What Comments Did EPA Receive That Did Not Support this Proposal to Delist?

EPA did not receive any comments that were critical of its proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607.

VII. What is the Effective Date of this Final Rule?

This action becomes effective May 11, 2001. Thus, the last year in which facilities had to file a Toxics Release Inventory (TRI) report for both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR was 2000, covering releases and other activities that occurred in 1999.

EPCRA section 313(d)(4) provides that ''[a]ny revision'' to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency had determined, as it has with this chemical, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)–(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 (June 28, 1994).

VIII. What are the References Cited in this Final Rule?

1. Elementis Chromium LP. Petition to Delist Chromite Ore from SARA 313.Elementis Chromium LP (January 5, 1998).

2. USEPA. Economic Analysis of the Proposed Deletion of Chromite Ore from the EPCRA Section 313 List of Toxic

Chemicals. OPPT/EETD/EPAB (February 1998).

3. USEPA. Preliminary Release Report Proposed Deletion of Chromite Ore from the EPCRA Section 313 Toxic Release Inventory. OPPT/EETD/CEB (March 1998).

4. USEPA. Chemistry Analysis of the Proposed Deletion of Chromite Ore from the EPCRA Section 313 Toxic Release Inventory. OPPT/EETD/ICB (February 1998).

5. USEPA. Chromite Ore Delisting Assessment of Health Hazard Concern.OPPT/RAD/SSB (May 1998).

6. USEPA. Petition to Delist Chromite Ore (Chromium Compounds Category): Ecological Hazard Assessment. OPPT/RAD/ECAB (April 1998).

7. USEPA. Environmental Fate Summary of Chromium (Cr) in Soils.OPPT/EETD/EAB (March 1998).

8. IRIS. U.S. Environmental Protection Agency's Integrated Risk Information System file pertaining to chromium (III), insoluble salts.

9. Engineering Bulletin: Technology Alternatives for the Remediation of Soils Contaminated with As, Cd, Cr, Hg, and Pb. EPA 540–S97–500.

10. Jin, X., Bailey, G.W., Yu, Y.S., and Lynch, A.T. ''Kinetics of Single and Multiple Metal Ion Sorption Processes on Humic Substances.'' Soil Science v. 161 (1996), pp. 509–519.

11. Zhang, H. and Bartlett, R. ''Light Induced Oxidation of Aqueous Chromium(III) in the Presence of Iron(III).'' Environmental Science & Technology, v. 33, 1999, pp. 588–594.

IX. What are the Regulatory Assessment Requirements for this Action?

A. Executive Order 12866

This action, which exempts both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of chemicals subject to reporting under EPCRA section 313 and PPA section 6607, eliminates an existing requirement to report and does not contain any new or modified requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), because OMB hasdetermined that the complete elimination of an existing requirement is not a ''significant regulatory action'' subject to review by OMB under E.O. 12866.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant impact on a substantial number of small entities. This determination is based on the fact that the elimination of the existing requirement will also eliminate the corresponding burden and costs associated with that requirement. This action will not, therefore, result in any adverse economic impacts on the facilities subject to reporting under EPCRA section 313, regardless of the size of the facility.

C. Paperwork Reduction Act

The delisting of both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the EPCRA section 313 list of toxic chemicals will reduce the overall reporting and recordkeeping burden estimate provided for the TRI program, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* EPA will determine the total TRI burden associated with this delisting, and will complete the required Information Collection Worksheet to adjust the total TRI burden estimate approved by OMB.

The reporting and recordkeeping burdens associated with TRI are approved by OMB under OMB No. 2070 0093 (Form R, EPA ICR No. 1363) and under OMB No. 2070 0143 (Form A, EPA ICR No. 1704). The current public reporting burden for TRI is estimated to average 52.1 hours for a Form R submitter and 34.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears above. In addition, the OMB control number for EPA's regulations, after initial display in the final rule, are displayed on the collection instruments and are also listed in 40 CFR part 9.

D. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Since this action involves the elimination of an existing requirement, it does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments as described in the Unfunded Mandates Reform Act of 1995 (P.L. 104–4). For the same reason, it is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

E. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. The Agency has determined that this delisting, which would eliminate the availability of the TRI information on this chemical that is made available to communities through the TRI Community Right-to-Know program, will not result in environmental justice related issues.

F. Executive Order 13045

Pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children. Since this action is not economically significant under Executive Order 12866, this action is not subject to Executive Order 13045.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. The

NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that ''In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation.''

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: February 28, 2001.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

Therefore, 40 CFR Part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(c) is amended by adding the following parenthetical to the chromium compounds listing ''(except for chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the chromite ore processing residue (COPR). COPR is the solid waste remaining after aqueous extraction of oxidized chromite ore that has been combined withsoda ash and kiln roasted at approximately 2,000 °F.).''

[FR Doc. 01–11918 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–310–1310–PB–01–24 1A]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management.

ACTION: Correcting amendment.

SUMMARY: The document contains corrections to the amendatory instructions of the final regulations on protecting Federal and Indian oil and gas resources from drainage published in the **Federal Register** on January 10, 2001, (66 FR 1883) and delayed on February 8, 2001, (66 FR 9527).

DATES: Effective April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluids Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW., Washington, DC 20240; telephone (202) 452–0382 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 4 p.m., Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: We are clarifying the amendatory instructions for the current regulations under Sections 3162.2 and 3165.3. The amendment for Section 3162.2, paragraph (c), indicates that more than one entity may hold interest in a lease or own operating rights.

List of Subjects

43 CFR Part 3160

Government contracts, Hydrocarbons, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: May 1, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, the **Federal Register** issue of January 10, 2001 is corrected as follows:

1. On page 1892, in the third column, correct the amendatory instruction 12.b for § 3162.2 to read as follows:

b. Removing in paragraph (c) the phrase ''the operating rights owner'' and adding in its place the phrase ''the lessee(s) and operating rights owner(s)''; (Note: § 3162.2(c) was redesignated as § 3162.2–1(b))

2. On page 1894, in the second column, renumber instructions 13. and 14. as 15. and 16. respectively.

[FR Doc. 01–11877 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–84–M

Proposed Rules

Federal Register
Vol. 66, No. 92
Friday, May 11, 2001

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ103–0037; FRL–6978–1]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona Department of Environmental Quality's portion of the Arizona State Implementation Plan (SIP). These revisions concern the establishment of affirmative defenses for excess emissions due to malfunctions, startups, and shutdowns, and reporting requirements for excess emissions. We are proposing to approve the rules under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 11, 2001.

ADDRESSES: Mail comments to Ginger Vagenas, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1252.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

This proposal addresses two rules that were adopted on February 15, 2001 and submitted on March 26, 2001 by Arizona Department of Environmental Quality: R18–2–310, Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown; and R18–2–310.01, Reporting Requirements.

On May 1, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 310 or 310.01 in the SIP, although the Arizona Department of Health Services submitted an earlier version of these rules (R9–3–309) to us on October 24, 1985. We proposed to approve Rule R9–3–309 into the SIP on September 22, 1986, but did not take final action.

C. What Is the Purpose of the Submitted Rules?

Emissions in excess of the limits that apply to a source are violations of the applicable emission limitation. State agencies must always retain the option to enforce such violations, however, under certain circumstances, an affirmative defense to enforcement proceedings based on violations of emission limits can be included in a SIP. Rule 310 establishes an affirmative defense to civil or administrative enforcement proceedings, other than a judicial action seeking injunctive relief, providing certain criteria have been met. Rule 310.01 sets out reporting requirements that the source must meet if it has emissions in excess of its limits.

II. EPA's Evaluation and Action

How Is EPA Evaluating the Rules?

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act (CAA) and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements appears in EPA policy guidance documents. EPA policy on excess emissions occurring during startup and shutdown is contained in a memorandum dated September 20, 1999, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (the Excess Emissions Policy). In general, the guidance document cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted rules meet Federal requirements, are fully enforceable, and strengthen or maintain the SIP.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the Clean Air Act and the relevant policy and guidance regarding excess emissions. Under the CAA, EPA has a fundamental responsibility to ensure that SIPs provide for attainment and maintenance of the national ambient air quality standards and protection (NAAQS) of prevention of significant deterioration (PSD) increments. See, e.g., sections 110(a) and (l) of the CAA, 42 U.S.C. sections 7410(a) and (l) (EPA cannot approve a SIP revision that would interfere with attainment of a NAAQS or any other requirement of the CAA).[1] Accordingly, EPA believes that an acceptable affirmative defense provision may only apply to actions for penalties, but not to actions for injunctive relief. This restriction ensures that both state and federal authorities remain able to protect air quality standards and PSD increments. Rule 310 includes the following provisions:

[1] Pursuant to Section 110(1), EPA may not approve a SIP revision if ''the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this chapter.'' See also CAA section 193, 42 U.S.C. 7575, and the definitions of ''emission limitation'' and ''emission standard'' contained in CAA section 302(k), 42 U.S.C. section 7602(k).

1. All periods of excess emissions are treated as violations of the emission limitation.

2. The rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction, startup, and shutdown episodes. There is no affirmative defense to actions for injunctive relief.

3. The rule includes criteria consistent with EPA's excess emissions policy that restrict the availability of affirmative defenses to malfunctions that are sudden, unavoidable, and unpredictable, and to excess emissions during startup and shutdown that could not have been avoided through careful planning and design. In all cases, all possible steps must have been taken to minimize excess emissions.

4. An affirmative defense is not available if during the period of excess emissions, there was an exceedence of the relevant ambient air quality standard that could be attributed to the emitting source.

5. The defendant has the burden of proof of demonstrating it has met the criteria set out in Rule 310.

Rule 310.01 requires that the owner or operator of a source must notify ADEQ within 24 hours of learning that the source has emitted pollutants in excess of its limits. A detailed written report must be submitted within 72 hours of the initial notification. In order to qualify for an affirmative defense under Rule 310, the source must comply with the requirements of Rule 310.01.

C. Public comment and final action.

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

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

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: May 4, 2001.

Michael Schultz,

Acting Regional Administrator, Region IX.

[FR Doc. 01–11916 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0054; FRL–6978–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver 1-Hour Ozone Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 30, 2000, the Governor of Colorado submitted a request to redesignate the Denver-Boulder metropolitan (Denver) ''transitional'' ozone nonattainment area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). As part of this request, the Governor asked that EPA parallel process a proposed maintenance plan for the Denver area. In conjunction with the Governor's submittal, EPA is also proposing approval of revisions to Colorado's Regulation No. 3 ''Air Contaminant Emissions Notices'' and Colorado's Regulation No. 7 ''Emissions of Volatile Organic Compounds'' that were previously submitted by Governor

Roy Romer, for our approval, on August 8, 1996.

In this action, EPA is proposing approval and soliciting public comment on the Denver 1-hour ozone redesignation request, the State-proposed maintenance plan, and the revisions to Regulation No. 3 and Regulation No. 7.

DATES: Written comments must be received on or before June 11, 2001.

ADDRESSES: Written comments may be mailed to:

Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the State documents relevant to this action are available for public inspection at:

Colorado Department of Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479

SUPPLEMENTARY INFORMATION:

Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean the Environmental Protection Agency.

I. What is the purpose of this action?

With this action, we are utilizing our parallel processing procedure for consideration of several revisions to the Colorado State Implementation Plan (SIP). Parallel processing allows EPA to propose rulemaking on a SIP revision(s), and solicit public comment, at the same time the State is processing the SIP revision(s). The Colorado Air Quality Control Commission (AQCC) adopted the proposed SIP revisions, with minor technical changes that we do not consider significant, on January 11, 2001. When the Governor submits the final revisions to us for approval, we will consider any comments received and proceed with a final rulemaking action. However, should the State substantially change any of the proposed SIP revisions before the Governor submits the final versions to us, we will re-propose and again solicit public comment on these State amended SIP revisions before we take final rulemaking action. For further information regarding parallel processing, please see 40 CFR Part 51, Appendix V, section 2.3.1.

In this action, we are proposing approval of a change in the legal designation of the Denver area from nonattainment to attainment for the 1-hour ozone NAAQS (hereafter referred to as ozone NAAQS or ozone standard), we're proposing approval of the AQCC-adopted maintenance plan that is designed to keep the area in attainment for ozone for the next 13 years, and we're proposing approval of changes to AQCC Regulation No. 3 and AQCC Regulation No. 7. We also note that in his November 30, 2000, letter, the Governor asked that we parallel process a potential alternative provision for the maintenance plan that had been proposed by the Colorado Department of Transportation (CDOT). CDOT's alternative provision involved the conversion of the Santa Fe Boulevard High Occupancy Vehicle (HOV) lanes to general service lanes and the provision of funds to provide additional light rail transit cars to compensate for the loss of the HOV emission reductions. However, in a December 6, 2000, letter (that we received on December 19, 2000) from CDOT to the AQCC, CDOT withdrew its request for this alternative provision indicating that it could not guarantee light rail transit cars to replace the HOV lanes. Based on our understanding that this CDOT proposed alternative provision is moot, we are not proposing action on this alternative.

We originally designated the Denver area as nonattainment for ozone under the provisions of the 1977 CAA Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), EPA designated the Denver area as nonattainment for ozone because the area had been previously designated as nonattainment before November 15, 1990. The Denver area was classified under section 185A of the CAA as a ''transitional'' ozone nonattainment area as the area had not violated the ozone NAAQS in the years 1987, 1988, and 1989.[1]

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Thus, before EPA can approve the redesignation request, EPA must find, among other things, that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur prior to final approval of the redesignation request or simultaneously with final approval of the redesignation request. EPA notes there are no outstanding SIP elements necessary for the redesignation. However, the Governor previously requested approval of revisions to Regulation No. 3 and Regulation No. 7 such that rules applicable to the Denver ozone nonattainment area remain in effect after Denver is redesignated to attainment for the 1-hour ozone standard. Therefore, EPA is also proposing approval of the revisions to Regulation No. 3 and Regulation No. 7. These revisions are described below.

II. What is the State's process to submit these materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements

[1] The CAA describes areas as ''transitional'' if they were designated nonattainment both prior to enactment and (pursuant to CAA section 107(d)(1)(C)) at enactment, and if the area did not violate the primary ozone NAAQS in the 3-year period of 1987 through 1989. Refer to section 185A of the CAA and the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'', 57 FR 13498, April 16, 1992. See specifically 57 FR 13523–27, April 16, 1992.

in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the final revisions being submitted by a State to us.

At the October 19, 2000, AQCC meeting, the Commission proposed for public comment the ozone redesignation request and maintenance plan. The AQCC held a public hearing on January 11, 2001, for considering public comment on the above SIP revisions. After accepting several minor technical corrections to the maintenance plan, the AQCC adopted the Denver 1-hour ozone redesignation request and maintenance plan on January 11, 2001.

The AQCC had previously held a public hearing on March 21, 1996, for the revisions to AQCC Regulation No. 3 ''Air Contaminant Emissions Notices'' (hereafter, Regulation No. 3) and AQCC Regulation No. 7 ''Emissions of Volatile Organic Compounds'' (hereafter, Regulation No. 7). The AQCC adopted the revisions to Regulation No. 3 and Regulation No. 7 directly after the hearing. These SIP revisions became State effective May 30, 1996, and were submitted by the Governor to us on August 8, 1996.

We have evaluated the Governor's prior submittal involving the revisions to Regulation No. 3 and Regulation No. 7 and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's August 8, 1996, submittal of the revisions to Regulation No. 3 and Regulation No. 7 became complete on February 6, 1997.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) Brief History of the Denver Ozone Redesignation Request, Maintenance Plan, and Related SIP Submittals.

On August 8, 1996, the Governor of Colorado submitted a redesignation request and maintenance plan for the 1-hour ozone NAAQS for the Denver area along with revisions to Regulation No. 3 and Regulation No. 7 to ensure that rules applicable to the Denver nonattainment area would remain in effect after Denver was redesignated to attainment. We did not proceed with any action on the Governor's submittal as the maintenance plan had both legal and technical problems that precluded our full approval.

On July 18, 1997, EPA promulgated the new 8-hour ozone NAAQS (*see* 62 FR 38856, July 18, 1997). In conjunction with that action, President Clinton issued a memorandum to the Administrator of the Environmental Protection Agency, on July 16, 1997, entitled ''Implementation of Revised Air Quality Standards for Ozone and Particulate Matter.'' This memorandum directed the Administrator to review current ambient air quality data and to proceed with revoking the 1-hour ozone standard for all areas that were in attainment for the 1-hour standard. On June 5, 1998, we revoked the 1-hour ozone NAAQS for the Denver area (see 63 FR 31014) as the area had the necessary ambient air quality data showing that the area was in attainment for the 1-hour NAAQS. At that time, the August 8, 1996, Denver 1-hour ozone redesignation request and maintenance plan became moot and no further action was contemplated by either the State or us.

The new 8-hour ozone NAAQS was challenged by the American Trucking Association and others. In a May 14, 1999, opinion, the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit stated that although EPA could designate areas as attainment or nonattainment for the 8-hour standard, we could not ''enforce'' (implement) the 8-hour standard. The result of this decision was that areas like Denver found themselves with the 1-hour ozone standard revoked and an 8-hour ozone standard that could not be enforced or implemented. We petitioned the U.S. Supreme Court to review several aspects of the D.C. Circuit's opinion.[2]

To continue to protect the public's health while waiting for the Supreme Court review, we reinstated the 1-hour ozone standard on July 20, 2000, (see 65 FR 45182) for all areas of the nation in which it had been previously revoked. This action had a delayed effective date for certain areas of the nation, such as Denver, to allow these areas to proceed with redesignation requests for the 1-hour standard. The 1-hour ozone NAAQS was reinstated for the Denver area on January 16, 2001, and at that time the area returned to its legal designation of nonattainment for the 1-hour ozone standard. Based on the above Federal actions, the Denver Regional Air Quality Council (RAQC) and State prepared a revised redesignation request and maintenance plan for the 1-hour ozone standard. The AQCC proposed these ozone SIP revisions for public comment at their meeting of October 19, 2000, and they were submitted by the Governor to us on November 30, 2000. The ozone SIP revisions we received from the Governor, and the revisions adopted by the AQCC on January 11, 2001, which made minor technical corrections to the Governor's November 30, 2000, submittal, form the basis for this proposed rule.

(b) Redesignation Criterion: The Area Must Have Attained The 1-Hour Ozone NAAQS.

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS.

As described in 40 CFR 50.9 and 40 CFR part 50, Appendix H, the national primary ambient air quality 1-hour ozone standard is 0.12 parts per million (235 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year. Attainment of the ozone standard is not a momentary phenomenon based on short-term data. Each of the ozone ambient air quality monitors in the network are allowed to record three or fewer exceedances of the ozone standard over a continuous three-year period. 40 CFR 50.9 and 40 CFR part 50, Appendix H. If a single monitor in the ozone monitoring network records more than three expected exceedances (based on the expected exceedance calculation method in Appendix H) or actual exceedances of the standard over a three-year period then the area is in violation of the ozone NAAQS. In addition, EPA's interpretation of the CAA and EPA national policy[3] has been that an area seeking redesignation to attainment must continue to show attainment of the ozone NAAQS through the date that EPA promulgates the redesignation to attainment in the **Federal Register**.

The ozone redesignation request for the Denver area is based on an analysis of quality assured ambient air quality

[2] The Supreme Court issued an opinion on February 27, 2001, that requires EPA to revisit its policy for implementing the new 8-hour ozone NAAQS and remands the case back to the Court of Appeals for the D.C. Circuit. There is still considerable uncertainty about when or whether we will be able to implement the new 8-hour ozone NAAQS. Thus, the Supreme Court's decision is largely irrelevant to this action.

[3] Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment.''

monitoring data that are relevant to the redesignation request. The Denver area has not violated the 1-hour ozone standard since 1987. Ambient air quality monitoring data for consecutive calendar years 1997 through 1999 show an expected exceedance rate of less than 1.0 per year, per monitor, of the ozone NAAQS in the Denver nonattainment area. These data were collected and analyzed as required (see 40 CFR 50.9 and 40 CFR part 50, Appendix H) and have been archived by the State in EPA's Aerometric Information and Retrieval System (AIRS) national database. A preliminary analysis of data for 2000 also show continued attainment of the 1-hour ozone standard.

Further information on ozone monitoring is presented in Chapter 2, section B, ''Attainment of the One-Hour Ozone NAAQS,'' of the State's maintenance plan and in the State's Technical Support Document (TSD). Exceedances of the 1-hour ozone standard have been measured at separate monitors in 1993, 1995, and 1998. We note, however, that the Denver area has not violated the ozone standard and continues to demonstrate attainment.

Because the Denver nonattainment area has complete quality-assured data showing no violations of the ozone NAAQS over the most recent consecutive three-calendar-year period, the Denver area has met the first requirement for redesignation; demonstration of attainment of the ozone NAAQS. EPA notes that the State of Colorado has also committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR part 58.

(c) Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 And Part D Of The CAA

Section 107(d)(3)(E)(v) requires that, to be redesignated to attainment, an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the CAA due after the submission of a complete redesignation request need not be considered in evaluating the request.

1. CAA Section 110 Requirements

On December 12, 1983, we approved revisions to Colorado's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 48 FR 55284). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1983 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 48 FR 55284. In addition, we have analyzed the SIP elements that we are approving as part of this action and we have determined they comply with the relevant requirements of section 110(a)(2).

2. Part D Requirements

Before the Denver transitional ozone nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable. Subpart 2 of part D contains specific provisions for transitional areas.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The General Preamble (57 FR 13498, April 16, 1992) provides EPA's interpretations of the CAA requirements for transitional ozone areas (see 57 FR 13524–26).

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694 and 57 FR 13525). In the case of the Denver area, the due date was November 15, 1993. As the original Denver 1-hour ozone standard redesignation request and maintenance plan were not submitted by the Governor until August 8, 1996, (and the current revised redesignation request and maintenance plan were submitted on November 30, 2000) the General Preamble (57 FR 13525) provides our interpretation that the applicable requirements of CAA section 172 are 172(c)(1) (Reasonably available control technology (RACT)/Reasonably available control measures (RACM)), 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), and 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)). It is our view that Part D requirements for an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to transitional ozone areas. See 57 FR 13525, April 16, 1992. It is also worth noting that EPA has interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP), 172(c)(6)(other measures), and 172(c)(9)(contingency measures) as being irrelevant to a redesignation request for a transitional ozone nonattainment area because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment'', and the General Preamble, 57 FR at 13525, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4)(identification of certain emissions increases) and 172(c)(8)(equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in our 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

In that action, EPA explained that its decision was based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation conformity rules even after redesignation and would risk sanctions for failure to do so. Unlike most requirements of section 110 and part D, which are linked to the nonattainment status of an area, and are not required after redesignation of an area to attainment, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of State-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes

it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Further information regarding transportation conformity and mobile source emission budgets are found below in section IV ''Transportation Conformity''.

The applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(1)—RACT/RACM

To satisfy section 172(c)(1), transitional areas (section 185A) that continued to show no violations of the 1-hour ozone standard as of December 31, 1991, must ensure, at a minimum, that any deficiencies regarding enforceability of an existing rule are corrected. While section 185A of the CAA exempts transitional areas from all subpart 2 requirements until December 31, 1991, and that exemption continues until the area is redesignated to attainment (assuming the area satisfactorily demonstrated attainment by December 31, 1991), States should be aware that in order to be redesignated to attainment such areas must correct any RACT deficiencies regarding enforceability. See 57 FR 13525, April 16, 1992.

On September 27, 1989, and on August 30, 1990, the Governor submitted revisions to Regulation No. 7 that address RACT for sources of Volatile Organic Compounds (VOC) in ozone nonattainment areas, which includes Denver. We approved these revisions on June 29, 1995 (see 60 FR 28055).

B. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Denver nonattainment area. Our interpretation of the emission inventory requirement for transitional ozone nonattainment areas is detailed in the General Preamble (57 FR 13525, April 16, 1992). We determined that an emissions inventory is specifically required under CAA section 172(c)(3) and is not tied to an area's proximity to attainment.

On August 8, 1996, the Governor submitted the original Denver 1-hour ozone redesignation request and maintenance plan. This submittal contained a 1993 attainment year inventory for the Denver ozone nonattainment area. The Governor's parallel processing submittal of the revised redesignation request and maintenance plan, dated November 30, 2000, also contains this 1993 attainment year inventory. Once EPA receives the Governor's final submittal, and we are able to approve the Denver ozone redesignation request and maintenance plan, this section 172(c)(3) requirement will be fulfilled.

C. Section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Colorado has a fully-approved NSR program (59 FR 42500, August 18, 1994) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (59 FR 42500, August 18, 1994) that will apply if we approve the redesignation to attainment.

D. Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements

According to our interpretations presented in the General Preamble (57 FR 13525, April 16, 1992), transitional ozone nonattainment areas must meet the ''applicable'' air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172(b) and (c) of the CAA. With respect to this requirement, the State indicates in Chapter 2, section B of the maintenance plan (''Attainment of the One-Hour Ozone NAAQS''), that ambient ozone monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Denver area. Air quality data through 1999 are included in Chapter 2, section B of the maintenance plan and in the State's TSD. We recently polled the AIRS database and verified that the State has also uploaded additional ambient ozone data through July 31, 2000. The data in AIRS indicate that the Denver area has shown, and continues to show, attainment of the 1-hour ozone NAAQS. Information concerning ozone monitoring in Colorado is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Our personnel have concurred with Colorado's annual network reviews and have agreed that the Denver ozone network remains adequate. Finally, in Chapter 3, section E, (''Monitoring Network / Verification of Continued Attainment'') of the maintenance plan, the State commits to the continued operation of the ozone monitoring network, according to all applicable Federal regulations and guidelines, even after the Denver area is redesignated to attainment for the 1-hour ozone NAAQS.

(d) Redesignation Criterion: The Area Must Have A Fully Approved SIP Under Section 110(k) Of The CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA, our prior approval of SIP revisions required under the 1990 amendments to the CAA, and our proposed approval of the maintenance plan, we have determined that Colorado will have a fully approved ozone SIP under section 110(k) for the Denver ozone nonattainment area if we approve the maintenance plan.

(e) Redesignation Criterion: The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions.

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan (Denver ozone revision as approved on December 12, 1983, see 48 FR 55284), implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The emissions reductions of ozone precursors (VOCs and Nitrogen Oxides or NO_X) that have occurred over the past several years were achieved primarily through Federal emission control measures, CAA-required improvements to the State vehicle inspection and maintenance (I/M) program, AQCC Regulations No. 3 and No. 6, and AQCC Regulation No. 7.

The Federal Motor Vehicle Control Program (FMVCP) achieved VOC and NO_X emission reductions. In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles (''fleet turnover''), emission reductions are realized for a particular area such as Denver. For example, EPA promulgated lower hydrocarbon (HC) (of which VOCs are a portion) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-

duty vehicles and light-duty trucks), in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

Colorado's Automobile Inspection and Readjustment (AIR) program is fully described in AQCC Regulation No. 11 (''Motor Vehicle Emissions Inspection Program'') and has been applicable in the Denver area since 1981. The AIR program works to reduce VOC and NO_X emissions from gasoline-powered motor vehicles by requiring them to meet emission standards through periodic tailpipe tests, maintenance, and specific repairs. The AIR program was updated in 1994 to meet the requirements of the CAA amendments of 1990, and a more stringent and effective ''enhanced'' inspection and maintenance program began in the Denver area in 1995. The enhanced program uses a loaded-mode dynamometer test called the ''I/M 240'' for 1982 and newer vehicles and an idle test for 1981 and older vehicles and heavy trucks.

The State's permit rules for stationary sources, AQCC Regulation No. 3 (''Air Contaminant Emissions Notices'') and AQCC Regulation No. 6 (''Standards of Performance for New Stationary Sources'') control emissions from industrial facilities and cap VOC and NO_X emissions from new or modified major stationary sources.

Finally, the State has Regulation No. 7 (''Emissions of Volatile Organic Compounds'') which contains RACT requirements for commercial and industrial sources of VOCs. As noted above, the State submitted substantial revisions to Regulation No. 7 in 1989 and 1990 that we approved on May 30, 1995 (see 60 FR 28055).

We have evaluated the various State and Federal control measures, the 1993 attainment year emission inventory, and the projected emissions described below, and have concluded that the improvement in air quality in the Denver nonattainment area has resulted from emission reductions that are permanent and enforceable.

(f) Redesignation Criterion: The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A.

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992.

In this **Federal Register** action, we are proposing approval of the State of Colorado's maintenance plan for the Denver ozone nonattainment area because we have determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's November 30, 2000, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

Our interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble and the September 4, 1992, policy memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for the 1-hour ozone NAAQS may demonstrate future maintenance of the ozone NAAQS either by showing that future VOC and NO_X emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the Denver area, the State selected the emissions inventory approach for demonstrating maintenance of the ozone NAAQS.

The maintenance plan that the Governor submitted on November 30, 2000, included comprehensive inventories of VOC and NO_X emissions for the Denver area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, on-road mobile sources, and biogenics. The State selected 1993 as the year from which to develop the attainment year inventory and included projections for 2006 and 2013. More detailed descriptions of the 1993 attainment year inventory and the projected inventories are documented in the maintenance plan in Chapter 3, section B, (''Emission Inventories''), Appendix A, (''Emission Inventories'') of the maintenance plan, and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance.

A. Emission Inventory Corrections and Changes; As Adopted on January 11, 2001

At the January 11, 2001, AQCC public hearing for the Denver 1-hour ozone redesignation request and maintenance plan, the RAQC and State brought forward several minor corrections and changes for consideration by the public and AQCC. These minor corrections/changes were as follows:

1. In preparing the emission inventories, the State used mobile source gridded VMT data that had been previously developed for the Denver area's carbon monoxide redesignation request and maintenance plan. The gridded VMT data, that were originally prepared for the Urban Airshed Model (UAM), covered a larger area than the Denver 1-hour ozone nonattainment area. The ozone maintenance plan inadvertently included calculated mobile source emissions for the larger UAM modeling domain area rather than just the ozone attainment/maintenance area. The emission inventories are to be calculated to be consistent with the original nonattainment area and the attainment/maintenance area boundaries. The mobile source emission figures for 1993, 2006, and 2013 were all corrected to reflect the appropriate area in both the maintenance plan and TSD.

2. In reference to the above, the motor vehicle VOC and NO_X conformity emission budgets were corrected to reflect the emissions only for the ozone attainment/maintenance area boundaries. The corrections were done for both the maintenance plan and TSD.

3. The Denver International Airport (DIA) provided the RAQC and State

updated emission estimates that reflected the projected expansion and associated growth of aircraft operations and ground support equipment at DIA. These revised estimates were incorporated into both the maintenance plan and TSD.

4. An error was discovered in the non-road emissions category. In reviewing VOC emissions that were estimated for farm equipment a figure of 9.0 tons per day of VOCs had been used in the 1993 attainment year inventory. This figure actually should have been 0.9 tons per day of VOCs. This correction was reflected in both the maintenance plan and TSD.

Summary emission figures, that include the corrections adopted at the AQCC January 11, 2001 public hearing, from the 1993 attainment year and the projected years are provided in Table III.–1 and Table III.–2 below.

TABLE III.–1—SUMMARY OF VOC EMISSIONS IN TONS PER DAY FOR DENVER

	1993	Rev. 1993 [1]	2006	Rev. 2006 [1]	2013	Rev. 2013 [1]
Point Sources	46	46	52	52	56	56
Area Sources	74	74	73	73	80	80
Non-Road Mobile Sources	67	58	40	39	40	38
On-Road Mobile Sources	124	119	89	84	77	74
Biogenics	211	211	211	211	211	211
Total	522	507	456	460	464	459

[1] These are the revised inventory figures that represent the technical corrections that were adopted by AQCC with the maintenance plan and TSD at the January 11, 2001, public hearing.

TABLE III.–2—SUMMARY OF NO_X EMISSIONS IN TONS PER DAY FOR DENVER

	1993	Rev. 1993 [1]	2006	Rev. 2006 [1]	2013	2013 [1]
Point Sources	122	122	123	123	126	126
Area Sources	7	7	10	10	11	11
Non-Road Mobile Sources	64	65	51	57	40	50
On-Road Mobile Sources	139	134	121	115	123	117
Biogenics	4	4	4	4	4	4
Total	336	332	309	309	304	308

[1] These are the revised inventory figures that represent the technical corrections that were adopted by AQCC with the maintenance plan and TSD at the January 11, 2001, public hearing.

2. Demonstration of Maintenance—Projected Inventories

As noted above, total VOC and NO_X emissions were projected by the State for 2006 and 2013. The years 2006 and 2013 were selected by the State, with EPA's concurrence, due to the immediate availability of transportation data sets from the Denver Regional Council Of Governments (DRCOG) from the work performed on the Denver carbon monoxide (CO) redesignation request and maintenance plan.

The Denver CO redesignation request and maintenance plan were submitted to us on May 10, 2000. This maintenance plan used the latest revised transportation data sets that were developed by DRCOG for the State to model the mobile source emissions. In addition, the CO maintenance plan incorporated changes to AQCC Regulation No. 11 that would initiate a Remote Sensing Device (RSD) program in 2002 and affect the cutpoints for the enhanced I/M program. Both of these I/M program revisions would also directly affect emission reductions for the ozone maintenance plan.

The RSD program is designed to evaluate 20% of the fleet in 2003, 40% of the fleet in 2004, 60% of the fleet in 2005, and 80% of the fleet in 2006. The RSD program will continue through 2013. In conjunction with the new RSD program, Regulation No. 11's enhanced I/M program will continue to apply to evaluate the remainder of the fleet and those vehicles that did not pass evaluation by the RSD program. Also, the enhanced I/M cutpoints will be tightened from the current levels of 2.0 grams per mile for hydrocarbons (HC) and 4.0 grams per mile for NO_X to 0.6 grams per mile HC and 1.5 grams per mile NO_X in 2006 and will continue through 2013. We have reviewed these State-adopted changes to Regulation No. 11 and will be proposing approval of them in a separate rulemaking action for the Denver CO redesignation request and maintenance plan. We note that the State has properly accounted for these Regulation No. 11 revisions in the projected emission inventories for 2006 and 2013 and is able to demonstrate maintenance of the 1-hour ozone standard. In the event that we are unable to approve the Regulation No. 11 revisions that were submitted by the Governor on May 10, 2000, this would not have an adverse impact on the Denver ozone maintenance plan as the current I/M program would continue and would provide greater emission reductions than the State has projected for the amended version of Regulation No. 11. In either scenario, the maintenance demonstration would still be valid.

For the ozone maintenance plan, the 1993 attainment year inventory and the projected 2006 and 2013 inventories were all prepared in accordance with EPA guidance. As stated in the maintenance plan, the projected emission inventories show a steady downward trend in both VOC and NO_X emissions. This is due mainly to more stringent motor vehicle tailpipe emission standards and additional Federal rule requirements for non-road sources of emissions. Because of this steady downward trend in emissions and because future year emissions are projected to be considerably below the 1993 attainment year levels, the State expects there will be no increases in emissions in the years between the present and 2013 that will jeopardize the demonstration of maintenance. Based on the information in the maintenance plan and the State's TSD, we agree with this conclusion.

Therefore, as the projected 2006 and 2013 inventories show that VOC and

NO_X emissions are not estimated to exceed the 1993 attainment levels during the time period from the present through 2013, the Denver area has satisfactorily demonstrated maintenance of the 1-hour ozone NAAQS.

3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the 1-hour ozone NAAQS in the Denver area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the Denver maintenance plan. In Chapter 2, section B and Chapter 3, section E the State commits to continue the operation of the ozone monitors in the Denver area and to annually review this monitoring network and make changes as appropriate.

Also, in Chapter 3, section F, (''Contingency Provisions''), the State commits to track mobile sources'' VOC and NO_X precursor emissions (which are the largest component of the inventories) through the ongoing regional transportation planning process that is done by DRCOG. Since revisions to Denver's transportation improvement programs are prepared every two years, and must go through a transportation conformity finding, the State will use this process to periodically review progress towards meeting the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the maintenance plan. This regional transportation process is conducted by DRCOG in coordination with the RAQC, the State's Air Pollution Control Division (APCD), the AQCC, and EPA.

Based on the above, we are proposing approval of these commitments as satisfying the relevant requirements. We note that a final rulemaking approval will render the State's commitments federally enforceable.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in Chapter 3, section F, (''Contingency Provisions'') of the maintenance plan, the contingency measures for the Denver area will be triggered by a violation of the 1-hour ozone NAAQS. (However, the maintenance plan does note that an exceedance of the 1-hour ozone NAAQS may initiate a voluntary, local process by the RAQC and APCD to identify and evaluate potential contingency measures.)

The RAQC, in coordination with the APCD and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the 1-hour ozone NAAQS has occurred. The subcommittee will present recommendations to the RAQC within 120 days of notification and the RAQC will present recommended contingency measures to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the contingency measures recommended by the RAQC, along with any other contingency measures that the AQCC believes may be appropriate to effectively address the violation of the 1-hour ozone NAAQS. The necessary contingency measures will be adopted and implemented within one year after the violation occurs.

The potential contingency measures that are identified in Chapter 3, section F of the Denver ozone maintenance plan include summertime gasoline Reid Vapor Pressure (RVP) reduction, reinstatement of the enhanced I/M program in effect before January 10, 2000, enhanced I/M program changes and additions that may involve changing cutpoints and adding an evaporative controls check, reinstatement of the NSR program, restrictions on consumer and commercial coatings, restrictions on architectural surface coatings, restrictions on lawn and garden equipment use, and NO_X RACT for major sources. A more complete description of the triggering mechanism and these contingency measures can be found in Chapter 3, section F of the maintenance plan.

Based on the above, we find that the contingency measures provided in the State's Denver ozone maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Colorado has committed to submit a revised maintenance plan SIP revision eight years after the approval of the redesignation. This provision for revising the maintenance plan is contained in Chapter 3, section G, (''Subsequent Maintenance Plan Revisions'') of the Denver ozone maintenance plan.

IV. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budgets in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

The maintenance plan (as updated on January 11, 2001) defines the motor vehicle emissions budgets in the Denver ozone attainment/maintenance area as 119 tons per day for VOCs and 134 tons per day for NO_X for all years 2002 and beyond. These figures reflect technical corrections to those of 124 tons per day for VOCs and 139 tons per day for NO_X that were previously submitted by the Governor on November 30, 2000. These budgets are equal to the attainment year (1993) mobile source emissions inventory for these pollutants and use some of the available safety margin in the years 2002 to 2013. The use of the safety margin is permitted by the conformity rule. *See* 40 CFR 93.124(a).

The State used specific inventory values for the years 2006 and 2013 to calculate and use some of the available safety margin in those years. As revised during the January 11, 2001, public hearing, in 2006 the total emissions of VOCs and NO_X are lower than the 1993 attainment year emissions inventory by 47 (was 56) tons per day and 23 (was 27) tons per day respectively. For 2006, the State added the mobile sources portion of the safety margin (35 tons per day for VOCs and 19 tons per day for NO_X) to the 2006 mobile sources emission inventories to arrive at the final budgets of 119 tons per day for VOCs and 134 tons per day for NO_X. For 2013, the State similarly allocated the safety margin to arrive at the same budgets. Although the maintenance plan does not specifically address the inventories for the other years between 2002 and 2013, the maintenance plan defines the same budgets for 2002 and all years beyond, thus evidencing the intent to apply some portion of the available safety margin in 2002 to arrive at these same budgets. We believe this is

acceptable under the circumstances because we would not expect total emissions from sources other than on-road mobile sources to exceed their 1993 levels in the year 2002 or any other year before 2013. Therefore, in view of our analysis, we are proposing to approve these 1-hour ozone NAAQS VOC and NO_X budgets for the Denver area.

V. EPA's Evaluation of the Regulation No. 3 Revisions

As we noted above, the Governor of Colorado had previously submitted minor revisions to Regulation No. 3 in conjunction with the Governor's original August 8, 1996, submittal of the Denver ozone maintenance plan. Regulation No. 3, Part B, Section III.D.1.f., previously exempted gasoline stations, located in ozone attainment areas, from construction permit requirements. The revision to Regulation No. 3 that the Governor submitted on August 8, 1996, exempts gasoline stations located in ozone attainment areas from construction permit requirements, with the exception of those gasoline stations located in the Denver Metro ozone attainment maintenance area. In other words, this revision ensures that gasoline stations will remain subject to Regulation No. 3 requirements after Denver's redesignation to attainment.

We concur with this revision to Regulation No. 3 and we are proposing approval of this change.

VI. EPA's Evaluation of the Regulation No. 7 Revisions

As we noted above, the Governor of Colorado had previously submitted minor revisions to Regulation No. 7 in conjunction with the Governor's original August 8, 1996, submittal of the Denver ozone maintenance plan. Section I.A.1 of Regulation No. 7, ''Applicability'', previously read ''The provisions of this regulation shall apply only to ozone nonattainment areas with the exception of Section V, Paragraphs VI.B.1 and 2., and Subsection VII.C., which shall apply statewide.'' This was revised in the Governor's August 8, 1996, submittal to read ''The provisions of this regulation shall apply only to ozone nonattainment areas and the Denver Metro Attainment Maintenance Area with the exception of Section V, Paragraphs VI.B.1 and 2., and Subsection VII.C., which shall apply statewide.''

We concur with this revision to Regulation No. 7 and we are proposing approval of this change. We note that additional revisions to Regulation No. 7 were also submitted with the Governor's August 8, 1996, submittal and included the addition of paragraphs A.2., A.3., and A.4. to create ''de minimus'' exemptions. We are not taking any action on these revisions and will not consider them with our proposed approval of the Governor's November 30, 2000, submittal.

VII. EPA's Evaluation of the Request for Revision to 40 CFR 80.27(a)(2) for RVP

Since 1991, gasoline sold in the Denver area during the summer ozone season (June 1st to September 15th for gasoline RVP) has been subject to a national Reid Vapor Pressure (RVP) limit of 7.8 psi (8.8 psi for ethanol-blended fuels) in order to reduce fuel volatility. Since the Denver area has not violated the 1-hour ozone standard since the late 1980s, the State has previously requested, and EPA has granted, waivers to allow a 9.0 psi RVP (10.0 psi for ethanol-blends) gasoline in the Denver area instead of the more stringent 7.8 psi RVP limit.

The maintenance plan that was submitted by the Governor on November 30, 2000, incorporates a gasoline RVP limit of 9.0 psi in the maintenance demonstration. Since maintenance of the 1-hour ozone NAAQS is shown for the entire maintenance time period of 1993 through 2013 with this 9.0 psi limit, the State of Colorado has requested that the 9.0 psi summertime RVP limit (10.0 psi for ethanol-blends) be made permanent for the Denver attainment/maintenance area once EPA approves the redesignation request and maintenance plan. We believe this change would be appropriate. However, separate rulemaking through our Headquarters office is necessary to revise the RVP requirements for Colorado as specified in 40 CFR 80.27(a)(2). We anticipate that our Headquarters office will pursue this rulemaking action if and when we fully approve the redesignation request and maintenance plan.

VIII. Proposed Rulemaking Action and Request for Public Comment

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. As stated above, we are proposing approval of the Governor's November 30, 2000, request to redesignate the Denver 1-hour ozone NAAQS nonattainment area to attainment, the maintenance plan and the minor technical changes as adopted by the AQCC on January 11, 2001, and the August 8, 1996, revisions to Regulation No. 3 and Regulation No. 7. Send your comments in duplicate to the address listed at the front of this proposed rule. We will consider your comments in deciding our final action if your letter is received before June 11, 2001.

Administrative Requirements

(a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

(b) Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

(c) Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a

regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes approval of a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. In addition, redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

(d) Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this proposed rule.

(e) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP proposed approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA U.S.A.*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area and does not impose any regulatory requirements. Therefore, because the Federal SIP proposed approval does not create any new requirements, I certify that the proposed approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

(f) Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 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 the 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.

EPA has determined that the proposed approval action 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 proposes approval of pre-existing 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.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 27, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 01–11915 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TN–T5–2001–03; FRL–6977–7]

Clean Air Act Proposed Full Approval of Operating Permit Program; Tennessee and Memphis-Shelby County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: In response to a request from Mr. George Hays as counsel for the National Parks Conservation Association, EPA is reopening the comment period for a proposed rule published on March 20, 2001, in the **Federal Register** (66 FR 15680) for full approval of the operating permit programs submitted by the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department.

DATES: Written comments must be received by EPA on or before June 11, 2001.

ADDRESSES: Comments should be addressed to Ms. Kim Pierce, Regional Title V Program Manager, Air & Radiation Technology Branch, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA Region 4, at (404) 562–9124 or *pierce.kim@epa.gov/.*

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section and the proposed rule located in the proposed rules section of the **Federal Register** published on March 20, 2001.

Dated: May 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–11911 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6958–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment.

The EPA is also proposing to grant a petition submitted by Tenneco Automotive, Inc. (Tenneco) to exclude (or delist) certain solid wastes generated by its Paragould, Arkansas, facility from the lists of hazardous wastes contained in 40 CFR 261.24 and 261.31 (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

Tenneco submitted the petition under sections 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Tenneco's petitioned waste is nonhazardous with respect to the original listing criteria and that the stabilization process Tenneco used will substantially reduce the likelihood of migration of constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until June 25, 2001. We will stamp comments received after the close of the comment period as ''late.'' These ''late'' comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by June 11, 2001. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to the Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas, 72209–8913. Identify your comments at the top with this regulatory docket number: ''F–00–ARDEL–TENNECO.''

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Michelle Peace at (214) 665–7430.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
- A. What action is EPA proposing?
- B. Why is EPA proposing to approve this delisting?
- C. How will Tenneco manage the waste if it is delisted?
- D. When would EPA finalize the proposed delisting?
- E. How would this action affect States?

II. Background
- A. What is the history of the delisting program?
- B. What is a delisting petition, and what does it require of a petitioner?
- C. What factors must EPA consider in deciding whether to grant a delisting petition?

III. EPA's Evaluation of the Waste Information and Data
- A. What wastes did Tenneco petition EPA to delist?
- B. What is Tenneco, and how did it generate this waste?
- C. What information and analyses did Tenneco submit to support its petition?
- D. What were the results of Tenneco's analysis?
- E. How did EPA evaluate the risk of delisting this waste?
- F. What did EPA conclude about Tenneco's analysis?
- G. What other factors did EPA consider?
- H. What is EPA's evaluation of this delisting petition?

IV. Next Steps
- A. With what conditions must the petitioner comply?
- B. What happens if Tenneco violates the terms and conditions?

V. Public Comments
- A. How can I as an interested party submit comments?
- B. How may I review the docket or obtain copies of the proposed exclusions?

VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act
IX. Unfunded Mandates Reform Act
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer and Advancements Act
XIII. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) To grant Tenneco's petition to have its stabilized sludge excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Tenneco's petition requests a delisting for listed hazardous wastes. Tenneco does not believe that the petitioned waste meets the criteria for which EPA listed it. Tenneco also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the

waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. The EPA's proposed decision to delist waste from Tenneco's facility is based on the information submitted in support of today's rule, *i.e.,* descriptions of the wastes and analytical data from the Paragould facility.

C. How Will Tenneco Manage the Waste if It Is Delisted?

Tenneco currently stores the petitioned waste (stabilized sludge) generated in containment vaults on-site at its facility. If the delisting exclusion is finalized, Tenneco will dispose of the sludge in a solid waste landfill in Arkansas.

D. When Would EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

RCRA section 3010(b)(1) at 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Tenneco transports the petitioned waste to or manages the waste in any State with delisting authorization, Tenneco must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, sections 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under section 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in section 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and

remain hazardous wastes until excluded.

The ''mixture'' and ''derived-from'' rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived from'' rules and remanded them to EPA on procedural grounds. See *Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (D.C. Cir. 1991). EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See 57 FR 7628 (March 3, 1992). These rules became final on October 30, 1992. See 57 FR 49278 (October 30, 1992). Consult these references for more information about mixtures and derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Tenneco Petition EPA To Delist?

On September 8, 2000, Tenneco petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, stabilized sludge excavated from the Finch Road Landfill in Paragould, Arkansas. The waste falls under the classification of listed waste because of the ''derived from'' rule in 40 CFR 261.3. Specifically, in its petition, Tenneco requested that EPA grant an exclusion for 1,800 cubic yards of dewatered sludge resulting from its hazardous waste treatment process. The resulting waste is listed, in accordance with the ''derived from'' rule.

B. What Is Tenneco, and How Did It Generate This Waste?

In 1973, Monroe Auto Equipment Company (now Tenneco Automotive, Inc.) purchased a seven-acre tract of land, which included an inactive sand and gravel borrow pit. This site was approved by the State to be used as a landfill. Approximately 15,400 cubic yards of waste water treatment sludge was deposited in the borrow pit between 1973 and 1978, the sludge originated from settling ponds that were used for the treated waste water from Tenneco's Paragould manufacturing plant. In 1996, a Superfund Record of Decision (ROD) was issued pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan at 40 CFR 300.430(f)(5) for the Finch Road Landfill. The ROD specified the requirements for remediation of the soil and groundwater at the site. In 1999, Tenneco submitted a petition to modify the ROD to include the excavation, treatment, and off-disposal of the waste in a Subtitle D landfill.

The Superfund removal action consisted of the excavation and segregation of the sludge; stabilizing the sludge with 10 percent lime addition; and stockpiling the stabilized sludge in an on-site lined containment cell.

The waste would not have been classified as RCRA hazardous waste in its original state because it was generated and placed in the Finch Road landfill prior to RCRA regulation. The stabilized sludge currently falls under the classification of listed waste because of the management (removal action) of the material occurred after the effective date of the rules in 1980. It is listed as F006, sludge from electroplating operations, based upon its original source. The waste code of the constituents of concern is EPA Hazardous Waste No. F006. The constituents of concern for F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

C. What Information and Analyses Did Tenneco Submit To Support Its Petition?

To support its petition, Tenneco submitted:

(1) historical information on past waste generation and management practices;

(2) results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) results from total oil and grease analyses and pH measurements.

D. What Were the Results of Tenneco's Analysis?

The EPA believes that the descriptions of the Tenneco analytical characterization provide a reasonable basis to grant Tenneco's petition for an exclusion of the stabilized sludge. The EPA believes the data submitted in support of the petition show the stabilized sludge is non-hazardous. Analytical data for the stabilized sludge samples were used in the DRAS. The data summaries for detected constituents are presented in Tables I. The EPA has reviewed the sampling procedures used by Tenneco and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the stabilized sludge. The data submitted in support of the petition show that constituents in Tenneco's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Tenneco has successfully demonstrated that the stabilized sludge is non-hazardous.

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS STABILIZED SLUDGE [1]

Constituent	Total constituent analyses (mg/kg)	TCLP Leachate concentration (mg/l)
Antimony	13.4	0.00335
Arsenic	21.5	0.0125
Barium	3.35	0.371
Benzene	0.008	0.050
Cadmium	0.423	0.050
cis-1,3-Dichloropropene	0.023	0.050
Ethylbenzene	0.04	0.0015
Lead	575	0.223
Mercury	0.00015	0.0006
Methyl ethyl ketone	0.076	0.00015
Nickel	7.32	0.07
Tetrachloroethylene	0.014	0.0015
Toluene	0.073	0.0015
1,1,1-Trichloroethane	0.011	0.005
Trichloroethylene	0.029	0.0015

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS STABILIZED SLUDGE [1]—Continued

Constituent	Total constituent analyses (mg/kg)	TCLP Leachate concentration (mg/l)
Xylenes (total)	0.22	0.0015

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

E. How Did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.,* ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Tenneco's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may release from the petitioned waste after disposal and determined the potential impact of the disposal of Tenneco's petitioned waste on human health and the environment. A copy of this software can be found on the world wide web at *www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Tenneco has never directly disposed of this material in its solid waste landfill, so no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

The EPA believes that the descriptions of Tenneco's hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA should grant Tenneco's petition for a one-time exclusion of the stabilized sludge.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table II. Based on the DRAS, the petitioned waste should be delisted because no constituents of concern exceed the maximum allowable concentrations.

TABLE II.—DRAS MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE

Constituent	DRAS maximum allowable Leachate concentration (mg/l)
Antimony	15.1
Arsenic	0.274
Barium	100
Benzene	0.163

TABLE II.—DRAS MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE—Continued

Constituent	DRAS maximum allowable Leachate concentration (mg/l)
Cadmium	1.0
Cis-1,3-Dichloropropene	93800
Ethylbenzene	55.8
Lead	5.0
Mercury	0.2
Methyl ethyl ketone	200
Nickel	827
Tetrachloroethylene	0.7
Toluene	98.5
1,1,1-Trichloroethane	23.2
Trichloroethylene	0.5
Xylenes (total)	1750

F. What Did EPA Conclude About Tenneco's Analysis?

The EPA concluded, after reviewing Tenneco's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Tenneco's waste. In addition, on the basis of explanations and analytical data provided by Tenneco, pursuant to section 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did EPA Consider?

During the evaluation of Tenneco's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Tenneco's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Tenneco's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Tenneco's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Tenneco's stabilized sludge. A description of EPA's assessment of the potential impact of Tenneco's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule, F–00–ARDEL–TENNECO.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 *FR* 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Tenneco's waste were released from a municipal solid waste landfill through runoff and erosion. See, the RCRA public docket for today's proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Tenneco's stabilized sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Tenneco's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this document), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table II). We believe Tenneco's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Tenneco's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant Tenneco an exclusion for the stabilized sludge. The EPA believes the data submitted in support of the petition show Tenneco's process can render the stabilized sludge nonhazardous.

We have reviewed the sampling procedures used by Tenneco and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the stabilized sludge. The data submitted in support of the petition show that constituents in Tenneco's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that Tenneco has successfully demonstrated that the stabilized sludge is nonhazardous.

The EPA therefore, proposes to grant a one-time exclusion to the Tenneco Automotive, in Paragould, Arkansas, for the stabilized sludge described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the stabilized sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Tenneco, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1. The text below gives the rationale and details of those requirements.

If the proposed exclusion is made final, it will apply only to 1,800 cubic yards of stabilized sludge. This is a one-time disposal of the sludge. We would require Tenneco to file a new delisting petition if it generates more than 1,800 cubic yards of waste. Tenneco must manage waste volumes greater than 1,800 cubic yards of stabilized sludge as hazardous until we grant a new exclusion.

If this exclusion becomes final, Tenneco's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Tenneco would be required to either treat, store, or dispose of the waste in an on-site facility that has a state permit, license, or is registered to manage municipal or industrial solid waste. If not, Tenneco must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or is registered to manage municipal or industrial solid waste.

(1) Reopener Language

The purpose of this condition is to require Tenneco to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented. This provision expressly requires Tenneco to report differing site conditions or assumptions used in the petition within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at section 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b).

(2) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Tenneco provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. This notification requirement must be met if the waste is transported off-site. Tenneco must provide this notification within 60 days of commencing this activity.

B. What Happens If Tenneco Violates the Terms and Conditions?

If Tenneco violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will evaluate the need for enforcement activities on a case-by-case basis. The Agency expects Tenneco to conduct the appropriate waste analysis and comply with the criteria explained above in Condition 1 of the exclusion.

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Arkansas Department of Environmental Quality, P.O. Box 8913, Little Rock, Arkansas, 72209–8913 Identify your comments at the top with this regulatory docket number: ''F–00–ARDEL–TENNECO.''

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available

for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and

local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: March 12, 2001.

Carl E. Edlund,

P.E., Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Tenneco Automotive.	Paragould, AR ..	Stabilized sludge from electroplating operations, excavated from the Finch Road Landfill and currently stored in containment cells by Tenneco (EPA Hazardous Waste Nos. F006). This is a one-time exclusion for 1,800 cubic yards of stabilized sludge. This exclusion was published on May 11, 2001. (1) Reopener Language: (A) If, anytime after disposal of the delisted waste, Tenneco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If Tenneco fails to submit the information described in (2)(A) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (D) Following the receipt of information from the facility described in (1)(C) or (if no information is presented under (1)(C)) the initial receipt of information described in (1)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (2) Notification Requirements: Tenneco must do following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if Tenneco ships the delisted waste to a different disposal facility.
*	*	* * * * *

[FR Doc. 01–11912 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 050101C]

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

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

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

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has received a proposal to conduct experimental fishing and has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to four federally permitted vessels in the limited access multispecies fishery to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The vessels would collect catch data to support the development of new trawl mesh selectivity curves for the Southern New England (SNE) yellowtail flounder fishery. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this action must be received on or before May 29, 2001.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Rhode Island EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Policy Analyst, (978) 281–9280, e-mail david.gouveia@noaa.gov.

SUPPLEMENTARY INFORMATION: The Rhode Island Department of Environmental Management, Division of Fish and Wildlife (applicant) submitted an application for EFPs on April 10, 2001. The EFPs will facilitate the collection of catch data that will support the development of trawl mesh selectivity curves for the SNE yellowtail flounder fishery. The applicant intends to provide the trawl mesh selectivity curves to fisheries managers as a tool for managers to match the minimum legal yellowtail flounder size with the size of yellowtail flounder retained by the appropriate mesh size.

The New England Fishery Management Council (Council) is currently developing Amendment 13 to the FMP (Amendment 13), which will include a rebuilding program associated with the overfishing definitions implemented under Amendment 9 to the FMP. As part of its November 2000 report, the Multispecies Monitoring Committee (MMC) provided management advice for the revised overfishing definitions, which serves as a guide for the development of rebuilding programs associated with the overfishing definitions. The MMC report concluded that SNE yellowtail flounder is at a low stock abundance and that fishing mortality should be as close to zero as practicable over the foreseeable future.

During the course of the development of Amendment 13, the Council has assembled a wide range of management alternatives in response to the SNE yellowtail flounder recommendations provided by the MMC. The management alternatives include: Trip limits; increases to the minimum fish and/or mesh sizes; area closures; and day-at-sea (DAS) reductions. Of the alternatives currently being considered to achieve the necessary reductions, the applicant states that the alternative for increasing minimum fish and/or mesh sizes may be more acceptable to the fishing community than widespread area closures. Implementation of large closures would likely have a severe impact on the SNE commercial fishing community, and the applicant is seeking additional information that may support the minimum fish and/or mesh size alternative.

The applicant acknowledges the studies used in the development of the current minimum fish and mesh size restrictions for the yellowtail flounder fishery, but notes that more recent studies conducted within Massachusetts and Rhode Island state waters show different results than did the earlier studies.

The applicant proposes to examine the differences between the mesh selectivity of 6-inch (15.24-cm) diamond and 6.5-inch (16.51-cm) square mesh to 6.5-inch (16.51-cm) diamond and 7-inch (17.78-cm) square mesh. To accomplish this task, an alternate tow design will be utilized for a comparison of mesh selectivity. Each net configuration will be tested with and without a 3-inch (7.62-cm) liner. The applicants will charter up to four federally permitted vessels in the limited access multispecies fishery. Participating vessels will take four half-day trips (totaling 16 trips). All trips will be completed during daylight hours and must include at least two scientific personnel. Each trip will complete six tows (three with a liner and three without). Tows will last approximately 90 minutes each.

Participating vessels would be fishing under the multispecies DAS program, and thus would be authorized to retain and sell all legal-sized groundfish and bycatch species up to the regulatory amounts for each species. The proceeds generated from the sale of the fish would help defray the cost associated with the research. The research would be conducted in areas open to commercial fishing within statistical areas 537 and 539 from the date of the issuance of the EFPs through July 31, 2001.

The applicant will select participating vessels based on their owners' or operators' knowledge of the trawl fishery for yellowtail flounder, familiarity with local fishing methodology, familiarity with the survey area, and possession of trawl gear (except netting). The applicant will provide the proper mesh configuration. Vessels would be required to comply with all conditions of the EFP, as well as all applicable regulations specified under 50 CFR part 648, including the multispecies DAS program and all applicable trip and possession limits for all species caught.

For the purposes of comparing the catch from each mesh configuration, the EFP would also exempt the vessels from the multispecies minimum mesh size restrictions specified under 50 CFR 648.80(b)(2)(i), and allow participating vessels limited use of a 3-inch (7.62-cm) trawl mesh liner. In order to obtain data

on yellowtail flounder catch distribution, the participating vessels may be required to temporarily retain species that are less than the minimum fish size specified at 50 CFR 648.83(a)(1). No species less than the legal minimum fish size may be landed or sold.

Participating vessels would be required to fish in accordance with a sampling plan designed by the applicant, maintain logbooks documenting fishing activities, carry on-board observers trained in fish taxonomy, and allow biological information to be collected from the catches.

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

Dated: May 7, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–11944 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 92
Friday, May 11, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV01–945–610 Review]

Idaho-Eastern Oregon Potatoes; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This notice announces that the Agricultural Marketing Service (AMS) plans to review Marketing Order 945, which regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice must be received by July 10, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. 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) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* 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, or may be viewed at *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; E-mail: *Robert.Curry@usda.gov;* or George Kelhart, 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) 720–8938; E-mail: *George.Kelhart@usda.gov.*

SUPPLEMENTARY INFORMATION: Marketing Order No. 945, as amended (7 CFR part 945), regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 945, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS' regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for Idaho-Eastern Oregon potatoes.

The purpose of the review will be to determine whether the Idaho-Eastern Oregon potato marketing order should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, views, opinions, and other information regarding the potato marketing order's impact on small businesses are invited.

Dated: May 7, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–11864 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

County Line—Fourmile Project, McKean And Warren Counties, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, Allegheny National Forest, Bradford Ranger District will prepare an environmental impact statement (EIS) to disclose the environmental consequences of the proposed County Line—Fourmile Project, and alternatives to the proposal.

The County Line—Fourmile Project area is located just north and northeast of Sheffield, Pennsylvania within Mead and Sheffield Townships in Warren County and Hamilton Township in McKean County. The total project area is approximately 12,515 acres, with 70% National Forest System lands and 30% private land.

The Forest Service is proposing to move from the existing condition of the County Line—Fourmile project area towards the Desired Future Condition, as detailed in the Allegheny National Forest Land and Resource Management Plan. Vegetation management, wildlife habitat improvements and transportation activities are proposed to respond to the following resource management needs: (1) To restore native vegetation to improve plant and wildlife habitat diversity, and move toward the desired age class distributions of forested stands, (2) To foster sustainable forest management through harvest and reforestation projects in stands needing treatment, (3) To provide high quality hardwoods and contribute to the economic vitality of local communities, (4) To improve wildlife cover and forage conditions and the distribution of non-

forest wildlife habitats, (5) To improve the distribution of non-forest habitats to meet the needs of wildlife species that prefer or require herbaceous openings, and (6) To provide an adequate transportation system to facilitate the activities proposed while protecting watershed values.

Proposed activities to meet the Desired Future Condition are: (1) Initiation of regeneration harvest through a shelterwood/removal cut sequence (604 acres); (2) Completion of removal cuts on stands already treated with a shelterwood (527 acres); (3) Intermediate harvest including thinning and conifer release (199 acres); (4) Reforestation treatments including herbicide application (1080 acres), site preparation (967 acres), fertilization (644 acres), and fencing (139 acres); (5) Wildlife habitat improvement including conifer/mast underplanting (219 acres), planting shrubs and mast in openings (49 acres), opening construction/maintenance and seeding (141 acres), savannah construction (6 acres), apple tree pruning and releasing shrubs (48 acres), and vernal pool construction (9 pools); (6) Transportation activities on roads to be used for the proposed timber sale including road construction (0.6 miles), road reconstruction (2.6 miles), road maintenance (22.6 miles), limestone surfacing (5.7 miles), and stone pit expansion and construction (8 acres); and (7) Resource protection activities including closing the end of Forest Road 139.3 (0.9 miles).

DATES: Comments identifying issues concerning the effects of the proposal should be postmarked on or before June 4, 2001 to receive timely consideration in the draft EIS. See **SUPPLEMENTARY INFORMATION** section for public meeting dates.

ADDRESSES: Submit written comments to: Chris Ryan, Team Leader, USDA Forest Service, 3801 Pegasus Drive, Bakersfield, CA 93308. Send electronic comments to: *r9_allegheny_nf@fs.fed.us.* See **SUPPLEMENTARY INFORMATION** section for additional information about electronic filing and public meeting addresses.

FOR FURTHER INFORMATION CONTACT: Chris Ryan, Team Leader, at 661–391–6107 or Jim Apgar, Bradford Ranger District, at 814–362–4613.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information presented in this notice is summarized. Those who wish to provide comments, or are otherwise interested in the project, are encouraged to obtain additional information from the contact identified in the **FOR FURTHER INFORMATION CONTACT** section.

Preliminary Issues

Three preliminary issues have been identified:

1. Road Management—The Forest Service will complete a Roads Analysis, which will assess the benefits, problems and risks of the current road system within the project area and identify management opportunities. This analysis may identify road issues related to the proposal.

2. Even-Aged/Uneven-Aged Management—The Forest Plan specifies the primary silvicultural system to be used in each management area. Even-aged management is the system identified for most of the Project Area. Uneven-aged management is an option considered for inclusions such as riparian areas, wet soils, or visually sensitive areas.

The interdisciplinary team will develop and analyze at least one alternative emphasizing uneven-aged management.

3. Class A Trout Fishery—The Project Area includes Fourmile Run, which is a Class A trout fishery. Maintenance of fisheries values and water quality will be important considerations for management activities in the vicinity.

Public Involvement and Public Meetings

An Open House will be held to provide information on the Roads Analysis for this project and for other projects proposed on the Bradford Ranger District. This meeting will be held at the Bradford Ranger District Office on May 14, 2001, from 2 p.m.–7 p.m.

Comments may be sent by electronic mail to *r9_allegheny_nf@fs.fed.us.* Please reference the County Line—Fourmile Project on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

Additional information concerning the proposal can be accessed on the internet in the ''Projects'' section of the Allegheny National Forest website, located at www.fs.fed.us/r9/allegheny.

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review by September 2001. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Comments received, including names and addresses of those who comment, will become part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519 553 [1978]). Also, environmental objection that could be raised at the draft environmental impact statement state but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. After the comment period ends on the draft EIS, the comments received will be analyzed and considered by the Forest Service in preparing the final EIS.

The final EIS is scheduled to be completed in March 2002. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement,

and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215.

The responsible official is John R. Schultz, District Ranger, Allegheny National Forest, Bradford Ranger District, HC 1, Box 88, Bradford, PA 16701.

Dated: April 24, 2001.

Dale Dunshie,

Acting Forest Supervisor,

[FR Doc. 01–11866 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Middle Fork Payette River Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the Middle Fork of the Payette River. The entire project area is located within watersheds that drain directly into the Middle Fork of the Payette River or its tributaries. The project area is located 12 miles east of Cascade, Idaho, and about 100 miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time, no public meetings to discuss the project are planned.

Proposed Action: Two primary objectives have been identified for the project: (1) Reduce current and future stand susceptibility to western spruce budworm, Douglas-fir beetle, and mountain pine beetle by moving stand densities, structures, and/or species compositions towards their historic conditions, and; (2) improve long-term stand growth to or near levels indicative of healthy, sustainable forests.

The Proposed Action would treat an estimated 881 acres in the 15,881 acre project area. Proposed activities would occur within a portion of the 67,637 acre Gold Fork/Clear Creek Management Area 53. An estimated 4.0 MMbf of timber would be harvested using ground-based (697 acres), skyline (24 acres), and helicopter (160 acres) yarding systems. The Proposed Action would employ a variety of silvicultural prescriptions including commercial thin (169 acres), improvement cut/sanitation (430 acres), seed cut shelterwood (95 acres), final removal shelterwood (147 acres), and clearcut with reserve trees (40 acres). The existing transportation system would be improved to facilitate log haul and reduce sedimentation with individual sections of 3.3 miles of road being reconstructed. An estimated 0.5 miles of specified road and 0.2 miles of temporary road would be constructed to facilitate harvest. In addition, 0.7 miles of the #409F road, currently closed year-round, would be decommissioned.

Preliminary Issues: Preliminary concerns with the Proposed Action include: (1) Potential impacts on sediment delivery to area streams; (2) potential impacts on bull trout, and; (3) potential impacts on the visual quality of the area.

Possible Alternatives to the Proposed Action: One alternative to the Proposed Action has been discussed thus far: (1) a no action alternative. Other alternatives will likely be developed as issues are identified and information received.

Decisions to be Made: The Boise National Forest Supervisor will decide the following. Should roads be built and timber harvested within the project area at this time, and if so; where within the project area, and how many miles of road should be built; and which stands should be treated and what silvicultural systems should be used? What design features and/or mitigation measures should be applied to the project? Should the decommissioning of existing roads be implemented at this time?

DATES: Written comments concerning the proposed project and analysis are encouraged and should be postmarked on or before June 11, 2001.

Schedule: Draft Environmental Impact Statement (DEIS), July 2001. Final Environmental Impact Statement (FEIS), September 2001.

ADDRESSES: Comments should be addressed to Keith Dimmett, Cascade Ranger District, P.O. Box 696, Cascade, ID 83611. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Keith Dimmett at the address mentioned above or by calling (208) 382–7430.

SUPPLEMENTARY INFORMATION: The NFMA planning for this project was initiated in the spring of 2001 with the Upper Middle Fork Payette River Ecosystem Analysis at the Watershed Scale (EAWS). A letter announcing plans to complete the EAWS and soliciting comments was mailed to interest individuals and/or groups in March of 2001.

Roughly 70 percent of the project area occurs within one of two inventoried roadless areas (IRA's). A portion of the Peace Rock IRA occupies an estimated 8,947 acres, and a section of the Stony Meadows IRA another 2,357 acres of the project area. A large portion of the project area also occurs within Management Area 43 (Peace Rock). The Proposed Action does not include any management activities within either IRA or within Management Area 43.

The Middle Fork Payette River originates within, and runs through the center of the project area. The Forest Plan discloses that that segment of the river from Railroad Pass to the Middle Fork Bridge on the #409 road is potentially eligible for inclusion in the National Wild and Scenic River system as a ''wild'' river. However, in June of 1991 the Forest Plan was corrected to show that this segment of the river is potentially eligible as a ''recreational'' river.

The comment period on the DEIS will be 45 days from the date of the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the

Forest Service at a time when it can meaningful consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Anne F. Archie, Acting Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Boise, ID 83709.

Dated: May 3, 2001.

Anne F. Archie,

Acting Forest Supervisor.

[FR Doc. 01–11611 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle/Kootenai/Lolo National Forests Grizzly Bear Forest Plan Amendment; Idaho Panhandle, Kootenai and Lolo National Forests; Lincoln and Sanders Counties, MT; Boundary and Bonner Counties; Idaho; and Pend Oreille County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement to amend land and resource management plans for the Idaho Panhandle, Kootenai, and Lolo National Forests.

SUMMARY: The Forest Supervisors of the Idaho Panhandle, Kootenai and Lolo National Forests give notice of the agency's intent to prepare an environmental impact statement (EIS) in conjunction with the establishment of new management direction for the grizzly bear within the Selkirk and Cabinet/Yaak Grizzly Bear Recovery Zones. The Forest Service has identified the need to update management direction, based on new information regarding grizzly bear biology.

DATES: Comments concerning the scope of the analysis should be postmarked by June 11, 2001. The agency expects to file a draft EIS with the Environmental Protection Agency (EPA) and make it available for public, agency, and tribal government comment in the summer of 2001. A final EIS is expected to be filed in February 2002.

ADDRESSES: Send written comments to Bob Castaneda, Forest Supervisor, Kootenai National Forest, 1101 US Hwy 2 West, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Rob Carlin, Grizzly Bear Plan Amendment Interdisciplinary Team Leader (406) 882–4451.

Responsible Officials: Pat Aguilar, Idaho Panhandle National Forests—Acting Forest Supervisor; Bob Castaneda, Kootenai National Forests—Forest Supervisor; and Deborah Austin, Lolo National Forest—Forest Supervisor.

SUPPLEMENTARY INFORMATION: In 1998, the Selkirk/Cabinet-Yaak grizzly Bear Subcommittee recommended new access management direction to aid in the recovery of the threatened grizzly bear within the Selkirk/Cabinet-Yaak Grizzly Bear Recovery Zones. This direction was titled the ''Interim Access Management Strategy''. Additional information was provided in an ''Interim Access Management Rule Set.'' This new direction is based on new information regarding grizzly bear habitat needs, including the need for core security areas. The purpose for the amendment is to update Forest Plan management direction to respond to the recommendations and new information presented by the Selkirk/Cabinet Yaak Grizzly Bear Subcommittee.

Proposed Action

The Forest Supervisors are proposing to amend their respective Forest Plans regarding Forest Plan standards and monitoring requirements that respond to the recommendations of the Interim Access Management Strategy and Interim Access Management Rule Set. The decision to be made is whether to adopt the proposed action as designed, with different requirements, or not at all.

This amendment would result in a new appendix to the Idaho Panhandle and Lolo National Forest Land and Resource Management Plans (Forest Plans). It will be an addendum to the Kootenai National Forest, Forest Plan, Appendix 8.

The Interim Access Management Strategy and Interim Access Management Rule Set comprise a set of access related guidelines developed over the past few years by the Selkirk/Cabinet-Yaak Subcommittee of the Interagency Grizzly Bear Committee (IGBC). The guidelines address the following access management parameters: (1) Habitat security, (2) core area, (3) trial use of access related to habitat quality/season, (4) motorized access route density, (5) monitoring, and (6) coordination with state wildlife agencies. The Rule Set also clearly discloses definitions of terminology related to each specific parameter. The complete text of these two documents is available on the IGBC internet website at *http://www.fs.fed.us/r1/wildlife/igbc/scy/main.htm.* Copies may also be requested by contacting Rob Carlin, ID Team Leader, at 406–882–4451.

Preliminary Issues and Alternatives

Some preliminary issues have already been identified and are listed below. These issues apply only to National Forest System lands on the units listed previously in this notice.

The interim access management strategy and rule set may affect the ability to use roads and trails, the construction of roads and trails, and the closure and decommissioning of roads and trails. This potentially influences activities such as timber harvest, recreation use, administrative management activities, and other uses associated with Forest Service roads and trails.

The interim access management strategy and rule set did not recommend standards for total and open motorized route density. Therefore, some people are concerned that the strategy and rule set do not fully address the habitat needs of grizzly bears.

Public Involvement

The first public participation efforts involving the Interim Access Management Strategy and Rule Set began in the spring and summer of 1997 with a series of seven workshops held throughout Washington, Idaho, and Montana. Nearly 300 individuals either sent letters or asked to be placed on the project mailing list. The key public concerns identified at the workshops were: (1) The need to consider habitat needs in relation to timing of road access restrictions; (2) the need to consider hunting regulations and law enforcement; and (3) the need to consider access options to provide the public a reasonable level of access to the National Forests.

The Forest Supervisors are giving notice that the Idaho Panhandle, Kootenai, and Lolo National Forests are beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision. The Forest Service is seeking comments from individuals, organizations, tribal governments, and Federal, State, and local agencies that are interested or may be affected by the proposed action. The public is invited

to help identify issues that define the range of alternatives to be considered in the environmental impact statement. The range of alternatives considered in the DEIS will be based on the issues and specific decisions to be made. Written comments identifying issues for analysis and the range of alternatives are encouraged.

Estimated Dates for Filing

The draft EIS is expected to be filed with the EPA and to be available for public review in the summer of 2001. The comment period on the draft environmental impact statement will be 90 days from the date the EPA publishes the Notice of Availability in the **Federal Register.**

The final EIS is scheduled to be completed by February 2002. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewer's Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objects are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the Natural Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 24, 2001.

Bob Castaneda,

Forest Supervisor—Kootenai National Forest.

[FR Doc. 01–11813 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rock Springs Generation, LLC; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to the development of a 1,020-megawatt, natural gas fired combustion turbine electric generation plant in Cecil County, Maryland, by Old Dominion Electric Cooperative and Outwater Limited Funding Partnership. RUS may provide financing for the plant to an affiliate of Old Dominion Electric Cooperative to be known as the Rock Springs Generation, LLC. The specifics of that entity have yet to be determined. The plant will be named the Rock Springs Generation Station. Rock Springs Generation, LLC, will initially own one-half of the plant (510 megawatts).

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The plant will be located in the community of Rock Springs, in northwestern Cecil County, Maryland, at the intersection of Old Mill Road and U.S. Route 222. The plant comprises six, 170-megawatt, gas-fired General Electric Frame 7FA combustion turbines. Each combustion turbine will have a 75-foot exhaust stack. The entire plant will be situated on approximately 26 acres of the 93-acre site. No major natural gas pipeline or electric transmission line improvements will be needed beyond the proposed site boundaries. A short electric transmission line span will be constructed on a 5-acre parcel owned by Rock Springs Generation, LLC adjacent to the plant site to tie the plant to an existing 500 kilovolt transmission line located southwest of Old Mill Road.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Mr. David Smith of Old Dominion Electric Cooperative, Insbrook Corporate Center, 4201 Dominion Boulevard; Glen Allen, Virginia 23060, telephone (804) 968–4045. Mr. Smith's e-mail address is dsmith@odec.com.

Dated: May 7, 2001.

Blaine D. Stockton,

Assistant Administrator, Electric Program.

[FR Doc. 01–11936 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 11, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 1, 2000 and March 23, 2001 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 75241 and 66 FR 16174) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Toner, Cartridges, New
7510–01–417–1220
7510–01–417–1222
7510–01–443–2121
Hat, Fleece
8415–00–NSH–0441

Services

Base Operating Services, Parks Reserve Forces Training Area, Dublin, California
Janitorial/Custodial, Federal Facilities Building, Cleveland-Hopkins International Airport, Cleveland, Ohio
Janitorial/Custodial, Naval Air Reserve Center, Minneapolis, Minnesota, Litigation Support Services, U.S. Department of Agriculture, The Animal and Plant Health Inspection Services, Agriculture Marketing Service,Minneapolis, Minnesota

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Patrick T. Mooney,

Director, Pricing and Program Operations.

[FR Doc. 01–11932 Filed 5–10–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

Comments Must Be Received on or Before: June 11, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Shaft, Propeller
2520–01–171–4844
NPA: Vocational Industries, Inc., Elkhorn, Wisconsin
Pallet, Wood
3990–00–NSH–0073
NPA: Goodwill Industries of South Texas, Inc., Corpus Christi, Texas

Services

Janitorial/Custodial, U.S. Federal Building, Courthouse and Post Office, Pierre, South Dakota
NPA: OAHE, Inc., Pierre, South Dakota
Transportation/Vehicle Operation Service, Brooks Air Force Base, Texas
NPA: Training, Rehabilitation & Development Institute, Inc., San Antonio, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Commodities

SuperDisk Drive
7025–01–454–8199
Apron, Laboratory
8415–00–715–0450

Patrick T. Mooney,

Director, Pricing and Program Operations.

[FR Doc. 01–11933 Filed 5–10–01; 8:45 am]

BILLING CODE 6353–01–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China

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

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza (Inner Mongolia and Zhejiang) at (202) 482–3019, Fred Baker (Kunshan) at (202) 482–2924, Charles Rast at (202) 482–1324 or Donna Kinsella at (202) 482–0194; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute and Regulations

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

Preliminary Determination

We preliminarily determine that honey from the People's Republic of China (the PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On October 26, 2000, the Department initiated antidumping investigations of honey from Argentina and the PRC. See Initiation of Antidumping Duty Investigations: Honey From Argentina and the People's Republic of China, 65 FR 65831–65834 (November 2, 2000) (Initiation Notice). The petitioners in these investigations are the American Honey Producers Association and the Sioux Honey Association. Since the initiation of these investigations, the following events have occurred with respect to honey from the PRC.

On November 13, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina and the PRC. On November 17, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Argentina and the PRC (65 FR 69573).

On November 27, 2000, the Department issued Section A of its antidumping duty questionnaire to the Embassy of the PRC with a letter requesting that it forward the questionnaire to all exporters of honey who shipped subject merchandise to the United States during the period of investigation (POI) and instruct those exporters to respond to Question 1, Section A. On December 12, 2000, the Department received responses from Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import and Export Corporation (Inner Mongolia), Kunshan Foreign Trading Company (Kunshan), Zhejiang Native Produce and Animal By-Products Import and Export Corporation (Zhejiang), High Hope International Group Jiangsu Foodstuffs Import and Export Corporation (High Hope), Shanghai Eswell Enterprise Company Ltd. (Shanghai Eswell), Anhui Native Produce Import and Export Corporation (Anhui), and Henan Native Produce Import and Export Corporation (Henan). Based on this information, the Department selected Inner Mongolia, Kunshan, and Zhejiang as mandatory respondents in this investigation because they represent, by volume, the three largest exporters of subject merchandise during the POI. See Memorandum to Joseph A. Spetrini, Selection of Respondents, dated December 19, 2000.

On December 19, 2000, the Department issued all sections of the antidumping duty questionnaire to Inner Mongolia, Kunshan, and Zhejiang. On January 19, 2001, we received responses to Section A of the Department's questionnaire from these three exporters as well as Section A responses from High Hope, Shanghai Eswell, Anhui, and Henan. On February 2, 2001, the Department issued supplemental Section A questionnaires to Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan. On February 23, 2001, we received responses from all seven exporters.

On February 9, 2001, Inner Mongolia, Kunshan, and Zhejiang responded to Sections C and D of the Department's questionnaire. Petitioners submitted comments on these responses on February 20, 2001. On February 13, 2001, we solicited comments from interested parties on surrogate country selection for purposes of this investigation. We received comments from petitioners and respondents Inner Mongolia, Kunshan, and Zhejiang on March 15, 2001. On February 23, 2001, the Department issued a supplemental questionnaire with respect to Sections C and D to the mandatory respondents. The Department issued a second supplemental questionnaire for Section A to the mandatory respondents on March 1, 2001. On March 16, 2001, Inner Mongolia, Kunshan, and Zhejiang responded to the supplemental questionnaire concerning Sections C and D and responded to the second supplemental questionnaire for Section A. Petitioners submitted comments on respondents' supplemental questionnaire responses (from March 16, 2001) on April 20, 2001 and April 23, 2001. OnApril 25, 2001, the mandatory respondents commented on petitioners' April 20, 2001 filing.

On March 19, 2001, we invited interested parties to provide publicly available information for valuing the factors of production. On April 4, 2001, we received comments and information from interested parties regarding valuation of the factors of production Petitioners and respondents filed rebuttal comments on April 11, 2001. On April 12, 2001, petitioners commented on respondents' April 11, 2001 filing. Respondents submitted additional comments and information on April 18, 2001. Petitioners also filed additional comments regarding the valuation of the factors of production on April 20, 2001 and April 23, 2001. On April 24, 2001, the Department requested that petitioners and respondents provide additional information and comments concerning the calculation of a surrogate value for factory overhead. See Memorandum to the File from Donna L. Kinsella (April 24, 2001). On April 27, 2001, we received responses from petitioners and respondents.

On March 29, 2001, the Department requested additional information on the export licensing system for honey in the PRC. On April 12, 2001 and April 18, 2001, all respondents provided this information.

On February 14, 2001, petitioners made a timely request for a fifty-day

postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 22, 2001, we postponed the preliminary determination until no later than May 4, 2001. See Honey from Argentina and the People's Republic of China: Notice of Postponement of Preliminary Antidumping Duty Determinations, 66 FR 12924 (March 1, 2001).

On February 23, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of honey from the PRC. On March 19, 2001, the Department requested monthly shipment data for the period February 1999 through February 2001 from Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan. On April 2, 2001, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan responded to this request.

Period of Investigation

In accordance with section 351.204(b)(1) of the Department's regulations, the POI comprises the two most recently completed fiscal quarters as of the month in which the petition was filed. For all exporters, this is the period of January 1, 2000 through June 30, 2000.

Scope of Investigation

For purposes of this investigation, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this investigation is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the Department's written description of the merchandise under investigation is dispositive.

Non-Market Economy Status for the People's Republic of China

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000), and Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. See Section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources used to value individual factors are discussed under the ''Normal Value'' section, below.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have provided company-specific separate rate information and have stated that there is no element of government ownership or control. In their questionnaire responses, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan state that they are independent companies ''owned by all the people'' and controlled by the general assembly of workers and employees. Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan further claim that they do not maintain any corporate relationship with the central, provincial, and local government in terms of production, management, and operations.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have stated that their exports of subject merchandise to the United States were subject to the export licensing system governing all exports of honey from the PRC. They submitted for the record the following relevant State Council laws and regulations governing the export licensing system: ''Notice on Issuing Guidelines of Quota Bidding for Exporting Commodities,'' ''Detailed Rules on Bidding for Exporting Commodity Quotas,'' and ''Notice of Issuing List of Commodities Subject to Export License Administration, 2001.'' While exports of honey from the PRC have been subject to licensing requirements for many years, during the POI of this proceeding, the export licensing system in effect was largely dictated by the terms of the Agreement Suspending the Antidumping Investigation of Honey from the PRC (the ''Agreement''). See 60 FR 42521 (August 16, 1995). In October 1995, for example, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) issued the Provisional Regulations for the Administration of Export of Honey to the United States (Provisional Regulations), which implemented the Agreement and established the process for PRC exporters to obtain the quotas necessary to export honey to the United States.

Under the terms of the Agreement, exports of PRC honey to the United States were subject to an annual limitation and a reference price at or above which all exports of honey to the United States were required to be sold. The annual limit for exports to the United States was allocated by MOFTEC to specific exporters through an open bidding process, in which the largest exporters bid first based on their historical export levels. Bid applications were processed by the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Produce and Animal By-Products (the ''Chamber''). After the largest 10 exporters bid and were allocated export volume, an open bidding process was initiated for the remaining 18 eligible exporters.[1] The total fee for the bid that the winner paid to MOFTEC for the export volume was based on the bidding prices and the quantity of the quota that the recipient won. Individual companies that had successfully bid for export limit were then notified of their respective quota allocation by the Foreign Trade Administration Department (FTA).[2]

Upon completion of the bidding process, the Chamber issued letters to each company successfully bidding for export volume, confirming that the company was eligible for an export license. This confirmation of eligibility for an export license, coupled with the

[1] Only those exporters that participated in the original 1994–95 PRC honey antidumping investigation were eligible to bid, on the grounds that only those companies had demonstrated their willingness to reliably participate in the investigation.

[2] If an export subsequently realized it could not fully utilize its export volume, it could ask the Chamber to allow it to transfer the unused portion to another exporter. Likewise, if an exporter realized it could export more than its export volume, it could apply to the Chamber for unused export volume transferred by other exporters.

notification of volume allocation from the FTA, allowed the exporter to enter into a contract for the sale of honey to the United States. The exporter then submitted to the Chamber the formal notification of volume allocation and a copy of its contract for sale of honey to the United States. The Chamber then reviewed the contract to ensure that the sale price was above the applicable reference price set by the Department.

The exporter then submitted to the Quota Licensing Board (QLB) or the Special Commissioners Office an application for an export license, including a copy of the formal notice of volume allocation from the FTA, the relevant contract for the sale of honey to the United States, and the letter of eligibility for an export license issued by the Chamber. Export licenses were issued on a shipment-specific basis, identified the price, quantity, and destination of the honey to be exported, and were valid for a period of three months from the date of issuance. After receiving an export license, the exporter would apply for a export volume certificate confirming that the exporter was authorized to export the quantity of honey covered by the sales contract. The QLB kept a running tally of the amount of export volume available to any individual exporter, and ensured that the amount of honey covered in a contract was less than or equal to that exporter's remaining export volume. The final step prior to exportation involved the submission of all relevant documents, including the export volume certificate and export license, to the PRC Customs Service, which checked the documentation before authorizing export.

The Agreement was terminated in July 2000. See Notice of Final Results of Five-Year (''Sunset'') Review, Termination of Suspended Antidumping Investigation on Honey From the People's Republic of China, 65 FR 46426 (July 28, 2000). Thereafter, MOFTEC made slight modifications to the export licensing system for honey. For example, under a new regulation issued by MOFTEC in December 2000, ''The Notice of Issuing List of Commodities Subject to Export License Administration, 2001 and Relevant Issues,'' export volume certificates are no longer required for exports of PRC honey to the United States. In the absence of a reference price issued by the Department and in an attempt to ensure that there is no dumping of Chinese honey, the Chamber, in consultation with the affected exporters, periodically establishes a minimum export price (EP) based on recent EPs. All exports of honey to the United States are required to be sold at or above this minimum EP.

The bidding process for export volume, however, remains the same as that in operation under the Agreement, and the annual limitation on exports of Chinese honey to the United States in effect at the time the Agreement was terminated remains in effect through July 2001.

The Department's separate rate test is not concerned, in general, with macroeconomic border-type controls (e.g., export licenses, quotas, and minimum EPs), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output-decision-making process at the individual firm level. See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61757 (November 19, 1997); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997); and Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value, 60 FR 14725, 14726 (March 20, 1995). In determining whether the export licensing system for Chinese honey is consistent with the application of separate rates to eligible exporters for purposes of this investigation, we believe it is appropriate to focus on the export licensing system and minimum price floor currently in effect rather than the system in effect during the POI because the system in effect during the POI was largely driven and governed by the Agreement which has since been terminated.

In the Department's preliminary determination in the original antidumping duty investigation of honey from the PRC (see Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China, 60 FR 14725 (March 20, 1995)) (Preliminary Determination), the Department determined that the existence of the export licensing system and minimum price floor for exports of Chinese honey to the United States were consistent with the Department's determination to grant separate rates to certain exporters of Chinese honey. We preliminarily determine in this investigation that the export licensing system and minimum price floor for exports of Chinese honey to the United States currently in effect are nearly identical to those examined in the original investigation and as a result are also consistent with the application of separate rates to those exporters who otherwise qualify. The bidding process, as described on the record, permits independent export pricing decisions and the export volume system operates on the basis of transparent and well-defined rules. All eligible exporters are free to bid for the right to export honey according to their own business plans. Further, exporters are free to independently negotiate EPs with their customers above the minimum EP. Allocation of export limits takes place in a competitive manner and exporters compete with each other for customers in the global marketplace. Thus, the export licensing system and minimum EP currently in effect does not involve the type of de jure government control over export pricing and marketing decisions that would preclude respondents from being eligible to receive separate rates.

With respect to the claims for entitlement to separate rates put forth by Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, as stated in the Final Determinations of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide), and Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol, 60 FR 22545 (May 8, 1995) (Furfuryl Alcohol), ownership of a company by ''all the people'' does not require the application of a single rate. As noted above, the Department's test for separate rates focuses on controls over export-related investment, pricing, and output decision-making process at the individual firm level. To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), and amplified in Silicon Carbide. Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. See Silicon Carbide and Furfuryl Alcohol.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (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.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, have placed on the record a number of documents to demonstrate absence of de jure control, including the ''Foreign Trade Law of the People's Republic of China,'' promulgated on May 12, 1994, the ''Law of the People's Republic of China in Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1998 (1988 Law), the ''Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures,'' and ''Regulations for Transformation of Operational Mechanism of State-Owned Enterprises,'' effective as of July 23, 1992 (1992 Regulations).

In prior cases, the Department has analyzed the 1988 Law and 1992 Regulations and found that they establish an absence of de jure control. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472 (October 24, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

As stated in previous cases, there is some evidence that the provisions of the above-cited 1988 Law and 1992 Regulations regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China-93–133 (July 14, 1993). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the EPs are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan assert the following: (1) They each establish their own EPs independent of the government and without the approval of a government authority; (2) they each negotiate contracts, without guidance from any governmental entities or organizations; (3) they each make their own personnel decisions including the selection of management; and (4) they each retain the proceeds of their export sales, and utilize profits according to business needs. This information supports a preliminary finding that there is a de facto absence of governmental control of the management of these exporters. The de facto impact of the regulatory provisions embodied in the above-referenced laws and regulations, including those governing the administration of the Agreement, do not constitute the degree of control of these firms which would preclude the calculation of antidumping rates based on their own, separate competitively-set prices.

Consequently, we preliminarily determine that Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have met the criteria for the application of separate rates. We will examine this matter further at verification.

Since Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, are the only responding producers/exporters and they do not account for all shipments of subject merchandise to the United States during the POI, we preliminarily determine, as facts available, that all other, non-responsive, producers/exporters have not met the criteria for application of separate rates. See the discussion of the PRC-wide rate below.

Margins for Cooperative Exporters Not Selected

The exporters who responded to Section A of the Department's antidumping questionnaire but were not selected as respondents in this investigation (High Hope, Shanghai Eswell, Anhui, and Henan) have applied for separate rates, and provided information for the Department to consider for this purpose. Although the Department is unable, due to administrative constraints (see Respondent Selection Memo), to calculate for each of these named parties who are exporters a rate based on their own data, these companies cooperated in providing all the information that the Department requested of them. For High Hope, Shanghai Eswell, Anhui, and Henan, we have calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice.

The PRC-Wide Rate

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received timely responses from Inner Mongolia, Kunshan, and Zhejiang, for which we have calculated company-specific rates, and timely responses to Section A of the Department's antidumping questionnaire from High Hope, Shanghai Eswell, Anhui, and Henan for which we have assigned a margin based on the weighted-average rate of the calculated company-specific rates of Inner Mongolia, Kunshan, and Zhejiang. U.S. import statistics indicate that the total quantity and value of U.S. imports of honey from the PRC is greater than the total quantity and value of honey reported by the seven PRC producers/exporters that submitted responses in this investigation. For this reason, we preliminarily determine that some PRC exporters of honey failed to respond to our questionnaire. Consequently, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the government of the PRC. See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China, 65 FR 25706, 25707 (May 3, 2000) (Synthetic Indigo). The PRC-wide rate applies to all entries of subject merchandise except for entries from Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan.

Use of Facts Otherwise Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the

Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available.

PRC-Wide Rate

As explained above, the exporters comprising the single PRC-wide entity failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the PRC-wide rate because we did not receive the data needed to calculate a margin for that entity. Also, because the exporters comprising the PRC-wide entity failed to respond to the Department's requests for information, the Department has found that the PRC-wide entity failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for that entity. As adverse facts available, we assigned the highest margin based on information in the petition, because the margins derived from the petition are higher than the calculated margins for the selected respondents.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, (1994) (SAA), states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

The petitioners' methodology for calculating the EP and NV, in the petition, is discussed in the initiation notice. To corroborate the petitioners' EP calculations, we compared the prices in the petition to the prices submitted by respondents for the same honey product. To corroborate the petitioners' NV calculations, we compared the petitioners' factor consumption data to the data reported by the respondents, and the surrogate values for these factors in the petition to the values selected for the preliminary determination.

As discussed in the Memorandum to the file entitled Corroboration of the Petition Data for the PRC-wide entity, dated May 4, 2001, we found that the EP and factors of production information in the petition were reasonable and of probative value. As a number of the surrogate values selected from the preliminary determination differed from those used in the petition, notably the value for raw honey and ratio for factory overhead, we compared the petition margin calculations to the calculations based on the selected surrogate values wherever possible and found them to be reasonable. Therefore, we preliminarily determine that the petition information has probative value. Accordingly, we find that the highest margin from the petition, 183.80 percent, is corroborated within the meaning of section 776(c) of the Act.

Fair Value Comparisons

To determine whether sales of honey from the PRC were made in the United States at less than fair value, we compared EP to NV based on an NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because Inner Mongolia, Kunshan, and Zhejiang sold the subject merchandise directly to unaffiliated purchasers in the United States and because CEP methodology was not otherwise appropriate. We calculated EP based on packed FOB or, where appropriate, C & F prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of exportation, and any insurance, brokerage and handling charges paid by Inner Mongolia, Kunshan, and Zhejiang, in the PRC. Because certain domestic factors, such as inland freight, insurance, brokerage and handling were provided by NME companies, we valued those factors using surrogate rates from India. Where appropriate, we calculated expenses which were incurred in U.S. dollars (i.e., international freight) based on the actual U.S. dollar amounts paid for such expenses. (See Memoranda from the Team to the File regarding Margin Analysis for Kunshan and Xinlong, Inner Mongolia and Sheng Li, and Zhejiang, Hubei and Hangzhou, dated May 4, 2001 (Margin Analysis Memoranda)).

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines were the countries most comparable to the PRC in terms of overall economic development (see the January 9, 2001 memorandum, Antidumping Duty Investigation on Honey from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection).

We have relied, where possible, on information from India, as it is the source of the most complete information and the only country from among the potential surrogate countries that produces comparable merchandise in commercial quantities. Accordingly, we have calculated NV by applying Indian values to virtually all of Inner Mongolia's, Kunshan's, and Zhejiang's factors of production. See Margin Analysis Memoranda.

2. Factors of Production

In accordance with section 773(c)(4) of the Act, we calculated NV based on factors of production as reported by Inner Mongolia and its supplier (Inner Mongolia Sheng Li Food Co. Ltd. (Sheng Li)), Kunshan and its supplier (Kunshan Xinlong Food Co. Ltd. (Xinlong)), and Zhejiang and its suppliers (Hubei Yangzijiang Apiculture Co. Ltd. (Hubei)) and Hangzhou Green Forever Apiculture (Group) Co. (Hangzhou)) for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian

surrogate values (except as noted below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to convert them to delivered prices. When we used Indian import values to value inputs sourced domestically by the Chinese producers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by the Chinese producers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

To value raw honey, we used an average of the highest and lowest price for raw honey given in an article published in The Tribune of India on January 3, 2000, entitled, ''Apiculture, a major foreign exchange earner.''

To value electricity, we used publicly available per kilowatt hour electricity charges as reported in the financial statements of seven Indian companies, as adjusted for inflation, for the period April 1, 1998 through March 31, 1999.

To value coal, we used the per kilogram rupee price, adjusted to the POI, as reported in the April 1, 1999 through March 31, 1999 Annual Report for Polychem, an Indian manufacturer.

To value water, we used publicly available water tariff rates (as of 1995–1996 for three areas in India: Chennai, Delhi, and Mumbai) reported in the second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank.

We valued labor using the U.S. dollar-denominated regression-based wage rate, adjusted to the POI (i.e., US$0.80) in accordance with 19 CFR 351.408(c)(3).

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India from April 1998 to December 1998, adjusted for inflation. Because there is no information on the record at this time for another raw honey by-product, scrap honey, we are not valuing this factor for purposes of our preliminary determination. We will continue to search for an appropriate value for scrap honey, and include our findings in our final determination.

To value truck freight rates, we used freight costs, adjusted for inflation, based on Indian domestic prices of truck freight rates (for the period of October 1998 through March 1999) as published in the Economic Times, an Indian newspaper.

As a surrogate value for rail transportation, we used the average train freight rates in India for fruit juices and syrups, published in November 1999, and adjusted for inflation.

To value inland water transportation, we used the surrogate value, adjusted for inflation, for inland water freight used in the Preliminary Results of the Antidumping Duty Administrative Review: Certain Helical Spring Lock Washers from the People's Republic of China, 65 FR 5493 (September 8, 2000). This rate was reported to the Department in the August, 1993 cable from the U.S. Embassy in India.

For brokerage and handling, we used price quotes from two Indian freight forwarders in November 1999, and adjusted for inflation.

We based our calculation of factory overhead, selling, general, and administrative (SG&A) expenses on actual data reported in the 1998–1999 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. (MHPC), a producer of the subject merchandise in India, as adjusted for inflation.

We valued packing materials (iron drums) on an offer for sale from an Indian manufacturer of iron drums (September 2000).

For a complete analysis of surrogate values, see Margin Analysis Memoranda.

Critical Circumstances

On February 23, 2001, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of honey from the PRC. In accordance with 19 CFR 351.206(c)(2)(i), given that this allegation was filed at least 20 days prior to the preliminary determination, the Department must issue its preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

History of Dumping or Importer Knowledge of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, the Department considers evidence of an existing antidumping order on honey from other countries to be sufficient. We are unaware of any antidumping order on honey from the PRC worldwide. Petitioners stated in their allegation of critical circumstances that the Preliminary Determination and the Agreement from the original investigation of honey from the PRC (1995) sufficiently establishes a history of injurious dumping in the PRC with respect to subject merchandise. The Department, however, does not consider either a preliminary determination or the existence of a suspension agreement as sufficient evidence of a history of injurious dumping of honey. Therefore, the Department must examine part (ii) of the first prong of the critical circumstances test.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling honey at less than fair value, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping. (See, e.g., Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Steel Seamless Standard, Line and Pressure Pipe from the Czech Republic, 65 FR 33803, 33803 (May 25, 2000)). In the instant case, we have preliminarily determined that the margins for the three mandatory respondents, Inner Mongolia, Kunshan, and Zhejiang, are 44.00, 37.51, and 36.98 percent, respectively. We have preliminarily determined that the margin for each of the four cooperative respondents for which we only examined the separate rates portion of the questionnaire, (High Hope, Shanghai Eswell, Anhui, and Henan) is 39.76 percent. Furthermore, the margin preliminarily assigned to the PRC-wide entity (the remaining exporters) is 183.80 percent. Therefore, we have

imputed knowledge of dumping to importers of the subject merchandise from each of the seven cooperating exporters and to the importers of subject merchandise from all other producers/exporters in the PRC.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the International Trade Commission (ITC). If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for subject imports of honey from the PRC. See Honey from the PRC, 65 FR 69573 (November 17, 2000). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers of honey from the PRC from all exporters knew or should have known that there was likely to be material injury by reason of dumped imports of the subject merchandise from the PRC.

Massive Imports

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the ''base period''), and a comparable period of at least three months following the filing of the petition (i.e., the ''comparison period''). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petition was filed on September 29, 2000. On April 2, 2001, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan provided monthly shipment data for February 1999 through February 2001 for exports of subject merchandise to the United States. Thus, we were able to obtain exporter-specific shipment data for a period encompassing 5 months prior to and 5 months after the filing of the petition. On an exporter-specific basis, we then compared Inner Mongolia's, Kunshan's, Zhejiang's, High Hope's, Shanghai Eswell's, Anhui's, and Henan's monthly shipments from May 2000 through September 2000 to their monthly shipments from October 2000 through February 2001. Additionally, we compared the exporter-specific monthly shipments from May 1999 through September 1999 to monthly shipments from October 1999 to February 2000 to determine whether any increases between the base and comparison periods in 2000 could be attributable to others factors, including seasonal trends.

Pursuant to 19 CFR 351.206(h) we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. We find that of the seven companies examined, imports of honey from High Hope and Zhejiang showed post-filing increases of at least 15 percent over the base period for which no other factors appear to be responsible. While imports from Inner Mongolia in the comparison period in 2000/2001 were also more than 15 percent greater than those in the base period, we also found a similar increase during the fall/winter of 1999/2000 when compared to the spring/summer base period in 1999. This leads us to conclude that the increase in imports from Inner Mongolia in the comparison period in 2000/2001 was attributable to factors other than the filing of the petition, such as seasonality. Imports from Kushan, Shanghai Eswell, Anhui, and Henan did not show an increase of more than 15 percent during the post-filing comparison period. Therefore, the Department did not find critical circumstances with respect to these exporters.

Because the PRC-wide entity failed to respond to our initial antidumping questionnaire, the Department, pursuant to section 776(a) of the Act has based its critical circumstances determination on the facts available. Further, because this entity did not act to the best of its ability to respond to the Department's questionnaires, we have, pursuant to section 776(b) of the Act, used an adverse inference in selecting from the facts available. We used U.S. Customs import statistics to determine whether there were additional imports during the base and the comparison periods not accounted for in the shipment data for the seven exporters named above. We found that there were such shipments but we were unable to distinguish the distribution of individual exporters in the data. Therefore, because we have no independent means by which to determine import levels for the PRC-wide entity, we have made an adverse inference and preliminarily determined that critical circumstances exists for the PRC-wide entity. See Memo to Richard Weible regarding Preliminary Affirmative and Negative Determinations of Critical Circumstances, May 4, 2001 (CC Memo).

In their April 2, 2001 submission, respondents argue that, when analyzing their export data, the Department must take into consideration two factors that they claim significantly influenced the recent export patterns of honey from the PRC. First, they argue that substantial uncertainty existed concerning exports of honey from the PRC during the summer of 2000 because of the Department's delay in completing an administrative review of the Agreement underway during that time period. This market confusion was then further increased by the uncertainty over the amount of quota and reference prices that could potentially apply to honey exports on and after August 1, 2000. As a result, respondents argue, exporters either ceased or significantly decreased their exports to the United States during the summer. Any subsequent increase in exports, they argue, is accordingly due to this abnormal period of suppressed exports. Second, the Department must also consider that many honey exporters export less honey during July, August, and September, they argue, because they are busy during those months purchasing and processing honey for export later in the year.

With respect to the first argument, our initial comparison of export levels in the 2000 base period and the 1999 base period shows that High Hope's and Zhejiang's exports and exports for the PRC-wide entity during the 2000 base period were not ''suppressed.'' With respect to the second argument, a comparison of the 2000 data for July, August, and September and for October, November, and December with the 1999 data for the same months for these entities does not initially appear to support the claim that exports of honey are normally lower during those months. See CC Memo. However, we will verify the data with respect to this issue and consider these arguments further for purposes of the final determination of critical circumstances.

In summary, we find that there is a reasonable basis to believe or suspect that importers had knowledge of

dumping and the likelihood of material injury with respect to imports of honey from the PRC, and that there have been massive imports of honey from High Hope, Zhejiang, and the PRC-wide entity over a relatively short period of time. As a result, we preliminarily determine that critical circumstances exist for imports of honey from High Hope, Zhejiang, and the PRC-wide entity, in accordance with section 733(e)(2) of the Act. Because we did not find that massive imports, within the meaning of 19 CFR 351.206(h), existed for Inner Mongolia, Kunshan, Shanghai Eswell, Anhui, and Henan, we preliminarily determine that critical circumstances do not exist for imports of honey from these companies. See CC Memo.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the PRC when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, for High Hope, Zhejiang, and the PRC-wide entity, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register.** For the remaining companies (i.e., Inner Mongolia, Kunshan, Shanghai Eswell, Anhui, and Henan), the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The margin in the preliminary determination is as follows:

Exporter/ manufacturer	Margin (percent)	Critical circumstances
Inner Mongolia	44.00	No.
Kunshan	37.51	No.
Zhejiang	36.98	Yes.
High Hope	39.76	Yes.
Shanghai Eswell.	39.76	No.
Anhui	39.76	No.
Henan	39.76	No.
PRC-wide Entity.	183.80	Yes.

Disclosure

The Department will disclose calculations performed within five days of this determination to the parties to the proceeding in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one honey case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. We will make our final determination no later than 75 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 4, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11940 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From Argentina

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

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, Charlie Rast or Donna Kinsella at (202) 482–3518, (202) 482–1324 or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

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 Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that honey from Argentina is being sold, or

is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On October 26, 2000, the Department initiated antidumping duty investigations of imports of honey from Argentina and the People's Republic of China (China). See Initiation of Antidumping Duty Investigations: Honey from Argentina and the People's Republic of China. 65 FR 65831–65834 (November 2, 2000) (Initiation Notice). The petitioners in these investigations are the American Honey Producers Association and the Sioux Honey Association (petitioners). Since the initiation of the investigations, the following events have occurred with respect to honey from Argentina.

On October 30, 2000, the Department requested information from the U.S. Embassy in Argentina to identify producers/exporters of subject merchandise. On November 13, 2000, the United States International Trade Commission (the Commission) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina and China. On November 17, 2000, the Commission published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina (65 FR 69573).

On November 27, 2000, the Department issued Section A, Question 1 of the antidumping questionnaire to Radix, S.R.L. (Radix), HoneyMax, S.A. (HoneyMax), ConAgra Argentina, S.A. (ConAgra), Compania Europea Americana, S.A. (CEASA), Foodway, S.A. (Foodway), and Asociacion de Cooperativas Argentinas (ACA), requesting volume and value information for the POI for each exporter. We received the information requested on December 8, 2000. Based on this information, the Department selected the three largest exporters/producers by volume as respondents in this investigation. See Memorandum to Joseph A. Spetrini, Selection of Respondents, dated December 19, 2000.

On December 19, 2000, the Department issued its antidumping questionnaire to Radix, ConAgra, and ACA. We requested that respondents respond to Section A (general information, corporate structure, sales practices, and merchandise produced), Section B (home market or third-country sales), and Section C (U.S. sales) of the questionnaire.

On January 9, 2001, ConAgra informed the Department that it would not be submitting responses to Sections A, B, or C of the Department's questionnaire. ACA and Radix submitted responses to Section A of the Department's questionnaire on January 10, 2001, and January 16, 2001, respectively. ACA filed corrections to its Section A response on January 30, 2001, January 31, 2001, and February 12, 2001.

In their Section A responses, ACA and Radix indicated that they were both exporters, not producers, of honey. On January 11, 2001, the Department requested comments from interested parties on the Department's proposed methodology for selecting respondents for cost purposes in the sales below cost investigation, which was initiated by the Department on October 26, 2000. Because ACA and Radix stated that they did not produce the honey sold during the period of investigation (POI), the Department indicated in its letter that it intended to select at random 12 to 15 honey producers to serve as respondents in the sales below cost investigation and to use the selected producers' costs to derive an average country-wide cost of production for use in the investigation. Radix and ACA submitted comments on January 11, 2001, and January 18, 2001. Radix and ACA filed additional comments on January 26, 2001, and February 23, 2001, respectively. Petitioners commented on January 17, 2001, January 18, 2001, January 23, 2001, January 26, 2001, March 30, 2001, and April 11, 2001. The Argentine embassy commented on January 29, 2001. On February 23, 2001, the Department selected 12 cost respondents and issued Section D of the questionnaire to the selected honey producers.

Additional comments were submitted on behalf of the selected beekeepers on March 29, 2001, and April 9, 2001.

ACA and Radix submitted responses to sections B and C of the Department's questionnaire on February 9, 2001, and February 16, 2001, respectively. ACA filed corrections to its response on February 12, 2001, February 14, 2001, and February 20, 2001.

Petitioners submitted comments on Radix's questionnaire responses on January 26, 2001, and February 20, 2001. Petitioners commented on ACA's original questionnaire responses on January 26, 2001, and February 21, 2001. ACA responded to petitioners' February 21, 2001, filing on February 23, 2001. Petitioners submitted additional comments on February 23, 2001, and February 27, 2001.

We issued supplemental questionnaires to Radix and ACA on February 2, 2001, and February 23, 2001. Radix responded on February 16, 2001, and March 16, 2001. ACA responded on February 16, 2001, and March 26, 2001. We requested additional information from Radix on March 5, 2001 and from ACA on March 5, 2000, March 9, 2000, and March 16, 2000. Radix submitted its response on March 16, 2001. ACA filed responses on March 9, 2001, March 14, 2001, and March 16, 2001. On April 3, 2001, ACA filed corrections to its supplemental questionnaire response for Sections B through C. Petitioners submitted comments on ACA's and Radix's supplemental questionnaire responses on February 27, 2001, and March 27, 2001, respectively.

On February 14, 2001, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 22, 2001, we postponed the preliminary determination until no later than May 4, 2001. See Honey From Argentina and the People's Republic of China; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations, 66 FR 12924 (March 1, 2001).

On February 23, 2001, the Department issued Section D of the Department's antidumping questionnaire to the twelve selected beekeeper respondents. After issuing several extensions to the beekeepers to the deadline for responding to Section D of the Department's questionnaire, on April 26, 2001, the Department received a letter on behalf of the twelve Argentine beekeepers, stating that they were unable to obtain usable cost information and would not be responding to the Department's Section D questionnaire. Petitioners submitted comments on April 30, 2001, regarding the failure of the beekeepers to provide responses to Section D of the Department's questionnaire. On May 1, 2001, Radix submitted a letter to the Department withdrawing from the investigation and requesting that its business proprietary data be removed from the record and returned to Radix.

Period of Investigation

The POI is July 1, 1999 through June 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 2000), and is in accordance with section 351.204(b)(1) of the Department's regulations.

Scope of Investigation

For purposes of these investigations, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to these investigations is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the Department's written description of the merchandise under investigation is dispositive.

Facts Available (FA)

Section 776(a) of the Act provides that ''if any interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' The statute also requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

ConAgra

As noted in the ''Case History'' section above, the Department issued its antidumping questionnaire to ConAgra on December 19, 2000. On January 9, 2001, ConAgra informed the Department that it would not be submitting responses to Sections A, B, or C of the Department's questionnaire. ConAgra stated that, after reviewing the questionnaire in detail, it determined that it did not have sufficient available resources in Argentina to complete the questionnaire, as requested by the Department. ConAgra indicated that its books and records in Argentina are not in a format easily translatable to the computer data set required by the Department, and that the personnel necessary to convert its books and records into the Department's format is not available.

Because ConAgra failed to respond to the Department's December 19, 2000, request for information, sections 782(d) and (e) of the Act are not applicable, and the Department must resort to the use of facts available for this respondent, in accordance with section 776(a) of the Act. Moreover, we have determined that ConAgra's failure to respond to any portions of the Department's December 19, 2000, questionnaire demonstrates that the company has not cooperated to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference in selecting a margin from among facts otherwise available. See Memorandum from Donna Kinsella to Richard O. Weible, Honey from Argentina: Preliminary Determination of Sales at Less Than Fair Value—The Use of Facts Available for ConAgra Argentina, S.A., and the Corroboration of Secondary Information, dated May 4, 2001 (ConAgra Facts Available Memorandum).

Radix

As also noted in the ''Case History'' section above, on May 1, 2001, the Department received a letter from Radix stating that it would not continue to participate in the Department's investigation. Radix explained that it was unable to file any usable cost information from the Argentine beekeepers despite the extensions granted to it by the Department. Therefore, Radix decided that it would not be beneficial to it to continue participating in the investigation, and it requested that all business proprietary data be removed from the record and returned to Radix. Accordingly, for purposes of our preliminary calculations, we will not be relying on Radix's proprietary information.[1]

Because Radix withdrew from the investigation and requested that its submitted responses be removed from the record, sections 782(d) and (e) of the Act are not applicable, and the Department must resort to the use of facts available for this respondent, in accordance with section 776(a) of the Act. Moreover, we have determined that Radix's withdrawal from the investigation demonstrates that the company has not cooperated to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference in selecting a margin from among facts otherwise available. See Memorandum from Donna Kinsella to Richard O. Weible, Honey from Argentina: Preliminary Determination of Sales at Less Than Fair Value—The Use of Facts Available for Radix, S.R.L., and the Corroboration of Secondary Information, dated May 4, 2001 (Radix Facts Available Memorandum).

As adverse facts available for ConAgra and Radix, the Department has applied a margin rate of 60.67 percent, the highest alleged margin for Argentina in the petition. This rate is the higher of the highest margin in the petition or the highest rate calculated for a respondent in the proceeding. See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from Germany; 64 FR 30710, 30714 (June 8, 1999).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (SAA) states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870. In this proceeding, we considered information contained in the petition as the most appropriate record information to use to

[1] In a letter of May 3, 2001, petitioners objected to the removal of Radix's information from the record. We will be addressing this issue at a later date.

establish the dumping margins for these uncooperative respondents because, in the absence of verifiable data provided by ConAgra and Radix, the petition information is the best approximation, using an adverse inference, available to the Department of ConAgra's and Radix's pricing and selling behavior in the U.S. market. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). See Initiation Notice. For purposes of this preliminary determination, we attempted to corroborate the information in the petition with information gathered since the initiation. We compared the export price (EP) and constructed value (CV) data, which formed the basis for the highest margin in the petition, to the price and cost/expense data provided by the honey producers and export trading companies during the investigation and, to the extent practicable, found that it had probative value. (For a detailed analysis see ConAgra's and Radix's Facts Available Memoranda.)

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by ACA, covered by the description in the ''Scope of Investigation'' above, and sold in the comparison market during the POI, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales.

Fair Value Comparisons

To determine whether sales of honey from Argentina to the United States were made at LTFV, we compared the EP to the constructed value (CV), as described in the ''Export Price'' and ''Constructed Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to CV.

Export Price

We calculated EP in accordance with section 772(a) of the Act because ACA sold the merchandise directly to the first unaffiliated purchaser in the United States prior to the date of importation, and because constructed export price (CEP) methodology was not otherwise appropriate. We based EP for ACA on the C&F price to unaffiliated purchasers in the United States. We made deductions for billing adjustments and ''reembolso'' reimbursements, where appropriate. We also made adjustments for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign brokerage and handling, international freight, and additional shipping costs.

Normal Value

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

Based on information submitted by the Argentine exporting trading company, we found that for the exporter the aggregate volume of home market sales of the foreign like product was less than five percent of their aggregate volume of U.S. sales of the subject merchandise during the POI. (See the December 8, 2000, Section A, Question 1, questionnaire responses from the export trading company.) Consequently, we determined that the Argentine home market was not viable.

Where the home market is determined not to be viable, section 773(a)(1)(B)(ii) of the Act directs the Department to employ the price of sales to a third country as the basis for NV if (1) such price is representative, (2) the aggregate quantity (or value) of sales to that country is at least 5 percent of the quantity (or value) of total sales to the United States, and (3) the Department does not determine that the particular market situation in that country prevents proper comparison with the EP or CEP price. In this case, we found the price of sales to Germany to be representative. Also, the volume and value of ACA's sales to Germany were found to exceed 5 percent of the volume and value of their sales to the United States. (See the December 8, 2000, February 9, 2001, and March 26, 2001, submissions of ACA). Furthermore, based on our examination of the record information, we found no reason to determine that the market situation in Germany would somehow prevent proper comparison between NV and EP price. We therefore found Germany to be the appropriate comparison market pursuant to section 773(a)(1)(B)(ii) of the Act. In deriving NV, we made certain adjustments described in the ''Price to CV'' section below.

ACA originally reported invoice date as the date of sale for both the U.S. and third country markets. In its questionnaire responses, ACA indicated that invoices are generated after date of shipment from the warehouse for sales in both markets. Consequently, for ACA, we have used date of shipment as the date of sale in the U.S. and third country markets.

ACA reported expenses attributable to sales to the third country market (Germany) incurred for sampling and/or testing honey in order to meet the standards of German customers. According to ACA, German customers require their purchases of honey to be free of antibiotic residuals and phenol. In its submission, these expenses were reported as direct selling expenses. For the reasons described below, we have determined to treat these expenses as indirect selling expenses for purposes of our preliminary determination.

Direct expenses are typically expenses that are incurred as a direct and unavoidable consequence of the sale (*i.e.*, in the absence of the sale these expenses would not be incurred). In other words, while indirect expenses generally consist of fixed expenses that are incurred whether or not a sale is made, direct selling expenses result from, and bear a direct relationship to, the particular sale in question. See 19 CFR 351.410(c); Oil Country Tubular Goods From Mexico; Final Results of Antidumping Duty Administrative Review, 66 FR 15832 (March 21, 2001); and Canned Pineapple Fruit From Thailand: Final Results of Antidumping Duty Administrative Review, 65 FR 77851 (December 13, 2000).

In this case, we found that the information provided by ACA with respect to sampling and/or testing honey, particularly at what point in time and on which merchandise they are conducted, is either contradictory or non-conclusive. (See the January 10, 2001,February 9, 2001, and March 26, 2001, submissions from ACA.) In fact, the evidence on the record indicates that these expenses are more properly classified as indirect selling expenses, given that they appear to be incurred whether or not a sale is made. For example, in its Section B–C questionnaire response, ACA states that the tests in question were conducted on all shipments to German customers that require particular testing results. However, in a later submission, on March 26, 2001, ACA reports that since October 1999 it has performed testing according to German standards on all

lots of honey darker than a certain color (*i.e.*, 34 mm on the pfund scale). It is also unclear from the record evidence whether honey, which is tested but which does not meet German standards, is shipped to other markets and how the testing expenses associated with such sales have been accounted for in ACA's testing expense calculations.

As a result of contradictory and ambiguous statements made by ACA in its submissions to date, we found that the evidence of expenses in connection with sampling and/or testing honey for German customers does not unequivocally demonstrate that these expenses result from and bear a direct relationship to the sales in question within the meaning of 19 CFR 351.410(c) and the Department's practice. Rather, the evidence indicates that these expenses appear to have the characteristics of indirect selling expenses. Accordingly, for purposes of our preliminary determination, we have determined to re-classify ACA's sampling and/or testing expenses as indirect selling expenses. However, we intend to fully examine this issue at verification, and will incorporate our findings, as appropriate, in our analysis for the final determination.

ACA reported warranty expenses for certain third country and U.S. sales on a customer-specific basis. To calculate these expenses, ACA allocated the total warranty costs reimbursed to a particular customer by the total tons of honey sold to that customer during the POI. Notwithstanding ACA's ability to report warranty expenses on a customer-specific basis, we have long recognized that the nature of warranty expenses (*i.e.*, that claims made for specific sales are often made after the close of a given period of investigation or review) necessitates the use of an appropriate allocation methodology. (See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany, 64 FR 30710, 30736–30738 (June 8, 1999); Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166 (July 23, 1996); and *Koenig & Bauer-Albert, et al.* v. *United States*, 15 Fed. Supp.2d 834, 854 (CIT 1998).) We do not believe that ACA's customer-specific allocation methodology takes into account an important additional characteristic of these expenses, namely, that they are not predictable at the time of the sale. Because warranty expenses are normally incurred after the sale is made, and are not incurred until a warranty claim has been received from a customer, we believe that in cases where warranty services are provided by the producer/exporter, all sales are subject to warranty expenses. Therefore, for purposes of the preliminary determination in this case, in order to derive a per-unit warranty expense for all sales, we have recalculated ACA's warranty expenses by allocating the total reported expenses for warranty claims in each market over the total quantity of sales made by ACA in each market.

Cost of Production Analysis

Based on our analysis of the cost allegation submitted by petitioners on September 29, 2000, the Department found reasonable grounds to believe or suspect that sales of honey produced in Argentina were made at prices below the cost of production (COP), in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department attempted to conduct an investigation to determine whether respondents made third country sales during the POI below the honey producers' COP, within the meaning of section 773(b) of the Act.

A. Calculation of COP

Because the respondent participating in this investigation is not a producer of the merchandise under investigation, we selected 12 honey producers to serve as cost respondents in the sales-below-cost investigation. As stated in the ''Case History'' section of this notice, the honey producers failed to respond to the Department's request for cost of production information. Because the selected honey producers did not provide necessary information regarding the cost of production of honey, we calculated COP based on the only cost data available on the record; *i.e.* cost data obtained from Argentine honey producer bi-monthly trade journal articles submitted in the petition. The Department used the average of the cost studies for March, May, July, September, November 1999, as provided in the petition, to derive an average country-wide honey producers' COP to use as the COP for the respondent.

B. Test of Third Country Market Prices

We compared the COP for ACA, as calculated above, to the company's third country market sales of the foreign like product, less any applicable movement charges, billing adjustments, and selling expenses as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard third country market sales below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of ACA's sales were at prices less than the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of ACA's sales during the POI were less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales. Because all sales were disregarded, we calculated NV based on CV.

D. Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the COP as calculated above plus the exporter's SG&A expenses and an amount for profit. In accordance with section 773(e)(2)(B)(iii) of the Act, and as facts available, we based profit on the September 1999 trade journal article.

Price to CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV pursuant to the criteria described in the ''Cost of Production'' section above. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting third country direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the exporter and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we examined information from ACA regarding their reported third country market and EP sales, including a description of the selling activities performed by ACA for each channel of distribution. In identifying LOT for EP and third country market sales, we considered the selling functions reflected in the starting price before any adjustments.

ACA claimed one level of trade in each market: One LOT representing sales to unaffiliated packers in the third country market; and one LOT representing sales in the U.S. market to unaffiliated importers, who resell to packers. According to ACA, because all customers in the third-country market are packers and all customers in the U.S. market are importers, the impact on ACA's pricing cannot be seen by comparing its prices at different LOTs in a single market. Instead, the difference in the LOT can be measured by the mark-up of ACA's U.S. export prices by its U.S. customers when the importers resell ACA's honey to their packer customers. ACA claimed a LOT adjustment equivalent to the estimated price differential between sales to importers and sales to packers.

In determining whether separate LOTs existed in the third country and U.S. market, we examined ACA's selling functions along the chain of distribution between ACA and its unaffiliated customers. In reviewing the chains of distribution and customer categories, we found that ACA made sales directly to unaffiliated customers in both the third country market and the U.S. market.

As indicated previously, ACA reported different categories of customers in the third country and U.S. markets, packers and importers who resell to packers, respectively. We note that while the Department considers the type of customer an important indicator in identifying differences in the LOT, the existence of different classes of customers is not sufficient to establish a difference in the LOTs. Whereas certain titles used to describe classes of customers (e.g., original equipment manufacturer, distributor, wholesaler, retailer) may actually describe LOTs, the fact that two sales were made by entities with titles suggesting different stages of the marketing process is not sufficient to establish that the two sales were made at different LOTs. (*See Antidumping Duties: Countervailing Duties,* Preamble to 19 CFR, 351, FR 27296, 27371 (May 19, 1997).)

In further analyzing ACA's LOT claims, we reviewed information available on the record regarding ACA's selling functions, in accordance with our practice. In its Section A questionnaire response, ACA stated that it performs no selling activities and offers no services in the U.S. or third-country markets. In its February 16, 2001, Section A supplemental questionnaire response, ACA stated that in addition to arranging international freight and delivery, the only selling activities it performs on third country or U.S. market sales is the provision of warranty services. ACA indicated that it performs activities relating to the arrangement of international freight and delivery for the third country and U.S. markets to a medium degree. It indicated that it performs activities relating to warranty services to a medium degree in the third country market and to a low degree in the U.S. market.

Based on the information provided by ACA, we find that the selling functions ACA provided to its reported channels of distribution in the third country and U.S. markets are the same, varying only by the degree to which warranty services were provided. We do not find the varying degree to which warranty services are provided sufficient to determine the existence of different marketing stages. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as that for third country sales. Accordingly, because we find U.S. sales and third country sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773 of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. This suspension-of-liquidation will remain in effect until further notice.

The margins in the preliminary determination are as follows:

HONEY FROM ARGENTINA

Producer/manufacturer/exporter	Weighted-average margin (percent)
ACA	49.93
Radix	60.67
ConAgra	60.67
All Others	49.93

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determinations are affirmative, the ITC will determine before the latter of 120

days after the date of this preliminary determination or 45 days after our final determinations, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several honey cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. We intend to make our final determination no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 4, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–820, A–428–830, A–475–829, A–580–847, A–583–836, A–412–822]

Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Stainless Steel Bar From France, Germany, Italy, Korea, Taiwan, and the United Kingdom

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

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Smith (France) at (202) 482–1766; Barbara Wojcik-Betancourt (Korea) at (202) 482–0629; Brian Ledgerwood (the United Kingdom) at (202) 482–3836; Craig Matney (Germany) at (202) 482–1778; Jarrod Goldfeder (Italy) at (202) 482–0189; Blanche Ziv (Taiwan) at (202) 482–4207; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

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

POSTPONEMENT OF PRELIMINARY DETERMINATIONS: On January 24, 2001, the Department published the initiation of the antidumping duty investigations of imports of stainless steel bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom. The notice of initiation stated that we would make our preliminary determinations for these antidumping duty investigations no later than 140 days after the date of issuance of the initiation (*i.e.,* June 6, 2001). *See Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom,* 66 FR 7620, 7626 (January 24, 2001); and *Corrections, Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom,* 66 FR 14986 (March 14, 2001).

On April 27, 2001, the petitioners [1] made a timely request pursuant to 19 CFR 351.205(e) for a 50-day postponement of the preliminary determinations, or until July 26, 2001. The petitioners requested a postponement of the preliminary determinations because of the need for additional time to submit comments regarding the respondents' questionnaire responses and for the Department to analyze the respondents' data and seek additional data, if necessary, prior to the issuance of the preliminary determinations.

For the reasons identified by the petitioners, and because there are no compelling reasons to deny the request, we are postponing the preliminary determinations under section 733(c)(1) of the Act. We will make our preliminary determinations no later than July 26, 2001.

This notice is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: May 7, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–11937 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitioners are Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America, AFL–CIO/CLC.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand

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

ACTION: Notice of amendment to final results of countervailing duty administrative review.

SUMMARY: Pursuant to remand instructions by the Court of International Trade (CIT), the Department has recalculated the countervailing duty rates for the 1990 administrative review of the countervailing duty order on certain iron-metal castings from India. The final countervailing duty rates for this administrative review period are listed below in the Final Results of Review section of this notice.

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Enforcement Office VI, Group II, 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: On August 29, 1995, the Department published the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1990 through December 31, 1990. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India,* 60 FR 44,849 (*1990 Iron-Metal Castings*). Subsequently, respondents challenged the final results before the CIT. The primary issue involved the calculation of the program rates for the subsidies provided under section 80HHC of India's Income Tax Act.

Under section 80HHC of India's Income Tax Act, exporters of iron-metal castings are eligible to claim tax exemptions based on their export profits. In *1990 Iron-Metal Castings,* the Department calculated these subsidies without adjusting for other subsidies received under India's International Price Reimbursement Scheme (IPRS) and India's Cash Compensatory Support Scheme (CCS). In *Crescent Foundry Co. Pvt. Ltd.* v. *United States,* Slip Op. 00–148 (CIT Nov. 9, 2000), the court remanded the final results of the 1990 administrative review and directed the Department to recalculate these subsidies by subtracting IPRS rebates and CCS rebates from taxable income before determining the benefit under section 80HHC. The Department's subsequent remand determination reflected the Court's instructions and was affirmed in *Crescent Foundry Co. Pvt. Ltd,* v. *United States,* Slip Op. 01–6 (CIT Jan. 24, 2001).

Final Results of Review

We recalculated the company-specific and all-other subsidy rates for the period January 1, 1990, through December 31, 1990. The amended final countervailing duty rates are as follows:

Manufacturer/exporter	Revised rates (percent)
Carnation Enterprise Pvt. Ltd	7.59
Crescent Foundry Co. Pvt. Ltd	7.59
Kajaria Castings Ltd	7.59
Kejriwal Iron & Steel Works	7.59
Nandikeshwari	7.59
Overseas	7.59
R.B. Agarwalla & Co	7.59
R.S.I	7.59
Ragunath	7.59
Serampore Industries Pvt. Ltd	7.59
Sitarem	7.59
Super Castings (India)	7.59
Tiruptati	7.59
UMA Iron & Steel Co	7.59
All-other Rate	7.59

The Department has been enjoined from issuing any liquidation instructions to the U.S. Customs Service (Customs) until the conclusion of litigation of this case. Litigation has been completed and, therefore, the Department will instruct Customs to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to Customs.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 705(d) of the Tariff Act of 1930, as amended, (19 USC 1671d(d)) and section 351.210(c) of the Department's regulations. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 3, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11938 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand

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

ACTION: Notice of amendment to final results of countervailing duty administrative review.

SUMMARY: Pursuant to remand instructions by the Court of International Trade (CIT), the Department has recalculated the countervailing duty rates for the 1991 administrative review of the countervailing duty order on certain iron-metal castings from India. The final countervailing duty rates for this administrative review period are listed below in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Enforcement Office VI, Group II, 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: On August 29, 1995, the Department published the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1991 through December 31, 1991. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 60 FR 44,843 (*1991 Iron-Metal Castings*). Subsequently, respondents challenged the final results before the CIT. The primary issue involved the calculation of the program rates for the subsidies provided under section 80HHC of India's Income Tax Act.

Under section 80HHC of India's Income Tax Act, exporters of iron-metal castings are eligible to claim tax exemptions based on their export profits. In *1991 Iron-Metal Castings*, the Department calculated these subsidies without adjusting for other subsidies received under India's International Price Reimbursement Scheme (IPRS) and India's Cash Compensatory Support Scheme (CCS). In *Kajaria Iron Castings Pvt. Ltd.* v. *United States*, Slip Op. 00–147 (CIT Nov. 9, 2000), the court remanded the final results of the 1991 administrative review and directed the Department to recalculate these subsidies by subtracting IPRS rebates and CCS rebates from taxable income before determining the benefit under section 80HHC. The Department's subsequent remand determination reflected the Court's instructions and was affirmed in *Kajaria Iron Castings Pvt.* v. *United States*, Slip Op. 01–5 (CIT Jan. 24, 2001).

Final Results of Review

We recalculated the company-specific and all-other subsidy rates for the period January 1, 1991, through December 31, 1991. The amended final countervailing duty rates are as follows:

Manufacturer/exporter	Revised rates
Calcutta Ferrous	0.93
Carnation Enterprise Pvt. Ltd	0.66
Commex	[1] 0.44
Crescent Foundry Co. Pvt. Ltd	1.18
Dinesh	0.00
Kajaria Castings Ltd.	2.56
Kejriwal Iron & Steel Works	[1] 0.40
Nandikeshwari	2.56
R.B. Agarwalla & Co.	1.73
R.S.I	4.19

Manufacturer/exporter	Revised rates
Serampore Industries Pvt. Ltd	0.78
Super Castings (India)	23.00
Tiruptati	3.68
UMA Iron & Steel Co	1.84
All-other Rate	2.56

[1] de minimis.

The Department has been enjoined from issuing any liquidation instructions to the U.S. Customs Service (Customs) until the conclusion of litigation of this case. Litigation has been completed and, therefore, the Department will instruct Customs to assess countervailing duties on all appropriate entries. For the companies with de minimis rates, the Department will instruct Customs to liquidate without regard to countervailing duties. The Department will issue liquidation instructions directly to Customs.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 705(d) of the Tariff Act of 1930, as amended, (19 USC 1671d(d)) and section 351.210(c) of the Department's regulations. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 3, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11939 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 000911256–1111–02]

RIN 0693–ZA40

Small Grants program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: On Thursday, January 11, 2001, the National Institute of Standards and Technology (NIST) announced in the **Federal Register** the availability of fiscal year 2001 funds for thirteen small grants programs. The purpose of this notice is to inform the public that under three of those programs, the Materials Science and Engineering Grants Program; the Physics Laboratory Grants Program; and the Chemical Science and Technology Laboratory Grants Program, priority will be given to proposals in the area of Nanotechnology, and a portion of the funding available for each of those programs will be allocated for awards in the area of Nanotechnology.

FOR FURTHER INFORMATION CONTACT: For the MSEL Grants Program, contact Dr. Stephen M. Hsu, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8520, Building 223, Room A 265, Gaithersburg, Maryland 20899–8520, Tel: (301) 975–6120, E-mail: *stephen.hsu@nist.gov.*

For the Physics Laboratory Grant Program contact Ms. Anita Sweigert, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, Tel (301) 975–4200, E-Mail: *anita.sweigert@nist.gov.*

For the Chemical Science and Technology Laboratory Grant Program contact Dr. William F. Koch, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8300, Gaithersburg, MD 20899–8300, Tel: (301) 975–8301, E-mail: *william.koch@nist.gov.*

SUPPLEMENTARY INFORMATION: On January 11, 2001, NIST published a document in the **Federal Register** announcing the availability of fiscal year 2001 funds for (1) Precision Measurement Grants; (2) Physics Laboratory (PL) 2001 Summer Undergraduate Research Fellowships (SURF); (3) Materials Science and Engineering Laboratory (MSEL) 2001 Summer Undergraduate Research Fellowships (SURF); (4) Manufacturing Engineering Laboratory (MEL) 2001 Summer Undergraduate Research Fellowships (SURF); (5) Information Technology Laboratory (ITL) 2001 Summer Undergraduate Research Fellowships (SURF); (6) Building and Fire Research Laboratory (BFRL); 2001 Summer Undergraduate Research Fellowships (SURF); (7) Electronics and Electrical Engineering (EEEL); 2001 Summer Undergraduate Research Fellowships (SURF); (8) Materials Science and Engineering Laboratory (MSEL) Grants Program; (9) Fire Research Grants Program; (10) Physics Laboratory (PL) Grants Program; (11) Chemical Science and Technology Laboratory (CSTL) grants Program; (12) Manufacturing Engineering Laboratory (MEL) Grants program; and (13) Electronics and Electrical Engineering Laboratory (EEEL) Grants Program (66 FR 2398, January 11, 2001). On January 24, 2001, NIST published a document in the **Federal Register** making minor corrections to the earlier publication (66 FR 7627, January 24, 2001). All information and requirements as published in the January 11, 2001 publication, as corrected by the January 24, 2001 publication, remain in effect.

NIST's fiscal year 2001 appropriation included funding for an initiative in the area of Nanotechnology, The initiative funds have now been allocated to the NIST laboratories that submitted successful proposals to the Acting NIST Director. Due to a combination of the timing of NIST's appropriation, the proposal review and selection process for distribution of the funding to the NIST laboratories, and a recent decision that financial assistance is an appropriate mechanism for carrying out the Nanotechnology programs selected, NIST now informs the public that under the MSEL Grants program, the PL Grants program, and the CSTL Grants program, priority will be given to proposals in the area of Nanotechnology, and a portion of the funding available for each of those programs will be allocated for awards in the area of Nanotechnology as described below. Applications submitted to these programs prior to publication of this notice in the area of Nanotechnology will be considered for the reserved funding and for the remaining funds announced in the January 11, 2001 notice, as described below.

MSEL Grants Program

Of the approximately $2,500,000 available in fiscal year 2001, approximately $300,000 will be allocated solely for funding awards in Nanotechnology in the area of Nanotechnology. The MSEL Grants Program may fund more than one award from this allocation. From the remaining $2,200,000, other highly rated proposals in the area of Nanotechnology may be funded.

Physics Laboratory Grants Program

Of the approximately $1,400,000 available in fiscal year 2001, approximately $210,000 will be allocated solely for funding awards in Quibit decoherence and moving quantum information over larger distances. The PL Grants Program anticipates funding one award from this allocation. From the remaining $1,190,000, other highly rated proposals in the area of Nanotechnology may be funded. Funding available for the PL Grants Program will remain at approximately $1,400,00 this fiscal year.

Chemical Science and Technology Laboratory Grants Program

Of the approximately $1,000,000 available in fiscal year 2001, approximately $150,000 will be allocated solely for funding awards in Nanotechnology in the areas of

Molecular Synthesis and/or Scanning-Probe Characterization. The CSTL Grants Program anticipates funding one award from this allocation. From the remaining $850,000, other highly rates proposals in the area of Nanotechnology may be funded.

Dated: May 4, 2001.

Karen H. Brown,

Deputy Director.

[FR Doc. 01–11881 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, DDC.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, June 19, 2001, and Wednesday, June 20, 2001, from 9 a.m. until 5 p.m. and Thursday, June 21, 2001, from 9 a.m. until 4 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Public Law 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public. Details regarding the Board's activities are available at http://csrc.nist.gov/csspab/.

DATES: The meeting will be held on June 19, 2001, and June 20, 2001, from 9 a.m. until 5 p.m. and on June 21, 2001, from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will take place at The John Marshall Law School, Main Conference Room, #1200, 315 S. Plymouth Court, Chicago, IL.

Agenda

- Welcome and Overview
- Two-Day Session on Privacy—issues critical to the national debate, including law, policy and implementation
- Updates on Recent Legislative Issues
- Update on OMB Activities
- Work Plan Review of Governance Issues
- Work Plan Review of GPEA Process
- Update on the Federal Bridge Certificate Authority (CA) and the Federal Public Key Infrastructure (PKI)
- Public Participation
- Discussion of September Baseline Security Controls Event
- Agenda Development for September 2001 meeting
- Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than June 1, 2001. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Dr. Fran Nielsen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20999–8930, telephone: (301) 975–3669.

Dated: May 4, 2001.

Karen H. Brown,

Acting Director, NIST.

[FR Doc. 01–11884 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Wednesday, May 30, 2001. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to Review the 2001 Baldrige Award Cycle; Discussion of Senior Examiner Training for Site Visits and Final Judging Interaction; Judges' Survey of applicants; and Judging Process Improvement. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene May 30, 2001, at 11 a.m. and adjourn at 4:30 p.m. on May 30, 2001. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Chemistry Building, Room A228, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 12, 2001, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 4, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–11882 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app.

2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Thursday, May 31, 2001. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Not-for-profit Baldrige Category; Expanding ''For-profit'' Business Category Eligibility; 2001 Baldrige Criteria Changes and Future Criteria Evolution; E-Baldrige Update; and Key Issues from the May 30 Judges' Meeting.

DATES: The meeting will convene May 31, 2001, at 8:30 a.m. and adjourn at 3 p.m. on May 31, 2001.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 4, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–11883 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050701B]

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes for public review and comment a summary of an application submitted by the Government of the Russian Federation requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 2001 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910, or to any of the following Regional Fishery Management Councils:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01905; Phone (978) 465–0492; Fax (978) 465–3116;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904; Phone (302) 674–2331; Fax (302) 674–4136.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This notice concerns the receipt of an application from the Government of the Russian Federation requesting the stern trawler/processor KAPITAN GORBACHEV be authorized to receive Atlantic herring and Atlantic mackerel from U.S. vessels in joint venture operations in 2001.

Dated: May 7, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–11943 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of March 31, 2001)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of March 31, 2001, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
COST COMPARISONS					
AVON PARK	FL	RANGE OPERATIONS	38	22–Dec–99	01–Sep–01
BANN	GERMY	RANGE OPERATIONS AND MAINTENANCE.	0	19–Mar–01	TBD
BEALE	CA	BASE OPERATING SUPPORT	372	08–Sep–99	01–May–01
BOLLING	DC	SUPPLY AND TRANSPORTATION	138	01–Dec–98	12–Sep–00
CARSWELL	TX	BASE OPERATING SUPPORT	69	03–Feb–00	05–Jun–01
DAVIS MONTHAN	AZ	BASE SUPPLY	35	04–Jan–00	16–Feb–01
EDWARDS	CA	BASE OPERATING SUPPORT	435	09–Dec–98	04–May–00
EGLIN	FL	ADMINISTRATIVE SUPPORT	37	22–Sep–99	26–Sep–00
EGLIN	FL	AIRCRAFT MAINTENANCE AND SUPPLY.	319	15–Sep–00	01–Jun–01
ELMENDORF	AK	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	66	05–Jan–00	08–Nov–00
ELMENDORF	AK	BASE SUPPLY	208	26–Mar–99	21–Apr–00
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09–Dec–98	25–Feb–00

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL.	17	25–Nov–98	20–Apr–00
HILL AFB	UT	BASE OPERATING SUPPORT	569	30–Sep–98	30–Mar–01
HOLLOMAN AFB	NM	TEST TRACK	125	18–Nov–99	23–Jan–01
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31–Jul–98	15–Apr–01
HURLBURT COM FL	FL	ENVIRONMENTAL	7	22–Jun–00	15–May–01
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	33	28–Apr–99	02–Aug–01
HURLBURT COM FL	FL	HOUSING MANAGEMENT	12	08–Jun–00	01–Jun–01
KEESLER	MS	MULTIPLE SUPPORT FUNCTIONS	741	21–Sep–99	19–Dec-00
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1439	26–Jan–99	09–Aug–99
LANGLEY	VA	COMMUNICATION FUNCTIONS	202	21–Mar–01	11–Jul–01
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28–Apr–98	22–Mar–99
MAXWELL	AL	EDUCATION SERVICES	35	24–Jul–00	29–Sep–00
MULTIPLE INSTLNS		MULTIPLE SUPPORT FUNCTIONS	65	14–Jul–99	31–Aug–01
CROUGHTON	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11–Mar–99	14–Apr–00
GENERAL MITCHELL	WI				
WESTOVER	MA				
MINN-ST PAUL	MN				
YOUNGSTOWN	OH				
WILLOW GROVE	PA				
GRISSOM	IN				
PITTSBURG	PA				
MARCH	CA				
HOMESTEAD	FL				
CARSWELL	TX				
NEW ORLEANS	LA				
MULTIPLE INSTLNS		PERSONNEL SERVICES	223	16–Jun–00	06–Jun–01
BARKSDALE	LA				
CANNON	NM				
DAVIS MONTHAN	AZ				
DYESS	TX				
ELLSWORTH	SD				
HOLLOMAN	NM				
KEFLAVIK	ICELD				
LAJES	AZO				
LANGLEY	VA				
MINOT	ND				
MOODY	GA				
MOUNTAIN HOME	ID				
NELLIS	NV				
SEYMOUR-JOHNSON	NC				
SHAW	SC				
WHITEMAN	MO				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE.	24	07–Jul–99	05–Mar–01
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		EDUCATION SERVICES	73	17–Aug–00	16–Jul–01
ANDERSEN	GUAM				
EIELSON	AK				
ELMENDORF	AK				
HICKAM	HI				
KADENA	JA				
KUNSAN	KR				
MISAWA	JA				
OSAN	KR				
YOKOTA	JA				
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec–97	21–Mar–01
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	03–Feb–00	01–Jun–01
OFFUTT	NE	BASE OPERATING SUPPORT	1568	30–Sep–98	28–Feb–01
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May–98	18–Sep–00
PETERSON	CO	PERSONNEL SERVICES	90	05–Jan–00	16–Feb–01
RANDOLPH	TX	MULTIPLE SUPPORT FUNCTIONS	1224	14–Sep–00	10–Oct-01
ROBINS	GA	EDUCATION SERVICES	67	07–Jan–99	17–Aug–00
ROBINS	GA	ENVIRONMENTAL	49	07–Jun–00	20–May–01
ROBINS	GA	BASE SUPPLY	131	01–Apr–99	19–Dec–00
SCOTT	IL	PERSONNEL SERVICES	236	25–Jun–99	22–Mar–01
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18–Dec–98	28–Feb–01
SHEPPARD	TX	MULTIPLE SUPPORT FUNCTIONS	549	21–Sep–99	29–Jun–00
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE.	131	15–Jul–98	24–Aug–00

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	114	20–May–99	27–Jan–01
USAF ACADEMY	CO	SUPPLY AND TRANSPORTATION	117	08–May–98	09–May–00
USAF ACADEMY	CO	CIVIL ENGINEERING	496	01–Dec–98	24–Mar–00
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE.	66	25–Oct–00	27–Apr–01
WHITEMAN	MO	UTILITIES PLANT	11	18–Aug–99	01–Jun–00
DIRECT CONVERSIONS					
BOLLING	DC	EDUCATION/TRAINING AND PERSONNEL.	12	01–May–00	13–Apr–01
COLUMBUS	MS	SURVIVAL EQUIPMENT	29	18–Apr–00	15–Apr–01
HICKAM	HI	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	48	07–Nov–00	18–May–01
HICKAM	HI	FURNISHINGS MANAGEMENT	11	27–Jun–00	06–Jul–01
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE.	66	12–May–97	09–Nov–00
LANGLEY	VA	COMMUNICATIONS ADMINISTRATION AND INFORMATION FUNCTION.	13	31–Jan–00	02–Apr–01
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23–Mar–99	11–Jul–01
LANGLEY	VA	DATA PROCESSING EQUIPMENT OPERATIONS.	15	04–Nov–99	02–Apr–01
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14–May–99	13–Oct–00
MULTIPLE INSTLNS		ENVIRONMENTAL	49	27–Sep–00	20–Jul–01
BARKSDALE	LA				
CANNON	NM				
DAVIS MONTHAN	AZ				
ELLSWORTH	SD				
HOLLOMAN	NM				
LANGLEY	VA				
MINOT	ND				
MOODY	GA				
MOUNTAIN HOME	ID				
NELLIS	NV				
SEYMOUR-JOHNSON	SC				
WHITEMAN	MO				
MULTIPLE INSTLNS		ADMINISTRATIVE SUPPORT	67	08–Aug–00	17–Jul–01
ANDERSEN	GUAM				
EIELSON	AK				
ELMENDORF	AK				
HICKAM	HI				
KADENA	JA				
KUNSAN	KR				
MISAWA	JA				
OSAN	KR				
YOKOTA	JA				
OFFUTT	NE	SOFTWARE PROGRAMMING	10	09–Mar–01	30–Apr–02
OFFUTT	NE	SOFTWARE PROGRAMMING	9	09–Mar–01	30–Apr–02
OFFUTT	NE	SOFTWARE PROGRAMMING	10	09–Mar–01	30–Apr–02
OFFUTT	NE	COMMUNICATION FUNCTIONS	13	17–Nov–00	29–Jun–01
RAF FELTWELL	UK	PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	76	08–Jan–01	24–Aug–01
ROBINS	GA	AIRFIELD MANAGEMENT	10	06–Jun–00	24–May–01
ROBINS	GA	PROTECTIVE COATING	8	18–Jan–00	15–May–01
SCHRIEVER	CO	FOOD SERVICES	18	02–Sep–99	02–Mar–01
SCOTT	IL	FURNISHINGS MANAGEMENT	3	18–Sep–00	22–Feb–02
SCOTT	IL	ADMINISTRATIVE SWITCHBOARD	85	05–Aug–99	16–Mar–01
SHAW	SC	RAILROAD TRANSPORTATION SERVICES.	2	02–Oct–00	29–Jan–01
SHAW	SC	COMMUNICATION FUNCTIONS	3	18–May–99	19–Apr–01
TINKER	OK	SOFTWARE PROGRAMMING	67	08–May–00	01–Jun–01
TINKER	OK	COMMUNICATION FUNCTIONS	70	08–Jan–01	03–Oct–01
VANDENBERG AFB	CA	AIR TRAFFIC CONTROL	8	09–Mar–01	01–Dec–01
VANDENBERG AFB	CA	BASE WEATHER OBSERVING	10	02–Mar–01	01–Dec–01

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–11868 Filed 5–10–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System (NCSS). The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: June 5–7, 2001.

ADDRESSES: Department of Energy, Room GA257, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–8681.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–11867 Filed 5–10–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 July 10, 2001.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

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: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Moving Reading/English Language Arts Standards to the Classroom Study: The Impact of Systemic, Standards-based Reform on Instruction.

Frequency: One Time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,320

Burden Hours: 1,986

Abstract: The purpose of Moving Standards Reading is to understand the relationship between state-initiated standards-based reforms and student achievement. The study will assess the impact of grade 4 reading/English language arts content standards and instructional supports on teachers' classroom instructional practices. It will also assess the relationship between instruction aligned with standards and grade 4 student achievement on state-administered reading/English language arts assessments. The study is to be conducted in 4 states, 100 districts, and 400 schools. The results of the study will highlight the features of effective standards-based reform policies and practices. The results are also expected to inform future federal programs and state, district, and school policy development and implementation.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie.Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11860 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Children with Disabilities Unilaterally Removed or Suspended/Expelled for More Than 10 Days.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 149,350

Abstract: This package provides instructions and a form for States to report the number of children and youth and the number of acts involving students served under the Individuals with Disabilities Education Act (IDEA) involving a unilateral removal by school personnel or long-term suspension/expulsion. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor State Educational Agencies (SEAs) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11853 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Part B, Individuals with Disabilities Education Act (IDEA) Implementation of FAPE Requirements (SC).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 149,350

Abstract: This package provides instructions and forms necessary for States to report the settings in which children with disabilities served under IDEA–B receive special education and related services. The form satisfies reporting requirements and is used by Office of Special Education Programs (OSEP) to monitor State Educational Agencies (SEAs) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11854 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Children with Disabilities Receiving Special Education under Part B of the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 30,682

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B that receive special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 MarylandAvenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11855 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Consolidated Data Collection on Students with Disabilities.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 18,312

Abstract: This package provides a file layout for States to use in reporting district and school level data on students receiving services under the

Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act, as amended. If used by States, it will meet the reporting requirements of the Office of Special Education Programs, the Office for Civil Rights (for students with disabilities only) and the National Center on Education Statistics (for students with disabilities only).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11856 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Children with Disabilities Exiting Special Education During the School Year.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 53,244.

Abstract: This package provides instructions and a form necessary for States to report the number of students aged 14 and older served under the Individuals with Disabilities Education Act, Part B (IDEA–B) exiting special education. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor State Education Agenices (SEAs) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11857 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Early Intervention Services on Individualized Family Service Plans (IFSPs) Provided to Infants, Toddlers and Their Families in Accordance with Part C and Report of Number and Type of Personnel Employed and Contracted to Provide Early Intervention Services.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 5,187.

Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities and their families receiving different types of Part C services, and the number of personnel employed and contracted to provide services for infants and toddlers with disabilities and their families. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of the Individuals with Disabilities Education Act (IDEA) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11858 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Personnel Employed to Provide Special Education and Related Services for Children with Disabilities.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 7,685

Abstract: This package provides instructions and a form necessary for States to report Personnel serving children with disabilities served under Individuals with Disabilities Education Act, Part B (IDEA-B). This form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) for monitoring, implementing IDEA, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11859 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the 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 June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that 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.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Infants and Toddlers Receiving Early Intervention Services and of Program Settings Where Services are Provided in Accordance with Part C, and Report on Infants and Toddlers Exiting Part C.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57

Burden Hours: 5,472

Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities who: (a) are served under the Individuals withDisabilities Education Act (IDEA), Part C; (b) are served in different program settings; and (c) exit Part C because of program completion and for other reasons. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11852 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Santiam-Bethel Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to rebuild a 17-mile portion of the Santiam-Chemawa single-circuit 230-kilovolt (kV) line as a double-circuit 230-kV line in the existing right-of-way in floodplains and wetlands located in Marion and Linn Counties, Oregon. The purpose of the project is to prevent overloads on the Santiam-Chemawa 230-kV line. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than May 29, 2001.

ADDRESSES: Submit comments to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. Internet address: *comment@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie Kelleher, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; telephone number 503–230–7692; fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: The BPA Santiam-Bethel transmission line rebuild would cross the 100-year floodplain of North Santiam River (T9S, R1E, Section 22) and a tributary to the Pudding River (T7S, R2W, Section 25); a total of 14 wetlands were identified within the cleared right-of-way.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on May 4, 2001.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 01–11926 Filed 5–10–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–401–000]

Columbia Gas Transmission Corporation; Notice of Tariff Filing

May 7, 2001.

Take notice that on May 2, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, original and revised tariff sheets, listed on Appendix A to the filing, bearing a proposed effective date of June 1, 2001. Columbia states that Sheet No. 30B is being filed pro forma. These tariff sheets are being filed to initiate new firm lateral-only transportation service under new Rate Schedule FTS–LAT.

Columbia states that it is proposing to establish Rate Schedule FTS–LAT to provide for firm transportation service on lateral facilities newly constructed for the benefit of a customer or customers. The rate schedule and tariff sheets being filed establish a tariff framework that will enable Columbia to construct and provide transportation service on discrete lateral facilities at incremental rates as requested by customers. The incremental rates for transportation service on a discrete lateral facilities when constructed will be filed and administered under the rate schedule framework proposed herein, including for Columbia's proposed Marcus Hook Lateral in a related certificate filing. Service on the new incrementally priced lateral facilities under Rate Schedule FTS–LAT will not include service under existing Columbia transportation rate schedules. Rate Schedule FTS–LAT is closely modeled after a similar lateral-only type service previously authorized by the Commission.

Columbia is also making conforming changes to its tariff to reflect the addition of this new rate schedule in its tariff.

Columbia states that copies of this filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11890 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1363–000]

Coral Energy Management, LLC; Notice of Issuance of Order

May 7, 2001.

Coral Energy Management, LLC (Coral) submitted for filing a rate schedule under which Coral will engage in wholesale electric power and energy transactions at market-based rates. Coral also requested waiver of various Commission regulations. In particular, Coral requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Coral.

On April 17, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Coral should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Coral is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant,and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Coral's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 17, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11885 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–180–000, CP01–181–000 and CP01–182–000]

Cypress Natural Gas Company, L.L.C.; Notice of Applications

May 7, 2001.

Take notice that on April 25, 2001, Cypress Natural Gas Company, L.L.C. (Cypress), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed applications pursuant to Section 7(c) of the Natural Gas Act. In Docket No. CP01–180–000, Cypress seeks a certificate of public convenience and necessity authorizing it to construct, install and operate pipeline, compression, and metering facilities, as well as acquire certain pipeline facilities. In Docket No. CP01–181–000, Cypress seeks a blanket certificate pursuant to 18 CFR Part 284, Subpart G of the Commission's Regulations for self-implementing transportation authority. In Docket No. CP01–182–000, Cypress seeks a certificate of public convenience and necessity to construct and operate natural gas pipeline facilities under Part 157, Subpart E of the Commission's Regulations. Cypress' proposals are more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Cypress proposes in Docket No. CP01–180–000 to construct and operate 166 miles of 24-inch pipeline from an interconnection with the facilities of Southern Natural Gas Company

(Southern) in Chatham County, Georgia to an interconnection with the facilities of Florida Gas Transmission Company in Clay County, Georgia. In addition, Cypress proposes to construct and operate at 13,000 horsepower compressor station and four metering stations. Cypress states that the capacity of the proposed pipeline is 310,000 Mcf per day. Further, Cypress seeks authorization to acquire an undivided interest in 310,000 Mcf per day of capacity on Southern's existing pipeline between Elba Island, Georgia and the proposed interconnection between Southern and Cypress in Chatham County, Georgia. Cypress states that the estimated cost of the proposed facilities is approximately $236.1 million and when the cost of acquiring the interest in Southern's facilities is included, the estimated cost is approximately $241.7 million. Cypress states that the project will be financed with equity contributions from its parent, Southern.

Cypress proposes to provide open access firm and interruptible service under Rate Schedules FT and IT, respectively. Cypress will offer both negotiated and recourse rates. Cypress designed its recourse rate using the straight fixed-variable method. Cypress states that its firm rate is designed to recover all fixed costs, less $500,000 which will be allocated to interruptible transportation service, through the monthly reservation charge. Cypress states that variable costs, except compressor power costs and gas lost and unaccounted for, will be recovered through the commodity charge. According to Cypress, compressor power costs and gas lost and unaccounted for are to be recovered through a fuel retention percentage of 0.5%. Cypress has also included a *pro forma* FERC Gas Tariff.

Cypress asserts that its project will provide a new source of supply—regasified liquefied natural gas (LMG) from the reactivated Southern LNG terminal at Elba Island, Georgia—to markets in south Georgia and north Florida, including new gas-fired electric generation. Further, Cypress states that its proposal is consistent with the Commission's statement of policy on certification of new interstate natural gas pipeline facilities. Cypress requests a preliminary determination on non-environmental issues by October 1, 2001, and final certificate authorization by August 1, 2002. Cypress states that this will allow construction to be completed by its proposed in-service date of June 1, 2003.

Any questions regarding the application should be directed to Patricia S. Francis, Senior Counsel, Cypress Natural Gas Company, L.L.C., P.O. Box 2563, Birmingham, Alabama 35202–2563 at 205–325–7696.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 29, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–11865 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–402–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2001.

Take notice that on May 2, 2001 Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 65 with a proposed effective date of June 1, 2001.

Destin states that the filing is being made to clarify Section 8.3 of Destin's General Terms and Conditions (force majeure provision) to the effect that a force majeure declaration by a shipper does not excuse such shipper from the payment of any applicable reservation charges during the period of the force majeure.

Destin states that a copy of this filing has been served upon is customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11887 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1169–000]

Nicor Energy, L.L.C; Notice of Issuance of Order

May 7, 2001.

Nicor Energy, L.L.C. (Nicor) submitted for filing a rate schedule under which Nicor will engage in wholesale electric power and energy transactions at market-based rates. Nicor also requested waiver of various Commission regulations. In particular, Nicor requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Nicor.

On April 17, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Nicor should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Nicor is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Nicor's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 17, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11886 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–403–000]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2001.

Take notice that on May 2, 2001, OkTex Pipeline Company (OkTex), filed revised tariff sheets in compliance with the Commission's directives in Order No. 587–M.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that result from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its November 30, 2000 Order No. 587–M in Docket No. RM96–1–015. OkTex will implement the GISB consensus standards for May 1, 2001 business, and that the revised tariff sheets therefore reflect an effective date of May 1, 2001.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11888 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–404–000]

Overthrust Pipeline Company; Notice of Tariff Filing

May 7, 2001.

Take notice that on May 3, 2001, Overthrust Pipeline Company (Overthrust) tendered for filing of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective June 4, 2001:

Seventh Revised Sheet No. 1

Third Revised Sheet No. 11
Second Revised Sheets No. 13 and 14
Original Sheet No. 15
Third Revised Sheet No. 20
Second Revised Sheet No. 22
Tenth Revised Sheet No. 30
Original Sheet Nos. 78F to 78I

Overthrust states that the tendered tariff sheets revise Overthrust's FERC Gas Tariff to implement provisions permitting Overthrust and its shippers to negotiate mutually acceptable rates as provided by the Commission's Policy Statement issued January 31, 1996, in Docket No. RM95–6 (the Policy Statement). Overthrust's negotiated-rate option would apply to its open-access services under Rate Schedules FT and IT. In the Policy Statement, the Commission stated, among other things, that it would allow pipelines to implement a negotiated/recourse-rate program. Under such a program, the pipeline's existing tariff rates would constitute its recourse rates. With the implementation of this service, a shipper that voluntarily elects not to take transportation service under the recourse rate may negotiate with Overthrust for a rate that is not limited by the stated tariff rates.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reverence Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11891 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–400–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

May 7, 2001.

Take notice that on May 1, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A certain tariff sheets to reflect various minor cleanup changes and clarifications. GTN requests that these tariff sheets become effective June 1, 2001.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 38.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11889 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–626–003]

Transwestern Pipeline Company; Notice of Compliance Filing

May 7, 2001.

Take notice that on April 13, 2001, Transwestern Pipeline Company (Transwestern) filed a letter to comply with the Commission's March 14, 2001, order in this proceeding.[1] The letter explain's (1) Why its proposed netting and trading proposal relies on dollar values as opposed to volumetric trades, (2) whether imbalances on its system could be netted and traded on a volumetric basis, and (3) how existing Section 27.1(e) of Transwestern's tariff, which provides for the make up of imbalances on an in-kind basis, would operate with Transwestern's proposed new tariff language.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 14, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11894 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

[1] 94 FERC ¶ 61,249 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–129–014 and RP91–54–014]

Trunkline Gas Company; Notice of Compliance Filing

May 7, 2001.

Take notice that on April 23, 2001, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective May 1, 2001.

Trunkline states that this filing is being filed to implement the terms of the January 29, 2001 Stipulation and Agreement in Docket No. RP96–129–000 and RP91–54–000 (Not Consolidated) (Settlement). The Settlement has been approved by the Commission's Order Approving Settlement issued April 12, 2001.[1]

Trunkline states that copies of the filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc/fed/us/online/rims. htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www/ferc/fed/us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11892 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

[1] 95 FERC ¶ 61,049 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–318–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

May 7, 2001.

Take notice that on May 3, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its response to the Commission's Order On Filings In Compliance With Order No. 587–M, issued Arpil 26, 2001 in Docket No. RM96–1–015.

Williston Basin states that it believes it has already complied with the Commission's Order since Williston Basin adopted by reference in its March 30, 2001 compliance filing in Docket No. RP01–318–000 GISB's revised Standard 5.3.30 by listing such standard under the Capacity Release section of Subsection 47.2 of Seventh Revised Sheet No. 371.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11893 Filed 5–10–01;8:45 am]

BILLING DATE 6717–01–M

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed extension.

SUMMARY: Southwestern Power Administration's (Southwestern's) current Integrated System Rate Schedules P–98D, NFTS–98D and EE–98 expire September 30, 2001. Southwestern's Administrator has prepared Current and Revised Fiscal Year (FY) 2001 Power Repayment Studies for the Integrated System which show the need for a rate adjustment of $1,876,231 (1.8 percent increase) in annual revenues. It is proposed that this rate adjustment will be deferred in accordance with Southwestern's rate adjustment threshold and that an extension of the aforementioned rate schedules from October 1, 2001 to September 30, 2002, will be sent to the Deputy Secretary of Energy for interim approval.

DATES: Written comments are due on or before June 11. 2001.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves,Assistant Administrator,Office of Corporate Operations,Southwestern Power Administration,Department of Energy,One West Third Street,Tulsa, Oklahoma 74103,(918) 595–6696, *reeves@swpa.gov*

SUPPLEMENTARY INFORMATION:

a. Decision

Following DOE Order Number RA 6120.2, Southwestern's Administrator prepared a FY 2001 Current Power Repayment Study (PRS) using the existing Integrated System rate schedules. The Current PRS showed that current revenues were insufficient to meet repayment criteria. The FY 2001 Revised PRS indicates that an increase in annual revenues of $1,876,231, or 1.8 percent would satisfy cost recovery requirements.

Southwestern generally defers an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold was developed to minimize Southwestern's costs while still maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. As a result of the benefits of reduced Federal expense and rate stability obtained by a rate adjustment deferral, Southwestern's Administrator is proposing to extend the current Integrated System Rate Schedules (P–98D, NFTS–98D and EE–98). The rate schedules are to be effective for a one-year period beginning

October 1, 2001, and extending through September 30, 2002.

Following review of the written comments (absent any substantive reasons to do otherwise), the Administrator will submit the rate extension proposal for the Integrated System to the Deputy Secretary of Energy for confirmation and interim approval.

b. Rationale for the Decision

The Integrated System's FY 2000 (last year's) PRS concluded that the annual revenues needed to be increased by 0.4 percent. At that time, it was determined prudent to defer the increase in accordance with the established threshold and the current rate schedule was continued for one year. It once again seems prudent to defer this potential rate adjustment in accordance with Southwestern's rate adjustment threshold and re-evaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 2002 (next year's) PRS. In accordance with 10 CFR Sections 903.22(h) and 903.23(a)(3), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC.

The current rate schedules for the Integrated System were confirmed and approved by the FERC on a final basis on April 29, 1998, for a period that is to end September 30, 2001. Since initial FERC approval, specific provisions within rate schedules P–98A and NFTS–98 have been revised to address issues that have arisen from restructuring of the electric industry. Rate schedules were redesignated 98B, 98C and 98D with each revision. All subsequent revisions of the Integrated System rate schedules through 98C have been approved by FERC. Rate schedules P–98D and NFTS–98D are currently under FERC review for final approval. These revisions had no impacts on the initially established revenue requirements for Southwestern's Integrated System. In addition, no change was made to the expiration date, September 30, 2001. Consequently, the net result of the revenue requirements projected in the FY1997 Integrated System Power Repayment Studies, which provided the basis for the existing rate schedules, is not changed.

c. Background

The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Southwestern's Integrated System is comprised of 22 of these projects interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Their power is marketed under contracts through which two customers purchase the entire power output of each of the projects at the dams.

d. Availability of Information

Opportunity is presented for customers and interested parties to receive copies of the study data for the Integrated System. If you desire a copy of this information, please submit your request to: Mr. James W. Sherwood, Division Director, Division of Rates and Repayment, Office of Corporate Operations, One West Third Street, Tulsa, OK 74103, call (918) 595–6673 or e-mail *sherwood@swpa.gov.*

Dated: April 26, 2001.

Michael A. Deihl,

Administrator.

[FR Doc. 01–11929 Filed 5–10–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Proposed Sam Rayburn and Robert D. Willis Project Power Rate Changes

AGENCY: Southwestern Power Administration, (DOE).

ACTION: Notice of opportunities for public review and comment

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2001 Power Repayment Studies (PRS) for the Sam Rayburn Dam (Rayburn) and Robert D. Willis (Willis) projects that demonstrate the need for an adjustment in annual revenues required to meet cost recovery criteria for each project. The PRS for Rayburn indicates the need for an annual revenue decrease of $90,504. This decrease results from a decrease in projected replacements. The PRS for the Willis project indicates the need for an annual revenue increase of $12,816. The Willis increase results from an increase in the annual estimates for Operations and Maintenance costs of the Corps of Engineers. The Administrator has developed proposed rate schedules for the Rayburn and Willis projects to assure recovery of the required costs. The proposed rate adjustment for the Rayburn project would decrease annual revenues from $2,168,136 to $2,077,632 or 4.2 percent. The proposed Willis rate adjustment increases annual revenues approximately 3.8 percent from $337,932 to $350,748. Both rate changes will be effective October 1, 2001.

DATES: A Public Information Forum has been scheduled for June 14, 2001, in Tulsa Oklahoma. A Public Comment Forum will be held July 18, 2001, in Tulsa, Oklahoma. Written comments are due on or before August 9, 2001. Southwestern is conducting a 90 day public notice and comment period (10 CFR 903.14(d)) to process both the Rayburn and Willis rate adjustments at the same time.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves,Assistant Administrator,Office of Corporate Operations,Southwestern Power Administration,U.S. Department of Energy,One West Third Street,Tulsa, Oklahoma 74103,(918) 595–6696.

SUPPLEMENTARY INFORMATION:

a. Background

The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Rayburn project, located in eastern Texas, is not interconnected

with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Rayburn project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The Willis project, located on the Neches River downstream from the Rayburn, consists of two 4,000 kilowatt hydroelectric generating units. It, like the Rayburn project, is marketed as an isolated project under a contract through which the customer receives the entire output of the project for a period of 50 years as a result of funding the construction of the hydroelectric facilities at the project. A separate PRS is prepared for each project based on its isolated project determination.

b. Decision and Rationale

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a Current PRS for the Rayburn project using the existing annual rate of $2,168,136. The study indicates that by maintaining the current rate, surpluses would result in FY 2018, the year the project investment is due, and in the 50th year of the study. This is primarily the result of reduced estimated replacement investment. The Revised PRS indicates that by decreasing revenues $90,504 (4.2 percent) annually, repayment criteria would continue to be met.

The Current PRS for the Willis project indicates that by maintaining the current rate, a revenue deficit is shown for the project. This is primarily a result of an increase in the Corps of Engineers estimated Operations and Maintenance costs. The Revised PRS for the Willis project shows that an increase of $12,816 (3.8 percent) annually will be sufficient to satisfy repayment criteria. This increase would change annual revenues produced by the Willis Project from $337,932 to $350,748 and satisfy the present financial criteria for repayment of the project.

c. Availability of Information

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Rayburn and Willis projects. If you desire a copy of the Repayment Study Data Package for these projects, please submit your request to: Mr. James W. Sherwood, Director, Division of Rates and Repayment, One West Third Street, Tulsa, OK 74103, (918) 595–6673 or e-mail *sherwood@swpa.gov.*

A Public Information Forum is scheduled to be held at 1:30 p.m., central daylight time (C.D.T.) Thursday, June 14, 2001, in Southwestern's offices, room 1600, Williams Center Tower 1, One West Third Street, Tulsa, Oklahoma. The Forum is to explain to customers and interested parties the proposed rates and supporting studies. The Forum will be conducted by a chairperson who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the forum may be submitted from interested persons and will be answered, to the extent possible, at the forum. Questions not answered at the Forum will be answered in writing, except the questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by 4 p.m., C.D.T., Friday, June 8, 2001, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum is scheduled to be held at 1:30 p.m., C.D.T., Thursday, July 18, 2001, at the same location established for the Public Information Forum. At the Public Comment Forum, interested persons may submit written comments or make oral presentations of their views and comments. This forum will also be conducted by a chairperson who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairperson may ask questions of speakers. The chairperson may allow others to speak if time permits. Persons interested in attending or speaking at the Public Comment Forum should indicate in writing by 4 p.m., C.D.T., Friday, July 13, 2001, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A transcript of each Forum will be made. Copies of the transcripts may be obtained from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, for a fee. Written comments on the proposed rates for the Rayburn and Willis projects are due on or before 90 days from publication of this notice in the **Federal Register**. Written comments should be submitted to the Administrator, Southwestern Power Administration, U. S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

Following review of the oral and written comments, the Administrator will submit the rate proposals and the Power Repayment Studies for the Rayburn and Willis projects, in support of the proposed rates, to the Deputy Secretary of Energy for confirmation and approval on an interim basis and then to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an additional opportunity to provide written comments on the proposed rate adjustments before making a final decision.

Dated: April 27, 2001.

George C. Grisaffe,

Acting Administrator.

[FR Doc. 01–11928 Filed 5–10–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool-Loveland Area Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed allocation.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces its Post-2004 Resource Pool Proposed Allocation of Power developed under the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule, 10 CFR part 905.

Western's call for applications was published in the **Federal Register** at 65 FR 12987, March 10, 2000. Applications for power were accepted at Western's Rocky Mountain Customer Service Region until close of business September 6, 2000. Review of those applications resulted in the Proposed Allocation of Power published in this notice.

DATES: The comment period on the Proposed Allocation of Power begins today and ends September 10, 2001. To be assured of consideration, Western must receive all written comments by the end of the comment period. Western will hold public information forums about the proposed allocations on August 2, 7, and 9, 2001, at the following locations and times:

1. August 2, 2001, information forum begins at 10 a.m. in Westminster, Colorado.

2. August 7, 2001, information forum begins at 10 a.m. in Casper, Wyoming.

3. August 9, 2001, information forum begins at 10 a.m. in Topeka, Kansas.

ADDRESSES: Send written comments about these proposed allocations to: Mr. Joel K. Bladow, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003. Comments may also be faxed to 970–461–7213 or e-mailed to POST2004LAP@WAPA.GOV. All documentation developed or retained by Western for the purpose of developing the proposed allocations is available for inspection and copying at the Rocky Mountain Customer Service Region Office, at 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

Public information forums will be held at:

1. Fairfield Inn, 12080 Melody Drive, Westminster, Colorado.
2. Holiday Inn Casper, 300 West ''F'' Street, Casper, Wyoming.
3. Capitol Plaza Hotel, 1717 SW Topeka Boulevard, Topeka, Kansas.

FOR FURTHER INFORMATION CONTACT: Ron Steinbach, Power Marketing Manager, 970–461–7322; David Holland, Project Manager, 970–461–7505; or Susan Steshyn, Public Utilities Specialist, 970–461–7237. Written requests for information should be sent to Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, faxed to 970–461–7213, or e-mailed to POST2004LAP@WAPA.GOV.

SUPPLEMENTARY INFORMATION: Western published Final Post-2004 Resource Pool Allocation Procedures on August 29, 2000, at 65 FR 52419, to implement Subpart C—Power Marketing Initiative of the Program's Final Rule, 10 CFR part 905, published at 60 FR 54151. The Program, developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools and allocate power from these pools to new preference customers. Those final procedures, in conjunction with the Post-1989 Marketing Plan (51 FR 4012, January 31, 1986), establish the framework for allocating power from the resource pool established for the Loveland Area Projects (LAP). Only comments relevant to the proposed allocations will be accepted during the comment period. After all public comments have been thoroughly considered, Western will prepare and publish the Final Allocations of Power in the **Federal Register**.

I. Amount of Pool Resources

Western will allocate up to 4 percent of the LAP long-term firm hydroelectric resource available as of October 1, 2004, as firm power. Current hydrologic studies indicate that about 28 megawatts (MW) capacity and 44 Gigawatthours (GWh) of energy will be available for the summer season. Approximately 24 MW capacity and 35 GWh of energy will be available for the winter season. Firm power means firm capacity and associated energy allocated by Western and subject to the terms and conditions specified in Western's long-term firm power electric service contracts.

II. Proposed Allocation of Power

Written comments on the Proposed Allocation of Power must be received at the address above by close of business on September 10, 2001. Western will respond to comments received on the Proposed Allocation of Power and publish the final allocations after the end of the comment period.

Western received 40 applications for the Post-2004 LAP resource pool. Applicants requested total allocations of 1,900 GWh in the summer season and 1,700 GWh in the winter season. Proposed seasonal capacity allocations for all allottees are based on the proposed seasonal energy data shown in the following tables and is calculated from the LAP seasonal plant factors of 36.7 percent in the summer season and 33.4 percent in the winter season. Initial review of the applications indicated that 6 of the 40 applicants did not meet the minimum allocation qualifications published at 65 FR 52419. Review of data from the remaining 34 applicants resulted in 25 proposed allocations of the Post-2004 LAP resource pool.

The proposed allocations for Native American allottees are shown in this table.

Native American allottees	Proposed post-2004 power allocation			
	Summer kilowatthours	Winter kilowatthours	Summer kilowatts	Winter kilowatts
Iowa Tribe of Kansas and Nebraska	1,986,640	1,722,043	1,232	1,180
Kickapoo Tribe in Kansas	2,760,701	2,323,337	1,713	1,592
Prairie Band Potawatomi Nation	5,536,170	4,458,846	3,435	3,056
Sac and Fox Nation of Missouri	2,690,754	2,289,904	1,669	1,570
Wind River Reservation (Eastern Shoshone and Northern Arapaho Tribes)	1,828,963	1,718,007	1,135	1,178

Facilities that represented non Native American load on the reservations were not considered as eligible for the allocation process. Native American facilities that were completed or substantially near completion on the application due date were considered eligible load. The Native American seasonal energy data was adjusted to account for those eligibility factors prior to the allocation process.

Native American allottees received a Western hydropower benefit totaling 65 percent of eligible load in both the summer and winter season based on the adjusted seasonal energy data submitted. The 65 percent Western hydropower benefit is inclusive of current service received through serving utilities and future service that will be received by serving utilities as a result of this allocation process.

Based on the applications submitted by the Northern Arapaho and the Eastern Shoshone tribes, Western could not differentiate between each tribe's load. The data from each tribe was used to propose an allocation for the Wind River Reservation instead of each tribe. The 65 percent Western hydropower benefit for the Wind River Reservation includes an estimated allocation from Western's Salt Lake City Area Integrated Projects resource pool and the Western service currently received from the Reservation's serving utility.

After proposed allocations were made to Native American allottees, utility and nonutility proposed allocations were allotted based on a pro-rata share of the remaining resource pool and application of the minimum and maximum

allocation criteria to that pro-rata share. The proposed allocations for utility and nonutility allottees are listed here.

Utility and nonutility allottees	Proposed post-2004 power allocation			
	Summer kilowatthours	Winter kilowatthours	Summer kilowatts	Winter kilowatts
City of Chapman, KS	257,680	169,378	160	116
City of Elwood, KS	169,562	145,528	105	100
City of Eudora, KS	998,125	691,651	619	474
City of Fountain, CO	3,785,880	2,872,807	2,349	1,969
City of Garden City, KS	3,785,880	2,872,807	2,349	1,969
City of Goodland, KS	1,588,254	1,230,315	985	843
City of Horton, KS	441,108	317,470	273	218
City of Hugoton, KS	753,878	637,494	468	437
City of Johnson City, KS	446,670	340,573	277	233
City of Meade, KS	504,527	316,964	313	217
City of Minneapolis, KS	544,660	343,822	338	236
City of Troy, KS	195,112	152,529	121	105
Doniphan Electric Cooperative Association, Inc., KS	467,191	389,080	290	267
Fort Carson, CO	3,188,774	2,678,064	1,978	1,836
Kaw Valley Electric, KS	3,334,693	2,486,473	2,069	1,704
Midwest Energy, Inc., KS	3,785,880	2,872,807	2,349	1,969
Nemaha-Marshall Electric Cooperative Association, Inc., KS	1,145,788	984,083	711	674
Regional Transportation District, Denver, CO	331,820	291,245	206	200
Sunflower Electric Power Corporation, KS	3,785,880	2,872,807	2,349	1,969
Yellowstone National Park, WY	224,113	146,018	139	100

The proposed allocations shown in the tables above are based on the LAP marketable resource available at this time. If the LAP marketable resource is adjusted in the future, all allocations will be adjusted accordingly.

III. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–621 (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined that (1) this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact on a substantial number of such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By the execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

IV. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) to collect customer information in this rule, under control number 1910–1200.

V. Review Under the National Environmental Policy Act

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** on October 12, 1995 (60 FR 53181). Western's NEPA review assured all environmental effects related to these procedures have been analyzed.

VI. Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Dated: April 30, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–11927 Filed 5–10–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6617–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/of.

Weekly receipt of Environmental Impact Statements

Filed April 30, 2001 Through May 04, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010151, Draft EIS, AFS, IL, Midewin National Tallgrass Prairie, Proposed Land and Resource Management Plan, Implementation, Prairie Plan Development, Will County, IL, Comment Period Ends: September 06, 2001, Contact: Renee Thakali (815) 423–6370.

EIS No. 010152, Final EIS, USA, Programmatic EIS—Transportable Treatment Systems for Non-Stockpile Chemical Warfare Material (CWM), To Destroy Non-Stockpile in order to Protect Human, Health, Safety and the Environment, To Comply with the International Treaty, Nationwide, Wait Period Ends: June 11, 2001, Contact: John Gieseking (410) 436–8737.

EIS No. 010153, Draft Supplement, BLM, MT, Zortman and Landusky Mines Reclamation Plan, Modifications and Mine Life Extensions, Updated Information To Analyze Additional Reclamation Alternatives, Approval of Mine

Operation, Mine Reclamation and COE Section 404 Permits, Little Rocky Mountains, Phillip County, MT, Comment Period Ends: July 09, 2001, Contact: Scott Haight (406)538–1930.

EIS No. 010154, Draft EIS, DOI, NV, Reno Clay Plant Project, Construct and Operate an Open-Pit Clay Mine and Ore Processing Facility, Plan of Operations, Oil-Dri Corporation of Nevada, Hungry Valley, Washoe County, NV, Comment Period Ends: July 10, 2001, Contact: Terri Knutson (775) 885–6156.

EIS No. 010155, Draft EIS, COE, NJ, Great Egg Harbor Inlet to Townsends Inlet, Storm Damage Reduction for Ocean City and Ludlam Island Utilizing Beachfill to Construct a Protective Berm and Dune, City of Ocean City, Strathmere (Township of Upper), City of Sea Isle City, Cape May County, NJ, Comment Period Ends: June 25, 2001, Contact: Steven Allen (215) 656–6559.

EIS No. 010156, Final EIS, JUS, AZ, Pinal County Private Detention Facility, Development and Operation of a Pre-Trail Detention Facility, Pinal County, AZ, Wait Period Ends: June 11, 2001, Contact: Charles Coburn (202) 307–9045.

EIS No. 010157, Draft EIS, BOP, CA, Fresno Federal Correctional Facility Development, Orange Cove, Fresno County, CA, Comment Period Ends: June 25, 2001, Contact: David J. Dorworth (202) 514–6470.

EIS No. 010158, Draft EIS, FHW, PA, Pennsylvania Turnpike/Interstate 95 Interchange Project, Pennsylvania Turnpike (I–276) and I–95 in Bucks County, PA Connection with Proposed Interstate Improvements Extending east into Burlington County, NJ, Funding, Buck County, PA and Burlington County, NJ, Comment Period Ends: July 02, 2001, Contact: James A. Cheatham (717) 221–3461.

EIS No. 010159, Draft Supplement, DOE, NV, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a Geologic Repository at Yuma Mountain, Update and Additional Information, Nye County, NV, Comment Period Ends: June 25, 2001, Contact: Jane R. Summerson (702) 794–1493.

EIS No. 010160, Final EIS, FHW, CO, South I–25 and US 85 Corridors Improvements, CO–470 to Castle Rock, Funding, Douglas County, CO, Wait Period Ends: June 11, 2001, Contact: Scott Sands (303) 969–6730.

EIS No. 010161, Draft EIS, USA, CO, Pueblo Chemical Depot, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility, Pueblo County, CO, Comment Period Ends: June 25, 2001, Contact: Penny Robitaille (410) 436–4178.

EIS No. 010162, Draft EIS, DOD, AL, Assembled Chemical Weapons Destruction Technologies at One or More Sites, Design, Construction and Operation of One or More Pilot Test Facilities, Anniston Army Depot, AL; Pine Bluff Arsenal, AR; Blue Grass Army Depot, KY and Pueblo Chemical Depot, CO, Comment Period Ends: June 25, 2001, Contact: Jon Ware (410) 436–2210.

EIS No. 010163, Final EIS, AFS, WY, State of Wyoming School Section 16 T. 12N., R.83W., 6th P.M., Issuing a Forest Road Special-Use-Permit for Access, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY, Wait Period Ends: June 11, 2001, Contact: Lynn Johnson 307–745–2300

Dated: May 8, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–11954 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6617–9]

Environmental Impacts Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental ReviewProcess (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements(EISs) was published in FR datedApril 14, 2000 (65 FR 20157) .

Draft EISs

ERP No. DA–FAA–F51040–IN Rating EC2 , IndianapolisInternational Airport Master Plan Development, UpdatedInformation to Construct a Midfield Terminal, Midfield Interchange, and Associated Developments, Airport Layout Plan Approval,Funding and Section 404 Permit, Marion County, IN

Summary: EPA continues to express concerns relating to the mitigation being provided for compensatory forested wetlands.

ERP No. DS–FTA–K40130–CA Rating LO , Los Angeles Eastside Corridor Transportation Improvement,Updated Information for Light Rail Transit (LRT) BuildAlternative and the Three Transition Options, Extending from Union Station to Beverly and Atlantic Boulevards in EastLos Angeles, via Alameda St., 1st. Street, Indiana St., 3rd Street, and Beverly Boulevard, Los Angeles County, CA

Summary: EPA found that the document adequately discussed the environmental impacts of the proposed project.

Final EISs

ERP No. F–FHW–G40151–TX, US–190 Corridor from FM2657 to the East City Limits of Copperas Cove,Transportation Improvements, Major Investment Study,Coryell and Lampasas Counties, TX

Summary: EPA has completed its review of the Final EIS and has no objection to the selection of the preferred alternative.

ERP No. F–NOA–A91066–00, Tilefish FisheryManagement Plan (FMP), (Lopholatilus Chamaeleonticep),To Prevent Overfishing and to Rebuild the Resource of Tilefish,Located along the Atlantic Ocean

Summary: EPA had environmental concerns about the proposed regulations and the sufficiency of the information in the document. EPA's concerns included the adequacy of the mitigation measures and the impacts of trawling on Tilefish EFH.

ERP No. F–NOA–K91008–00, Pelagic Fisheries of the Western Pacific Region, Fishery Management Plan,To Analyze Longline Fisheries, Commercial Troll and Recreational Troll Fisheries, Commercial PelagicHandliner and Commercial Pole and Line Skipjack Fishery,Hawaii, American Samoa, Guam and Commonwealth of the Northern Mariana Island

Summary: EPA reviewed the FEIS and found that the document adequately addresses the issues raised in our comment letter on the DEIS.

ERP No. F–FHW–H40168–MO, New MississippiRiver Crossing, Relocated I–70 and I–64 Connector, Funding,COE Section 404 and 10 Permits, NPDES Permit, St. Louis County, MO

Summary: EPA has no objections to this project as proposed.

Dated: May 8, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–11955 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6977–4]

Science Advisory Board;Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given several committees/subcommittees of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Standard Time. All meetings are open to the public; however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—where appropriate, information concerning availability of documents from the relevant Program Office is included below.

1. NATA Review Panel Conference Call—May 14, 2001

It was recently announced in the **Federal Register** (66 FR 20802, April 25, 2001) that the National-Scale Air Toxics Assessment (NATA) Review Panel (hereafter, ''NATA Review Panel'') of the USEPA Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public conference call on Monday, May 14, 2001 from 11 a.m. to 1 p.m. (Eastern Standard Time). The call will be hosted out of the EPA Science Advisory Board Conference Room (Room 6013), Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. Interested members of the public may attend in person or connect to the conference by phone. The original purpose of the call was to provide Panel Members with the opportunity to reach closure on their draft report. The Panel Members conducted a technical editing work session (non-Federal Advisory Committee Act (FACA) meeting) on April 24, 2001(see also 66 FR 9846, February 12, 2001). In the April 24, 2001 meeting, the Panel Members determined that they need more time to continue edits and will not have a public draft report available until after May 14, 2001. They elected to continue the May 14, 2001 conference call as a technical editing work session (non-FACA) meeting, in which the public could listen in, but where no comments would be solicited on the draft report, since it is still in preparation. The NATA Panel then scheduled a public conference call for May 25, 2001 from 10 a.m. to 12 noon, in which public comments could be made. See below for details of the review, to request any supplemental materials from the Agency or ask questions on materials already received from the Agency.

2. EC/NATA Review Panel Conference Call—May 25, 2001

On May 25, 2001, the NATA Review Panel will discuss its draft report in review of the EPA Document entitled ''*National-Scale Air Toxics Assessment for 1996*,'' EPA–453/R–01–003, dated January, 2001 and supporting appendices. The conference call will take place from 10 a.m. to 12 noon (Eastern Standard Time). The call will be hosted out of the EPA Science Advisory Board Conference Room (Room 6013), Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. Interested members of the public may attend in person or connect to the conference by phone.

The document being reviewed represents an initial national-scale assessment of the potential health risks associated with inhalation exposures to 32 air toxics identified as priority pollutants by the Agency's Integrated Urban Air Toxics Strategy, plus diesel emissions. More information about the previous meetings can be found in 66 FR 9846, February 12, 2001, and 66 FR 20802, April 25, 2001. The NATA Review Panel is commenting on the charge questions which were outlined in the above FR notice and pertain to appropriateness of the overall approach, including the data, models, and methods used, and the ways these elements have been integrated, as well as to suggest ways to improve these approaches for subsequent national-scale assessments.

Providing Public Comments—We anticipate that the revised public draft of the NATA Report will be available to the public and the Agency on the SAB website (www.epa.sab.gov/sab) approximately one week prior to the May 25th meeting. The NATA Review Panel will accept oral or written public comments at the May 25, 2001 conference call, and is asking participants to focus on three aspects of the SAB NATA Panel's draft report, namely: (1) Has the NATA Review Panel adequately responded to the questions posed in the charge?; (2) Are any statements or responses made in the draft unclear?; and, (3) Are there any technical errors? Oral and written public comments were previously accepted at the March 20–21, 2001 meeting in review of this topic and new comments should be duplicative of these earlier comments.

For Further Information—To obtain information concerning this conference call, please contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO) (see contact information below). To obtain information about how to participate in this conference call, please contact Ms. Betty Fortune (see contact information below). A draft agenda for the teleconference will be posted on the SAB website (www.epa.gov/sab) approximately one week prior to the conference call. The draft report, once it becomes a consensus draft will also be posted on the SAB website. It is anticipated that this will be posted around May 21, 2001.

Availability of Review Materials—All the Agency OAQPS NATA-related review and informational materials, including the NATA Report, the Appendices, all briefing and presentation materials previously provided to the SAB were mentioned in earlier **Federal Register** notices (see above) and may be obtained on the web at the following URL site: http://www.epa.gov/ttn/uatw/sab/sabrev.html.

Alternately, a copy of the review document (*National-Scale Air Toxics Assessment for 1996*, EPA–453/R–01–003, dated January, 2001) and supporting appendices can be obtained from Ms. Barbara Miles at U.S. EPA, OAQPS/ESD/REAG (MD–13), Research Triangle Park, NC 27711; telephone (919) 541–5648; facsimile (919) 541–0840; e-mail *miles.barbara@epa.gov.* Please provide the title and the EPA number for the document, as well as your name and address. The document will be dispensed in CD ROM format unless the requestor requires a paper copy. Internet users may also download a copy from EPA's National Center for Environmental Assessment's (NCEA) website (*http://www.epa.gov/nata/*).

Following the May 25, 2001 conference call meeting, the NATA Review Panel plans to revise its draft report and forward it to the SAB Executive Committee for final review and approval, prior to transmittal to the Agency. This review will be announced in a subsequent **Federal Register** notice.

For Further Information—Members of the public desiring additional information about the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), Environmental Models Subcommittee, National-Scale Air Toxics Assessment Review Panel, US EPA Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx address: US EPA Science Advisory Board, Suite 6450, 1200 Pennsylvania Avenue, NW.,

Washington, DC 20004); telephone/voice mail at (202) 564–4557; fax at (202) 501–0582; or via e-mail at *kooyoomjian.jack@epa.gov.* The draft agenda will be available approximately one week prior to the meetings on the SAB website (*http://www.epa.gov/sab*) or from Ms. Betty Fortune at (202) 564–4534; fax: (202) 501–0582; or e-mail at: *fortune.betty@epa.gov.*

Providing Public Comments—Members of the public who wish to make a brief oral presentation at the May 25th meeting must contact Dr. Kooyoomjian in writing (by letter, fax, or e-mail—see previously stated information) no later than 12 noon Eastern Time, Friday, May 18, 2001 in order to be included on the Agenda. Written statements will be accepted in the SAB Staff office up until two business days following the meeting (by close of business, May 29, 2001).

3. Ecological Processes and Effects Committee (EPEC)—Teleconference Meeting June 1, 2001

The Ecological Processes and Effects Committee's STAR Water and Watersheds (WW) Review Panel will meet by conference call from 1 to 3 p.m. Eastern time on Friday, June 1, 2001. Members of the public wishing to call-in to the teleconference must make arrangements with Ms. Mary Winston by noon the Tuesday *before* the meeting. Instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston, Management Assistant, at (202) 564–4538, or via e-mail at: *winston.mary@epa.gov.*

Purpose of the Meeting—The purpose of the conference call meeting is to allow the STAR WW Review Panel to complete discussion of the Agency's Science to Achieve Results (STAR) Water and Watersheds Program. The STAR WW Program was the subject of a public meeting of the Committee on April 20, 2001. Additional details on the background and charge for the review of the STAR WW Program were provided in 66 FR 15433–15434, dated March 19, 2001.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total, unless otherwise stated. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until two business days following the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on our Website (http://www.epa.gov/sab) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 7, 2001.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–11914 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of New Exposure Draft Reporting Corrections of Errors and Changes in Accountng—Amendment of SFFAS 7, Accounting for Revenue and Other Financing Sources

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, *Reporting Corrections of Errors and Changes in Accounting Principles—Amendment to SFFAS 7, Accounting for Revenue and Other Financing Sources.*

A summary of the proposed Statement follows: On May 11, 2001, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) to amend Statement of Federal Financial Accounting Standards (SFFAS) 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting. The Chairman of the Federal Accounting Standards Advisory Board announced that the FASAB has issued an exposure draft of a proposed standard amending the reporting requirements for errors, discovered in the current year, that would have materially affected prior year financial statements. The current standard requires that adjustments be recognized as a change in cumulative results of operations (rather than as an element of net results of operations for the period) and that prior period financial statements not be restated for prior period adjustments recognized in the current period. The proposed amendment requires that when material errors are discovered in prior year financial statements, all statements presented must be restated to correct the error. The primary reason for proposing the amendment is to allow reporting entities to present comparative statements. The exposure draft, entitled Reporting Corrections of Errors and Changes in Accounting Principles, Amendment of SFFAS 7, Accounting for Revenue and Other Financing Sources, will be out for comment until June 11, 2001. The proposed amendment of SFFAS No. 7 would be effective for periods beginning after September 30, 2001.

The exposure draft will be mailed to FASAB's mailing list subscribers. Additionally, it is available on FASAB's home page *http://www.financenet.gov/*

fasab.htm. Copies can be obtained by contacting FASAB at (202) 512–7350, or *palmer@fasab.gov.* For further information call Andrea Palmer (202) 512–7360.

Written comments are requested by June 11, 2001, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

For Further Information, Contact: Wendy Comes, Executive Director, 441 G St., NW., Room 6814, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: May 8, 2001

Lucy Lomax,

Assistant Executive Director.

[FR Doc. 01–11935 Filed 5–10–01; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Extensions of Credit to Executive Officers, Unsafe and Unsound Practices.

OMB Number: 3064–0108.

Annual Burden:

Estimated annual number of respondents: 4,000

Estimated number of responses: 8,000

Estimated time per response: 1 hour

Total annual burden hours: 8,000 hours

Expiration Date of OMB Clearance: June 30, 2001.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before June 11, 2001 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The information collection and recordkeeping requirements are mandated by statute and take the form of (1) a report by executive officers of insured nonmember banks to their boards of directors within 10 days of incurring any indebtedness to any other bank in an amount in excess of the amount the insured nonmember bank could lend to the officer, and (2) a report from insured nonmember banks, included with their reports of condition filed with the FDIC, on any extensions of credit made by the bank to its executive officers since the bank filed its last report of condition.

Dated: May 7, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–11862 Filed 5–10–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:22 a.m. on Tuesday, May 8, 2001, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: May 8, 2001.

Federal Deposit Insurance Corporation

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 01–12033 Filed 5–9–01; 12:17 pm]

BILLING CODE 6714–01–M

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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 June 4, 2001.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Promistar Financial Corporation, Johnstown, Pennsylvania; to acquire 100 percent of the voting shares of, and merge with FNH Corporation, Herminie, Pennsylvania, and thereby indirectly acquire voting shares of First National Bank of Herminie, Herminie, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Porter Bancorp, Inc., Shepherdsville, Kentucky; to acquire 100 percent of the voting shares of USAccess Holdings, Inc., Louisville, Kentucky. USAccess Holdings, Inc., Louisville, Kentucky, has applied to become a bank holding company by acquiring at least 66 percent of the voting shares of USAccess Bank, Inc., Louisville, Kentucky.

In connection with this application, USAccess Holdings, Inc., Louisville, Kentucky, and Porter Bancorp, Inc., Sheperdsville, Kentucky have applied to acquire 100 percent of the voting shares of Interim Henry County Bank, Inc., Pleasureville, Kentucky.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. FlatIrons Bank Holding Company, Loveland, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of FlatIrons Bank, Boulder, Colorado.

Board of Governors of the Federal Reserve System, May 7, 2001.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 01–11872 Filed 5–10–01; 8:45 am]

BILLING CODE 6210–01–S

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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 June 7, 2001.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Ottawa Bancshares, Inc., Salina, Kansas; to acquire 100 percent of the voting shares of Admire Bancshares, Inc., Emporia, Kansas, and thereby indirectly acquire Admire Bank, Emporia, Kansas.

Board of Governors of the Federal Reserve System, May 8, 2001.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 01–11934 Filed 5–10–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Republic Bancorp, Inc., Owosso, Michigan; to acquire NetBank, Inc., Alpharetta, Georgia, and thereby indirectly acquire NetBank, Alpharetta, Georgia, and NetBank Partners, LLC, Alpharetta, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and in management consulting and counseling activities, pursuant to § 225.28(b)(9)(i)(A)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 7, 2001.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 01–11873 Filed 5–10–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01097]

Reducing the Impact of Arthritis and Other Rheumatic Conditions; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Reducing the Impact of Arthritis and Other Rheumatic Conditions. This program addresses the ''Healthy People 2010'' focus area of Arthritis, Osteoporosis, and Chronic Back Conditions.

The purpose of the program is to further implement the National Arthritis Action Plan: A Public Health Strategy at the state level by building, developing, enhancing, implementing, and evaluating arthritis control and prevention programs. This arthritis program emphasizes State-based

leadership, coordination, and establishment or enhancement of State Health Department capacity to lead efforts to reduce the burden of arthritis within the State. Programmatic efforts should focus on persons affected by arthritis, i.e., persons already experiencing the symptoms of arthritis, their families, and others treating or providing services for persons with arthritis. By targeting persons affected by arthritis, prevention strategies are secondary and tertiary, focusing on prevention of disability and improving quality of life. Primary prevention activities, while worthy, will not be supported in this cooperative agreement.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The following states are not eligible to apply for funding under this announcement: Alabama, California, Georgia, Florida, Illinois, Minnesota, Missouri, and Utah. These States are currently funded to perform these activities and implement demonstration projects as State Planning Programs under Program Announcement 99074.

Eligibility is limited to State health departments because they are the only organizations capable of reducing the burden of Arthritis on a State-wide basis.

Note: Title 2 of the United States Code, Chapter 26,Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $2.4 million is available in FY 2001 to fund approximately 18 to 24 awards. There will be two levels of activities for this announcement (see below for definitions). Approximately two to six awards will be for the Establishment Level I Program and approximately 16 to 20 awards will be for the Enhanced Establishment Level II Program. It is expected that the average award will be $100,000 ranging from $90,000 to $120,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Funds will be provided for a Level 1 and Level 2 Program.

Level 1—Establishment Program objective: is to assist States to establish the basic public health foundation to lead the development and the coordination of a state arthritis program among State Health Departments and other agencies. This includes the formulation of linkages and partnerships dedicated to the development and implementation of a State Plan for Arthritis and the implementation of one or more intervention activities in year two. Applicants eligible for Level 1 funding are those 21 States and Territories not currently receiving CDC funding for arthritis activities. Please refer to Attachment I for a listing of these States.

Level 2—Enhanced Establishment Program: Objective is to build on existing capacity and resources for States currently funded by CDC at level 1. States will be expected to have a current State Plan for Arthritis. Key activities will be to expand and maintain partnerships as appropriate, improve surveillance activities, implement one or more interventions, and coordinate arthritis activities within the State.

Eligible applicants for Level 2 funding are those 30 Establishment States which received CDC funding under program announcement 99074 ''Reducing the Burden of Arthritis and Other Rheumatic Conditions.''

Applicants may apply for Level 1-Establishment Program or Level 2-Enhanced Establishment Program, but not both.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1A. or 1B. (Recipient Activities), as appropriate, and CDC will be responsible for the activities listed under 2. (CDC Activities).

1A. Recipient Activities Level 1—Establishment Programs

a. *Staffing:* Establish a full-time arthritis program manager to oversee arthritis program activities and to promote an arthritis program within the State.

b. *Partnerships:* Establish an advisory group or coalition to guide, review, and provide direction for the State in all activities directed at reducing the burden of arthritis.

The advisory group, at a minimum, should include the local chapter(s) of the Arthritis Foundation. In addition, the state should consider the following as members of the advisory board or coalition:

(1) Individuals with expertise in arthritis;

(2) Agencies/organizations with activities relevant to arthritis, resources for arthritis activities, and access to target populations (*e.g.,* Area Agencies on Aging, Medicaid/Medicare, managed care organizations, American Association of Retired Persons, senior centers, and faith communities); and

(3) Persons with arthritis or family members of persons with arthritis. As appropriate, States should establish internal workgroups with other components of State government that are directly or indirectly involved in some aspect of arthritis control and prevention.

c. *Surveillance:* Define and monitor the burden of arthritis using the Behavioral Risk Factor Surveillance System (BRFSS) and other state-based data that contain information on arthritis. By the end of year two, States are encouraged to issue a State of Arthritis Report using, at a minimum, 2001 BRFSS arthritis data. Arthritis data will be collected by all states in calendar year 2001 through the BRFSS.

d. *State Plan:* Develop a State Plan for Arthritis that outlines a proposed framework for activities to reduce the burden of arthritis. This document should be planned with partners and include activities to be implemented by the partners. The plan should not address health department activities only.

e. *Interventions:* During year two, implement one or more strategies consistent with the Public Health Framework for Arthritis (Attachment II) with a focus on the immediate effects. Therefore, activities should be implemented with a focus on one or both of the following areas:

(1) *Self Management Interventions:* Broaden the reach of evidence-based self management programs, *e.g.,* the Arthritis Self Help Course (ASHC), the promotion of physical activity in individuals with arthritis using land/water-based exercise programs such as People with Arthritis Can Exercise® (PACE) and the Arthritis Foundation Aquatics Program. Applicants may consider other programs for which the applicant determined to be beneficial and effective in reducing the burden of arthritis.

(2) *Health Communications Campaigns:* Develop or utilize health communications interventions that will increase/enhance knowledge and beliefs necessary for appropriate management of arthritis. Communications strategies should be designed to increase self management beliefs and behaviors and to increase the belief that self management is an important part of arthritis management. The communications activity can be targeted to people with arthritis and their families, the general public, or health professionals. CDC developed health communication material promoting physical activity may be used. A summary of this material will be posted at *www.cdc.gov/nccdphp/arthritis/index.htm.* Physician education efforts, while worthy, will not be considered as part of this activity.

1B. Recipient Activities Level 2—Enhanced Establishment Programs

a. *Staffing:* Establish a full time arthritis program manager to oversee arthritis program activities and to promote an arthritis program within the State.

b. *Interventions:* Implement one or more strategies from the State Plan that is consistent with the Public Health Framework for Arthritis (Attachment II) with a focus on the immediate effects as outlined in this framework. Therefore, activities should be implemented with a focus on one or both of the following areas:

(1) *Self Management Interventions:* Broaden the reach of evidence-based self management programs, e.g., the ASHC; the promotion of physical activity in individuals with arthritis using land/water-based exercise programs such as People with Arthritis Can Exercise'' (PACE) and the Arthritis Foundation Aquatics Program. Applicant may consider other programs for which the applicant determined to be beneficial and effective in reducing the burden of arthritis.

(2) *Health Communications Campaigns:* Develop or utilize health communications interventions that will increase/enhance knowledge and beliefs necessary for appropriate management of arthritis. Communications strategies should be designed to increase self management beliefs and behaviors and to increase the belief that self-management is an important part of arthritis management. The communications activity can be targeted to people with arthritis and their families, the general public, and health professionals. CDC developed health communication material promoting physical activity may be used. A summary of this material will be posted at www.cdc.gov/nccdphp/arthritis/index.htm. Physician education efforts, while worthy, will not be considered as part of this activity.

c. *Partnerships:* Strengthen alliances among current partners. Coordinate or ensure the coordination of activities in the State Plan with other relevant programs, organizations, and groups. Coordinate and collaborate with other entities to maximize the effectiveness, impact, and support for these activities and reduce the potential for unnecessary duplication of effort. States are encouraged to creatively explore other linkage mechanisms and partnership opportunities.

d. *Surveillance:* Manage, analyze, interpret and disseminate State-based arthritis surveillance data and findings. By the end of year, two states are encouraged to issue a State of Arthritis Report using at a minimum, 2001 BRFSS data. Arthritis data was collected by all states in 2001 through the BRFSS. As appropriate, States should expand the existing arthritis surveillance system by examining the availability and/or use of other state-based data sources to supplement the BRFSS. Other data sources may include but are not limited to data from outpatient/ambulatory care settings, managed care organizations, and follow back surveys of BRFSS respondents. Pharmacy data may also prove useful to better define the burden of arthritis within the State.

2. CDC Activities

a. Provide consultation and technical assistance to plan, implement, and evaluate each component of the program.

b. Provide current information on the status of national efforts as they relate to the implementation of recipient activities.

c. As needed, provide technical assistance in the coordination of surveillance efforts and the use of other data systems to measure and characterize the burden of arthritis; provide standard analyses of BRFSS data for states; and provide data for national level comparisons.

d. Facilitate communication among arthritis programs, other government agencies and others involved in arthritis control and prevention efforts.

E. Content (All Applicants)

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The main body (narrative) of the application should be no more than 25 pages. The total number of pages should not exceed 60 pages including appendices. The abstract, budget narrative, and federal forms are not included in the page limits. The narrative must be typewritten, double spaced, printed on one side, with 12 point Times New Roman font on 8.5 by 11 inch paper, and with one inch margins. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria. Your application must be submitted UNSTAPLED and UNBOUND.

Abstract

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the program, organization, name and address of the project director, telephone number, facsimile number, and e-mail address. The abstract should clearly state which level of activities the applicant is applying for: Level 1—Establishment Program or Level 2—Enhanced Establishment Program. The abstract should briefly list major program elements and activities. A table of contents that provides page numbers for each section should follow the abstract.

Budget

The budget should be reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant must include a detailed budget justification. Budgets should include travel for one Arthritis Program staff to attend a two day meeting in Atlanta. Proposed sub-contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection. If indirect costs are requested, a copy of the current Indirect Cost Rate Agreement should be included.

F. Submission and Deadline

Application

Submit an original and two copies of CDC 0.1246. Forms are available in the application kit and at the following Internet address: *http://forms.psc.gov/*. On or before July 1, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria (100 Points for Each Level)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Level 1—Establishment Programs

1. Need/Current Status (15 Points)

The extent to which the applicant describes the burden of arthritis in the state, identifies what data sources are being used, the barriers the State currently faces in developing and implementing a program for arthritis, and identifies specific needs and resources available for arthritis activities.

2. Work Plan (Total 85 Points)

The extent to which the work plan includes objectives for each of the following areas: Staffing, partnership, surveillance, state plan, and interventions. For each proposed objective, the extent to which there is a description of methods, a time-line for completion, identification of program staff responsible for its achievement, and process evaluation measures. The extent to which all activities are realistic and feasible.

a. Staffing (25 Points)

The degree to which the proposed staff have the relevant background, qualifications, and experience. Specifically, the applicant should:

(1) (15 points) Describe the proposed or existing health department staff's role in promoting an arthritis program within the State, their specific responsibilities, and their level of effort and time. The degree of staff coordination between relevant programs within the state health department; the degree to which the organizational structure supports staff's ability to conduct proposed activities. An organizational chart, job descriptions, and resumes if available, should be included.

(2) (10 points) Include a plan to expedite filling of all positions and provide assurances that such positions will be authorized to be filled by the applicant's personnel system within a reasonable time after receiving funding. If all positions are filled, this criterion will be considered met.

b. Partnerships (20 Points)

(1) (10 points) The extent to which the applicant has included plans for partnerships with the local chapter(s) of the Arthritis Foundation, state and local agencies, federal agencies, and others with an interest in arthritis.If partnerships have been developed, the extent to which the applicant describes the process of development, provides evidence of a viable, ongoing partnership by including copies of agendas for all partnership meetings held for calender years 1999 and 2000.

(2) (10 points) The extent to which letters of support describe the nature and extent of involvement by outside partners.

c. Surveillance (20 Points)

The extent to which the applicant describes plans to monitor the burden of arthritis within the State using BRFSS data as a minimum. The extent to which the applicant describes future surveillance plans including data to be collected and its programmatic application. The extent to which the applicant provides a plan for the development and dissemination of a State of Arthritis Report.

d. State Plan (10 Points)

The extent to which the applicant describes the process of engaging relevant partners and developing a state arthritis plan. If a state plan has been developed, the extent to which the applicant describes the process of development and provides agendas for planning meetings and the executive summary of the state plan.

e. Interventions (10 Points)

The extent to which the process for selecting the intervention to be implemented in Year two is clearly described and justified. If an existing state plan or partnership has already provided guidance for choice of intervention, the extent to which the applicant describes the target population(s), rationale, and evaluation strategy.

3. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

Level 2—Enhanced Establishment Program

1. Background/Current Status (15 Points)

The extent to which the applicant adequately describes the burden of arthritis within the State including the definition and data sources used. The extent to which the applicant describes barriers the State currently faces in further developing and implementing programs for the control of arthritis. The extent to which the funds will fill the gaps in the State's arthritis activities.

2. Work Plan (Total 85 Points)

The extent to which the work plan includes objectives for each of the following areas: staffing, partnership, surveillance, and interventions. For each proposed objective, the extent to which there is a description of methods, a time-line for completion, identification of the program staff responsible for its achievement, and process evaluation measures. The extent to which all activities are realistic and feasible.

a. Staffing and Management (25 Points)

The degree to which the existing or proposed staff have the relevant background, qualifications, and experience. Specifically, the applicant should:

(1) (15 points) Describe the existing or proposed health department staff role in promoting an arthritis program within the State; their specific responsibilities, and their level of effort and time. The degree of staff coordination between relevant programs within the state health department; the degree to which the organizational structure supports staff's ability to conduct proposed activities. An organizational chart, job descriptions, and resumes if available, should be included.

(2) (10 points) Describe the plan to expedite filling of all positions and provide assurances that such positions will be authorized to be filled by the applicant's personnel system within a reasonable time after receiving funding. If all positions are filled, this criterion will be considered met.

b. Partnerships (20 Points)

(1) (10 points) The extent to which the applicant describes the roles of advisory groups, partnerships, or coalition in the development and implementation of activities in the State Plan for Arthritis. The extent to which letters of support describe the nature and extent of involvement by outside partners.

(2) (10 points) The extent to which the applicant has shown that partnerships have been ongoing and viable and have included copies of the following: (1) Agendas for all partnership meetings for calendar years 1999 and 2000; and (2) the executive summary and table of contents from the State Plan for Arthritis.

c. Surveillance (15 Points)

The extent to which the applicant describes the status of existing state-based arthritis surveillance. The extent to which the applicant describes future surveillance plans including data to be collected, the rationale for its selection and its programmatic application.

d. Interventions (25 Points)

The extent to which the applicant describes the proposed intervention(s) activity, the rationale for selection, the target population, the appropriateness of the intervention for the target population, and the implementation and evaluation strategies.

3. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment III in the application kit.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317 of the Public Health Service Act, [42 U.S.C. section 241(a) and 247(b)], as amended. The Catalog of Federal Domestic Assistance number is 93.945.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements''. Should you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Michelle Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Program Announcement 01097, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2686,E-mail address: stc8@cdc.gov

For program technical assistance, contact: Sakeena Smith, MPH, Senior Project Officer, Arthritis Program, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K–45, Atlanta, GA 30341, Telephone number: (770) 488–5440, E-mail address: SSmith1@cdc.gov

Dated: May 7, 2001.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office,Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11896 Filed 5–10–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0465]

Determination of Regulatory Review Period for Purposes of Patent Extension; Baycol

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Baycol and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued) FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Baycol (cerivastatin sodium). Baycol is indicated as an adjunct to diet for the reduction of elevated total and LDL cholesterol levels in patients with primary hypercholesterolemia and mixed dyslipidemia (Frederickson Types IIa and IIb) when the response to dietary restriction of saturated fat and cholesterol and other nonpharmacological measures alone has been inadequate. Subsequent to this approval, the Patent and Trademark

Office received a patent term restoration application for Baycol (U.S. Patent No. 5,006,530) from Bayer Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 9, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Baycol represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Baycol is 2,262 days. Of this time, 1,896 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective: April 19, 1991. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 19, 1991.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the act: June 26, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Baycol (NDA 20–740) was initially submitted on June 26, 1996.

3. The date the application was approved: June 26, 1997. FDA has verified the applicant's claim that NDA 20–740 was approved on June 26, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 890 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by July 10, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 7, 2001. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 7, 2001.

Jane A. Axelrad,

Associate Director for Policy, Canter for Drug Evaluation and Research.

[FR Doc. 01–11961 Filed 5–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0177]

Draft Guidance for Industry on Immunotoxicology Evaluation of Investigational New Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Immunotoxicology Evaluation of Investigational New Drugs.'' This draft guidance provides recommendations for sponsors of investigational new drugs (INDs) on the parameters that should be routinely assessed in toxicology studies to determine effects on immune function, when additional specific immunotoxicity studies should be conducted, and when additional mechanistic information could better evaluate a given effect on the immune system.

DATES: Submit written comments on the draft guidance by August 9, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane,Rockville, MD 20857, 301–594–5476.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Immunotoxicology Evaluation of Investigational New Drugs.'' The immune system consists of a diffuse and complex set of cells and organs that have complicated interactions with each other and with other physiological systems. These complexities make the detection and evaluation of drug-induced immunotoxicity in animal models difficult. Immunotoxicologic findings could suggest the need for additional followup studies, particularly if the observed adverse effects are serious. The objective of these followup studies would be to investigate the nature and mechanism of the immunotoxic effects. Immunotoxicity findings could lead to modifications in proposed clinical trials or could be included in the investigator's brochure or product label. Rarely, immunotoxicity findings could indicate that a drug is unsafe for some types of clinical investigations or certain indications.

For the safety assessment of INDs, specific immunotoxicity testing should be conducted when drugs are to be administered by inhalation or topically. Specific immunotoxicity studies should also be considered for safety assessment purposes when: (1) The drug has the potential to elicit an anti-drug immune response; (2) use of the drug during pregnancy is likely; (3) there is an absence of immunotoxicity findings in the toxicology studies, but there is significant accumulation or retention of the drug in immune system tissues; or (4) the drug will be used to treat an immune-deficiency disease such as the human immunodeficiency virus (HIV). In most other instances, specific immunotoxicity studies are generally not needed to support initial clinical trials or continued development.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The

draft guidance represents the agency's current thinking on immunotoxicology evaluation of INDs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: May 4, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–11879 Filed 5–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10040]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* NMEP Regional Survey of Medicare Beneficiaries; *Form No.:* HCFA–10040 (OMB# 0938–NEW); *Use:* HCFA is proposing to conduct a survey by selecting 2,000 Medicare beneficiaries per HCFA region from HCFA's administrative databases with oversampling for underserved populations as a part of the continuous assessment on the knowledge and understanding of the Medicare program and the NMEP/Medicare+Choice outreach and educational efforts to systematically quantify current knowledge and awareness and to assess future direction; *Frequency:* On occasion; *Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 20,000; *Total Annual Responses:* 20,000; *Total Annual Hours:* 5,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 2, 2001.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11869 Filed 5–10–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA AIDS Advisory Committee; Notice of Meeting; Correction

In **Federal Register** Document 01–10229 appearing on page 20820 in the issue for Wednesday, April 25, 2001, the location of the meeting scheduled on June 4, 2001, from 8:30 a.m.–5 p.m. has changed. This meeting will be held at: Holiday Inn Select (Conference Plaza),130 Claremont Avenue,Decatur, Georgia 30030,Telephone: 800–225–6079.

Dated: May 7, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–11880 Filed 5–10–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–34]

Notice of Submission of Proposed Information Collection to OMB; Annual Lead-Based Paint Activity Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 11, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0090) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents

submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Annual Lead-Based Paint Activity Report.

OMB Approval Number: 2577–0090.

Form Numbers: HUD–52850.

Description of the Need for the Information and Its Proposed Use: Public housing agencies (PHAs) and Tribally Designation Housing Entities (TDHEs) are requried to maintain records on tenant notificaiton, testing and abatement activities. These agencies are also required to provide tenants and purchasers a copy of all positive lead-based paint test results. HUD needs the information to assure statutory and regulatory compliance with the Lead-Based Paint Poisoning Prevention Act (LBPPPA). HUD reports the information to Congress as required by statute.

Respondents: Individual or households, State, Local or Tribal Government

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	3,100		1		1		3,100

Total Estimated Burden Hours: 3,100.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 4, 2001.

Donna L. Eden,

Director, Office of Investment Strategies, Policy and Management.

[FR Doc. 01–11958 Filed 5–10–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–35]

Notice of Submission of Proposed Information Collection to OMB; Economic Opportunities for Low- and Very Low-Income Persons

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 11, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529–0043) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Economic Opportunities for Low- and Very Low-Income Persons.

OMB Approval Number: 2529–0043.

Form Numbers: HUD–60002 and Form HUD–958.

Description of the Need for the Information and Its Proposed Use: This information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses that employ low-income persons.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	58,593		1		2		117,186

Total Estimated Burden Hours: 117,186.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 7, 2001.

Donna L. Eden,

Director, Office of Investment Strategies, Policy and Management.

[FR Doc. 01–11959 Filed 5–10–01; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, 441 G Street, Washington, DC 20314–1000; (202) 761–7425; DOT: Mr. Rugene Spruill, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW Room 2310, Washington, DC 20590; (202) 366–4246; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, Washington, DC 20240; (202) 606–3139; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 3, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 5/11/01

Suitable/Available Properties

Buildings (by State)

Alabama

Federal Bldg.
301 Third Ave.
Cullman Co: AL 35055–
Landholding Agency: GSA
Property Number: 54200120005
Status: Excess
Comment: 30,887 sq. ft., 2-story, most recent use—office
GSA Number: 4–G–AL–769

California

Bldg. 01290
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120090
Status: Excess
Comment: 460 sq. ft., most recent use—garage, off-site use only

South Dakota

Residence, Tract 102
Oahe Dam Project
915 South Garfield Ave.
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120004
Status: Excess
Comment: 1008 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 105
Oahe Dam Project

916 South Arthur
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120005
Status: Excess
Comment: 1008 sq. ft., wood frame, no garage, off-site use only

Residence, Tract 113
Oahe Dam Project
1005 South Garfield
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120006
Status: Excess
Comment: 1232 sq. ft., wood frame, attached one-car garage, off-site use only

Residence, Tract 119
Oahe Dam Project
1013 Memory Lane
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120007
Status: Excess
Comment: 936 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 123
Oahe Dam Project
1001 South Garfield
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120008
Status: Excess
Comment: 816 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 124
Oahe Dam Project
1009 South Primrose Lane
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120009
Status: Excess
Comment: 996 sq. ft., wood frame, attached one-car port, off-site use only

Residence, Tract 132
Oahe Dam Project
2401 E. Reen
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120010
Status: Excess
Comment: 1536 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 200
Oahe Dam Project
1013 South Cleveland
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120011
Status: Excess
Comment: 960 sq. ft., wood frame, attached 2½ car garage, off-site use only

Washington

Bldg. 31
440 Yule Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120019
Status: Excess
Comment: 1065 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

Bldg. 37
474 Camp 4 Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120020
Status: Excess
Comment: 932 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

Bldg. 38
476 Camp 4 Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120021
Status: Excess
Comment: 1152 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

Unsuitable Properties

Buildings (by State)

Alaska

Barracks
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Incinerator Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Signal/Power Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Transmitter Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87299120010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Waste Water Treatment Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87299120011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

California

Bldg. 01289
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120089
Status: Excess
Reason: Extensive deterioration

Bldg. PM1529
Point Mugu, Naval Base
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200120094
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM1606
Point Mugu, Naval Base
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200120095
Status: Unutilized
Reason: Extensive deterioration

Guam

Bldg. 123
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120091
Status: Unutilized
Reason: Secured Area

Bldg. 124
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120092
Status: Unutilized
Reason: Secured Area

Bldg. 135
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120093
Status: Unutilized
Reason: Secured Area

Missouri

Privy/Nemo Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120001
Status: Excess
Reason: Extensive deterioration.

Privy No. 1/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120002
Status: Excess
Reason: Extensive deterioration.

Privy No. 2/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: Coe
Property Number: 31200120003
Status: Excess
Reason: Extensive deterioration

[FR Doc. 01–11527 Filed 5–10–01; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Environmental Assessment of Take of Nestling American Peregrine Falcons in the Contiguous United States and Alaska for Falconry

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice is to announce the availability of a Final Environmental Assessment and a Finding of No Significant Impact of take of nestling American Peregrine Falcons (*Falco peregrinus anatum*) for falconry. We published the Draft Environmental Assessment in July 2000. We considered 352 comments in revising the assessment. After completion of the Final Environmental Assessment, we also produced a Finding of No Significant Impact for the action.

ADDRESSES: The documents are available from the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610. They also are available on the Division of Migratory Bird Management web pages at http://migratorybirds.fws.gov.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703/358–1714.

SUPPLEMENTARY INFORMATION: In the draft Environmental Assessment, we considered six alternatives for take of nestling American peregrine falcons (*Falco peregrinus anatum*) in the western United States and Alaska. We received 352 electronic or written comment letters on the draft Environmental Assessment. Seventeen were from State or Federal agencies; 335 were from individuals and organizations. Fifteen agency responses favored allowing take of nestlings, and 2 responses were neutral. Of the individual and organization comments received, 21 opposed take of nestlings and 314 supported allowing take. We modified the Environmental Assessment to respond to concerns expressed by agencies, organizations, and individuals.

Having reviewed the comments on the draft, our preferred alternative is to allow take of up to 5% of the American peregrine falcon nestlings produced in the States west of 100° longitude, at the discretion of each State. These States include Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. We believe that a conservative level of take is appropriate for a species recently removed from the List of Endangered and Threatened Wildlife and Plants, and will have no discernible effect on the American peregrine falcon population in the western United States.

Dated: May 1, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–11960 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Deer Canyon Park Preserve in the City of Anaheim, Orange County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the City of Anaheim (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10 (a) 1 (B) of the Endangered Species Act of 1973, as amended. The proposed permit would authorize the incidental take of the federally threatened coastal California gnatcatcher (*Polioptila californica californica*) in Deer Canyon Park Preserve, in the City of Anaheim, Orange County, California. Take would occur through the permanent loss of 1.39 acres of coastal sage scrub habitat during facility development and fuel management. The Applicant seeks a permit for a period of 30 years.

We request comments from the public on the permit application, which is available for review. The application also includes a Habitat Conservation Plan (HCP). The HCP describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of coastal California gnatcatcher. We also request comments on our preliminary determination that the HCP qualifies as a ''low-effect'' habitat conservation HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA).

DATES: Written comments should be received on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to telephone (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Karen Evans, Division Chief, Los Angeles and Orange Counties, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by calling the Service's Carlsbad Fish and Wildlife Office at the above referenced telephone number. Documents also are available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act, and its implementing regulations, prohibit the ''take'' of fish or wildlife species listed as endangered or threatened species. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). Harm may include significant habitat modification where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. The Service may, under certain circumstances, issue permits to authorize take of endangered or threatened wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered or threatened species are found at 50 CFR 17.22 and 17.32.

Under the proposed action, improvement of park facilities and fire management activities would directly impact the coastal California gnatcatcher by removing 1.39 acres of coastal sage scrub vegetation utilized by coastal California gnatcatchers. The Deer Canyon Park Preserve totals approximately 130 acres. The Applicant's HCP describes consideration of alternatives to the action and provisions for minimization and mitigation of impacts.

The HCP is further designed to assure that this action does not reduce the potential for survival and recovery of the coastal California gnatcatcher in the wild, as mandated by requirements of 50 CFR Part 17.22(b)(1)(iii).

The HCP proposes the following measures to minimize the impacts of the project on coastal California gnatcatchers: (1) Fuel modification and clearing of coastal sage scrub will be conducted outside the gnatcatcher breeding season. If it is necessary to clear coastal sage scrub during the breeding season, surveys by a qualified biologist must demonstrate that gnatcatchers are not nesting or rearing chicks in the affected area; (2) a project monitor will be present during all clearing activities to make sure no birds or nests are directly harmed or

destroyed; (3) construction limits will be fenced or flagged prior to construction activities to avoid inadvertent disturbance of areas outside the construction zone; (4) the proper use and disposal of oil and gasoline will be enforced; and (5) all trash associated with construction activities will be properly contained and disposed.

To mitigate for the permanent loss of occupied habitat due to the proposed activities, the Applicant proposes to revegetate 6.0 acres of non-native grassland in Deer Canyon Park Preserve with coastal sage scrub vegetation. The revegetated area would connect patches of fragmented coastal sage scrub that lie to the north and south. A restoration HCP will be developed that includes performance criteria, such as percent cover by native and non-native plants, native plant diversity, and evidence of natural reproduction, which must be met. The restoration plan must be reviewed and approved by the U.S. Fish and Wildlife Service.

The HCP considered the following alternatives: (1) The proposed project; (2) use of a mitigation fee; (3) redesign of the project; and (4) no project or no action alternative.

The proposed project involves the issuance of a permit under section 10(a)(1)(B) of the Act to authorize the incidental take of the threatened coastal California gnatcatcher during facilities improvement and fire management activity. The project impacts 1.39 acres of coastal sage scrub occupied by the coastal California gnatcatcher. Mitigation for the project is the revegetation of 6.0 acres of non-native grassland with coastal sage scrub vegetation.

The use of a mitigation fee to compensate for the loss of coastal sage scrub, as outlined in the Central and Coastal Orange County Natural Community Conservation Plan (NCCP), is not authorized for this project because Deer Canyon Park Preserve is designated as an Existing Use Area, and the in-lieu fee mitigation program is not available to mitigate for take of gnatcatchers within Existing Use Areas unless specifically authorized by the U.S. Fish and Wildlife Service and California Department of Fish and Game.

Under the redesign alternative, the applicant would redesign the project to further reduce impacts to coastal sage scrub vegetation. The applicant states that it is not possible to further redesign the project and meet project goals.

Under the No Project alternative the project would not occur. Therefore an incidental take permit would not be required and the Applicant would abandon the proposed project.

The Service has determined that the HCP qualifies as a ''Low Effect'' Habitat Conservation Plan as defined by the Fish and Wildlife Service's Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of a plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of a plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of a plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based on this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the permit application, the HCP, and the associated documents and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If we determine that the requirements are met, we will issue a permit for the incidental take of the coastal California gnatcatcher. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: April 23, 2001.

Jill Parker,

Acting Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 01–11897 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1990–EX]

Notice of Availability for the Oil-Dri Corporation of Nevada's Reno Clay Plant Project Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

COOPERATING AGENCIES: U.S. Bureau of Indian Affairs, Reno-Sparks Indian Colony, and Washoe County, Nevada.

ACTION: Notice of availability of a draft environmental impact statement (EIS) for the Oil-Dri Corporation of Nevada Reno Clay Plant Project, notice of public meeting, and initiation of a 60-day public comment period.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) and 40 CFR 1500–1508 Council on Environmental Quality Regulations (CEQ), and 43 CFR 3809 Surface Management Regulations, notice is given that the Bureau of Land Management (BLM) Carson City Field Office has prepared, with the assistance of a third-party consultant, a Draft EIS on the proposed Reno Clay Plant Project, and has made the document available for public and agency review.

DATES: Written comments on the Draft EIS must be submitted or postmarked to the BLM no later than July 10, 2001. Written comments may also be presented at a public open house that is scheduled for May 30, 2001, from 5 pm to 7 pm, at the BLM Nevada State Office, 1340 Financial Boulevard, Reno, NV.

ADDRESSES: Written comments on the Draft EIS should be addressed to: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, Attn: Terri Knutson, Oil-Dri EIS Project Manager. Comments may also be sent via electronic mail to the following address: *tknutson@nv.blm.gov* or via fax: (775) 885–6147. A limited number of copies of the Draft EIS may be obtained at the above BLM Field Office in Carson City, NV. In addition, the Draft EIS is available on the internet via the Carson City Field Office Home Page at: *www.nv.blm.gov/carson.*

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.–5 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request

confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Terri Knutson, Oil-Dri EIS Project Manager, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701, (775) 885–6156.

SUPPLEMENTARY INFORMATION: Oil-Dri Corporation of Nevada (Oil-Dri) has submitted a Plan of Operations for the construction, operation, and reclamation of a mining operation and processing facility located approximately ten miles north of the Reno/Sparks area in Hungry Valley, Washoe County, Nevada. The proposed mining operation, known as the Reno Clay Plant Project, would be located on 305 acres of public and 40 acres of private land and would result in the development of two open pit mine areas, construction of a processing facility, construction and/or upgrade of haul and access roads, and continued exploration activities. Construction is scheduled to begin in the Fall of 2001 and continue for approximately 20 years.

The Draft EIS analyzes the environmental impacts associated with the proposed mining and processing facilities, two access alternatives, and the no action alternative. Issues analyzed include geology, minerals, paleontology, air resources, aesthetics (visual & noise), water resources, soils, vegetation, range resources, wildlife, special status species, land use, access, recreation, cultural resources, Native American Religious Concerns, social & economic resources, and Environmental Justice.

A copy of the Draft EIS has been sent to all individuals, agencies, and groups who have expressed interest in the project or as mandated by regulation or policy. A limited number of copies are available upon request from the BLM at the address listed above. In addition, the document is available on the Carson City Field Office Home Page at the address above.

Public participation has occurred throughout the EIS process. A Notice of Intent to Prepare an EIS was published in the **Federal Register** on July 22, 2000 (Pages 43779–43780) and the 30-day public scoping period was initiated. A public open house was held in Reno on August 8, 2000 and additional presentations were made to three Washoe County Citizen Advisory Boards and to a community meeting at the Reno-Sparks Indian Colony.

To assist the BLM in identifying and considering issues and concerns on the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. Comments should also refer to specific pages or chapters in the document. After the comment period ends, all comments will be analyzed and considered by the BLM in preparing the Final EIS.

Dated: April 23, 2001.

John Singlaub,

Manager, Carson City Field Office.

[FR Doc. 01–10912 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–090–1990EX–01]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of a Draft Supplemental Environmental Impact Statement (EIS) for Reclamation of the Zortman and Landusky Mines in Phillips County, Montana. This is a supplement to the 1996 Final EIS on Reclamation Plan Modifications and Mine Life Extensions at the Zortman and Landusky Mines. The Draft Supplemental EIS addresses 12 reclamation alternatives, six for the Zortman Mine and six for the Landusky Mine. The BLM and Montana Department of Environmental Quality (DEQ) are co-lead agencies for the preparation of the Supplemental EIS. The Environmental Protection Agency and the Fort Belknap Indian Community Council are participating agencies.

DATES: The comment period on the Draft Supplemental EIS will end on July 9, 2001.

ADDRESSES: Address all written comments to Zortman/Landusky Mine Reclamation Plan SEIS, c/o Bureau of Land Management, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160. Comments may also be sent electronically to: *ZLReclamation_EIS@blm.gov.* Please include your name and complete mailing address on all comments.

FOR FURTHER INFORMATION CONTACT: Scott Haight, 406–538–1930.

SUPPLEMENTARY INFORMATION: This EIS is a draft supplement to the March 1996 Final EIS Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions. With the bankruptcy of the mines' operator, Zortman Mining, Inc., the BLM and DEQ are overseeing reclamation at the mines. The Draft Supplemental EIS has been prepared to analyze additional reclamation alternatives developed by the agencies that may constitute a substantial change from those presented in the 1996 Final EIS. The Draft Supplemental EIS presents 12 reclamation plans, six for reclamation of the Zortman Mine and six for reclamation of the Landusky Mine. The reclamation plans were developed based upon public scoping comments and through consultation with the Fort Belknap government and the Environmental Protection Agency. The Draft Supplemental EIS discloses the environmental consequences of each alternative. Alternative Z6 is identified in the Draft Supplemental EIS as the DEQ and BLM preferred reclamation alternative for the Zortman Mine, and Alternative L4 is identified as the preferred reclamation alternative for the Landusky Mine. The identification of the preferred alternatives does not constitute an agency decision but is intended to help focus public comment on the alternatives more likely to be selected.

Authority: Sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Dated: May 1, 2001.

Bruce W. Reed,

Field Manager, Bureau of Land Management.

[FR Doc. 01–11875 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–01–1430–EU; CACA–37660]

Notice of Realty Action, Noncompetitive Sale of Public Lands in Trinity County, California for Community Purposes, Case File CACA–37660

AGENCY: Bureau of Land Management, Department of the Interior, Redding Field Office, Redding, CA.

ACTION: Notice of segregation and sale of public land.

SUMMARY: The following public lands have been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $135,000.00. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T.33N., R.9W.,
Section 5, Lots 21, 55.
Section 6, Lots 6, 7, 11, 13, 18, 19, and Lots 23&24 of the SE.
Section 7, Lot 44.
Containing 131.61 Acres more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale for community purposes to Trinity County and the Weaverville Fire District, consistent with 43 CFR 2711.3–3(a)(1). It has been determined that the public lands in Section 5, Lots 21, 55, Section 6 Lots 6, 7, 11, 13, 18, 19 contain no known mineral values; therefore, mineral interests may be conveyed simultaneously. Section 6, Lots 23&24 of the SE and Section 7 Lot 44, do contain a significant mineral interest value for cobble and small boulder size placer tailings, a royalty of ten percent of the gross Fair Market Value of the free on board cobbles, boulders, sand and gravel after processing and prior to incurring transportation costs shall be reserved to the United States. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests not reserved to the United States.

The land are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States.

2. Third party rights

3. Protective covenant to protect an historic ditch and cultural site.

4. Section 6, Lots 23&24 of the SE and Section 7 Lot 44, do contain a significant mineral interest value for cobble and small boulder size placer tailings, a royalty of ten percent of the gross Fair Market Value of the free on board cobbles, boulders, sand and gravel after processing and prior to incurring transportation costs shall be reserved to the United States.

5. The patent will contain a hold harmless clause to protect the United States liability arising from local use of the land.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Redding Field Office, 355 Hemsted Dr., Redding, California, 96002.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed sale to Charles M. Schultz, Field Office Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002. In the absence of timely objections, this proposal shall become the final determination of the department of the Interior.

Dated: April 26, 2001.

Michael Truden,

Acting Field Office Manager.

[FR Doc. 01–11876 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1313]

Notice of Availability of the Record of Decision for the Final Environmental Impact Statement, Center for Domestic Preparedness, Fort McClellan, Anniston, Alabama

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of availability of record of decision.

SUMMARY: The Department of Justice, Office of Justice Programs, has prepared a Record of Decision (ROD) for the Final Environmental Impact Statement for the Center for Domestic Preparedness located at Fort McClellan, Anniston, Alabama. This ROD is a statement of the decision made, the background of the project, other alternatives considered, the basis for the decision, the preferable alternative, measures to minimize environmental harm, and public involvement in the decision-making process.

DATES: The ROD will become effective upon signature by the Assistant Attorney General, Office of Justice Programs.

ADDRESSES: Copies of the ROD for the Final Environmental Impact Statement, Center for Domestic Preparedness, Fort McClellan, Alabama, have been provided to the following locations for public review:

1. United States Department of Justice, Office of Justice Programs, Office of the General Counsel, Room 5411, 810 Seventh Street, NW., Washington, DC 20531.

2. The Center for Domestic Preparedness, P.O. Box 5100, 61 Parliament Rd., Ft. McClellan, Anniston, AL 36205.

3. Anniston-Calhoun County Public Library, 108 East Tenth Street, Anniston, AL 36202.

4. Jacksonville Public Library, 200 Pelham Road, North Jacksonville, AL 36205.

5. Cole Library, Jacksonville State University, 700 Pelham Road, North Jacksonville, AL 36265–1602.

6. Oxford Public Library, 213 Chocclocco Street, Oxford, AL 36203.

7. Talladega Public Library, 202 East South Street, Talladega, AL 35160.

FOR FURTHER INFORMATION CONTACT: For copies of the ROD or additional information, please contact: L.Z. Johnson, Director, Center for Domestic Preparedness, P.O. Box 5100, Fort McClellan, Anniston, AL 36205, (256) 847–2000.

Dated: April 27, 2001.

Alexa Verveer,

Deputy Assistant Attorney General.

[FR Doc. 01–11808 Filed 5–10–01; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rages and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA 010003 (Mar. 02, 2001)
New York
NY010033 (Mar. 02, 2001)

Volume II

Delaware
DE010002 (Mar. 02, 2001)
DE010003 (Mar. 02, 2001)
DE010004 (Mar. 02, 2001)
DE010005 (Mar. 02, 2001)
DE010009 (Mar. 02, 2001)
Maryland
MD010002 (Mar. 02, 2001)
MD010043 (Mar. 02, 2001)
West Virginia
WV010002 (Mar. 02, 2001)
WV010003 (Mar. 02, 2001)
WV010009 (Mar. 02, 2001)

Volume III

Florida
FL010009 (Mar. 02, 2001)
FL010014 (Mar. 02, 2001)
FL010017 (Mar. 02, 2001)
Georgia
GA010053 (Mar. 02, 2001)
GA010055 (Mar. 02, 2001)
South Carolina
SC010003 (Mar. 02, 2001)

Volume IV

Michigan
MI010046 (Mar. 02, 2001)
MI010047 (Mar. 02, 2001)
MI010049 (Mar. 02, 2001)
MI010050 (Mar. 02, 2001)
MI010052 (Mar. 02, 2001)
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WI010008 (Mar. 02, 2001)
WI010010 (Mar. 02, 2001)
WI010019 (Mar. 02, 2001)

Volume V

Iowa
IA010004 (Mar. 02, 2001)
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IA010006 (Mar. 02, 2001)
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TX010046 (Mar. 02, 2001)
TX010054 (Mar. 02, 2001)
TX010093 (Mar. 02, 2001)
TX010096 (Mar. 02, 2001)
TX010121 (Mar. 02, 2001)

Volume VI

Idaho
ID010001 (Mar. 02, 2001)
ID010002 (Mar. 02, 2001)
Washington
WA010001 (Mar. 02, 2001)
WA010002 (Mar. 02, 2001)
WA010007 (Mar. 02, 2001)
WA010011 (Mar. 02, 2001)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd Day of May 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–11633 Filed 5–10–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Notice of Reinstatement of Milwaukee Fence Co.

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Notice of reinstatement, Milwaukee Fence Co.

SUMMARY: This notice advises that Milwaukee Fence Co., has been reinstated as an eligible bidder on Federal and federally assisted construction contracts and subcontracts. For further information, contact Harold M. Bush, Acting Deputy Assistant Secretary for Federal Contact Compliance, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–3325, Washington, DC 20210 (202) 693–1072.

SUPPLEMENTARY INFORMATION: Milwaukee Fence Co., Milwaukee, Wisconsin, is as of this date, reinstated as an eligible bidder on Federal and federally assisted construction contracts and subconstracts.

Signed at Washington, DC this 4th day of May, 2001.

Harold M. Busch,

Acting Deputy Assistant Secretary for Federal Contract Compliance.

[FR Doc. 01–11908 Filed 5–10–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on June 4, 5, and 6, 2001. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, June 4, 2001

9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 9

1. Possible measurement bias in aggregate productivity measures: Update of Gullickson-Harper paper
2. Developments in industry productivity studies
3. Status of the 2000–10 projections
4. Topics for the next meeting

Committee on Foreign Labor Statistics

1. Update on activities of the Division of International Technical Cooperation
2. Preliminary report on development of hourly compensation measures for additional countries
3. Topics for the next meeting

1:30 p.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Latest results from National Longitudinal Survey of Youth (NLSY)97 and NLSY79 surveys
2. Current Population Survey (CPS) topics:
   a. Data on union membership
   b. Update on the CPS–CES gap, based on latest information from 2000 Census
   c. Discussion of issues related to measuring labor force activity of the prison population
3. Developments in the Local Area Unemployment Statistics and Mass Layoff Statistics programs
4. Topics for the next meeting

Tuesday, June 5, 2001

1:30 p.m.—Committee on Compensation and Working Conditions—Meeting Room 9

1. Welcome, Introductions

2. Update on data for the Federal white-collar pay setting process
3. Employee Benefits Survey: status and data availability
4. Data on working conditions from BLS
5. Bonuses, lump-sum payments, and other forms of variable pay
6. Topics for the next meeting

Wednesday, June 6, 2001

9:30 a.m.—Committee on Prices and Living Conditions—Meeting Room 9

1. Update on program developments
   a. Consumer Price Index
   b. International Price Indexes
   c. Producer Price Indexes
2. Topics for the next meeting

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. Report on worker and case circumstances data from the 1999 Survey of Occupational Injuries and Illnesses
2. Discussion of changes to the Survey of Occupational Injuries and Illnesses resulting from the revision of the OSHA record keeping rule
3. Report on the status of the Survey of Respirator Use and Practices
4. Update on the introduction of the North American Industry Classification System into the Survey of Occupational Injuries and Ilnesses and the Census of Fatal Occupational injuries
5. Proposed FY 2002 budget
6. Topics for the next meeting

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC this 30th day of April, 2001.

Katharine G. Abraham,

Commissioner.

[FR Doc. 01–11907 Filed 5–10–01; 8:45 am]

BILLING CODE 4510–24–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution

National Environmental Policy Act Pilot Projects; Comment Request; Announcement of Workshop

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Meeting notice and request for public comment.

SUMMARY: At the request of U.S. Senators Max Baucus, Mike Crapo, Harry Reid, and Craig Thomas, the U.S. Institute for Environmental Conflict Resolution is exploring how pilot projects can be used to determine how collaboration, consensus building, and appropriate dispute resolution processes can improve the implementation of the National Environmental Policy Act (NEPA) in the context of federal lands and natural resource management issues. In the past months, the U.S. Institute, with the assistance of the Meridian Institute, has sought input from a diverse group of individuals representing environmental organizations, resource users, federal, state and local governments, tribes, participants in local and regional collaborative processes, and NEPA experts. The purpose of these individual conversations was to learn more about (1) What specific concerns or issues should be addressed by pilot projects, (2) what parameters should define the pilot projects initiative, (3) what criteria should be used to select pilot projects, (4) what institutional mechanisms would be needed to assure project oversight, implementation, and evaluation, and (5) how to maximize the likelihood that positive lessons learned from the pilots can be mainstreamed and begin to influence the implementation of NEPA in the future.

A number of perceived problems with both NEPA implementation and collaborative processes were identified through these early conversations. Among the reported problems with NEPA implementation were:

- Inconsistent implementation of NEPA's statutory requirements, implementing regulations and agency guidelines;
- Inadequate coordination among federal agencies with overlapping jurisdictions and inadequate intergovernmental coordination with state agencies;
- Overemphasis on NEPA documentation and litigation protection, rather than sounder strategic planning and decision-making;
- Inefficient and duplicative processes; and
- Inadequate attention to realizing the goals laid out in Section 101 of NEPA.

The issues relating to collaborative processes and conflict resolution can be placed into four organizational contexts:

- Interagency collaboration,
- Intergovernmental collaboration,
- Governmentally organized multi-stakeholder collaboration, and
- Privately organized collaborative processes.

Across these contexts, various problems were raised, such as:

- A lack of guidance on options for agencies and inconsistent approaches to collaboration resulting in confusion;
- The resource intensive nature of such processes and inadequate process funding;
- Lack of clarity on stakeholder roles and responsibilities, and inadequate stakeholder guidance;.
- Maintaining balanced stakeholder representation; and
- Overemphasis on process of collaboration as an end itself and inadequate attention to planning outcomes, decision-making, and implementation.

The U.S. Institute proposes that pilot projects may be useful in addressing the perceived challenges of NEPA implementation and providing clearer guidance regarding the use of collaborative processes in NEPA implementation to agencies, state and local governments, tribes and non-governmental interests with respect to public lands and natural resources management issues. Specifically, pilot projects could:

- Clearly distinguish problems and concerns related to NEPA and the manner in which NEPA is being implemented from concerns about other environmental statutes and/or broader societal concerns;
- Demonstrate innovative and practical solutions to clearly delineated NEPA implementation problems; and
- Provide information about the conditions under which collaborative problem solving, consensus-building, and dispute resolution processes can improve implementation of NEPA.

There are differing views regarding the effectiveness of NEPA implementation, reflecting legitimate underlying differences in values and perspectives about the nature and extent of the environmental impacts of proposed projects and how these impacts can best be avoided or mitigated. Most would agree, however, there is room for improvement in the application of NEPA procedures and in the achievement of its substantive objectives articulated in Section 101. Collaborative processes and conflict resolution strategies often involve or implicate NEPA review and analysis activities. Well-managed and highly visible pilot projects may bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses.

The U.S. Institute recommends four basic features for a pilot projects initiative. First, there must be a sufficient number of pilot projects from which to draw reliable lessons across the four different contexts of collaborative processes (i.e., interagency, intergovernmental, governmentally organized, and privately organized) and across a spectrum of agencies that have responsibility for lands and natural resource management issues.

Second, it is important not to ''reinvent the wheel.'' The use of collaboration and dispute resolution on environmental issues, of which NEPA implementation is a subset, is not new. For this reason, the pilot projects under this initiative should be oriented less toward introducing a new concept or approach and more toward solving specific problems regarding the use of collaboration and dispute resolution in NEPA implementation. At the same time, the initiative should include research and a retrospective analysis of past and present NEPA projects involving collaborative and dispute resolution processes, in parallel with current projects in the pilot program.

Third, pilot projects are not enough in and of themselves. Evaluation of the results of the pilot projects is essential in order to learn from both the successes and the failures. Articulating the criteria for assessing the outcomes of these pilot projects will be central to such an initiative. Dissemination of the results of the evaluations is essential to ensure that the lessons learned from these pilot projects are broadly understood and utilized.

Finally, a transparent, open, and public process must be designed and managed to build consensus on the desired outcomes for this pilot projects initiative in relation to NEPA implementation in connection with federal lands and natural resource management issues. The interviews conducted thus far, along with this request for public comment, are a step toward laying the initial foundation for such a process.

The U.S. Institute would like comments on how it can assure a balanced and effective approach to developing and managing such pilot projects. The U.S. Institute seeks written public comment and direct input at two public workshops on the approach it proposes to take to the NEPA pilot projects initiative. Based on the comments received from this notice and the public workshops, in addition to the feedback from earlier meetings and interviews, the U.S. Institute will provide a report and recommendations to the Senators for their consideration. The supplemental information below provides greater detail on the preliminary concepts under consideration.

Based on the interviews conducted thus far and a review of the literature, the supplemental information provides a review of the perceived problems with NEPA implementation and collaborative processes, as well as the preliminary recommendations for the design of a pilot projects initiative to address the request of the Senators.

DATES: Comments must be submitted on or before June 25, 2001. The public workshops will be held in Denver, Colorado on June 8, 2001 and Washington, DC on June 14, 2001. A balanced set of stakeholder representatives will be invited to attend the workshops, which will also be open to the public. An opportunity will be provided for public comment. The meetings will begin at 8:30 a.m. and conclude at approximately 4 p.m. Members of the public who wish to attend one of the meetings are requested to contact the Meridian Institute (see **ADDRESSES** section) by June 1, 2001 so that a sufficient number of materials can be prepared and directions to the facility can be provided. Space may be limited, thus a RSVP is strongly encouraged.

ADDRESSES: Direct comments to: Meridian Institute, Attn. Tutti Tischler, P.O. Box 1829, Dillon, Colorado, 80435. Fax: 970–513–8348, e-mail: ttischler@merid.org by no later than June 25, 2001.

The meeting locations are:

June 8, 2001—Embassy Suites at Denver Airport, Conference Center, 4444 North Havana, Denver, CO

June 14, 2001—GSA National Capitol Region Training Center, Rooms A & B, 490 L'Enfant Plaza, Suite 3207, Washington, D.C.

If you are interested in attending either public workshop, please contact Ms. Tutti Tischler by June 1, 2001, Meridian Institute, P.O. Box 1828, Dillon, Colorado 80435, phone: 970–513–8340 ext. 252, fax: 970–513–8348, or e-mail: ttischler@merid.org. Ms. Tischler can provide directions to both meeting locations.

FOR FURTHER INFORMATION CONTACT: Logistical Information: Tutti Tischler, Meridian Institute, P.O. Box 1828, Dillon, Colorado 80435, phone: 970–513–8340 ext. 252, fax: 970–513–8348, or e-mail: ttischler@merid.org for directions to either meeting location and other related information.

Substantive Information: Sarah Palmer, U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701, fax: 520–670–5530, phone: 520–670–5299, e-mail: palmer@ecr.gov

SUPPLEMENTARY INFORMATION:

I. Overview

A. The Senators' Request

At the request of U.S. Senators Max Baucus, Mike Crapo, Harry Reid, and Craig Thomas, the U.S. Institute for Environmental Conflict Resolution is exploring how pilot projects can be used to determine how collaboration, consensus building, and appropriate dispute resolution processes can improve the implementation of the National Environmental Policy Act (NEPA). The Senators have asked specifically about the potential application of collaborative approaches to NEPA activities in the context of natural resources management and public lands issues. In order to respond to this request, and at the suggestion of the Senators, the U.S. Institute is seeking input from those with interest and experience in NEPA review activities and collaborative processes.

B. The U.S. Institute for Environmental Conflict Resolution

Congress established the U.S. Institute in 1998 in the Environmental Policy and Conflict Resolution Act (Pub. L. 105–156). The Institute's primary purpose is to assist parties in resolving environmental, natural resource, and public lands conflicts. It was also charged with assisting in achieving the substantive goals of NEPA laid out in Section 101. The U.S. Institute is part of the Morris K. Udall Foundation, an independent federal agency of the executive branch located in Tucson, Arizona and overseen by a board of trustees appointed by the President. The U.S. Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. The U.S. Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict.

C. Background and Context of the NEPA Pilot Projects Initiative

This project builds on the results of a workshop co-sponsored by the Institute for Environment and Natural Resources

at the University of Wyoming and the O'Connor Center for the Rocky Mountain West at the University of Montana in March of 1999 and reported on in ''Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?'' The workshop focused on the potential for improving NEPA through the use of collaborative processes.

Chief among the important questions raised at this workshop were:

- How can both national and local interests be properly considered and appropriately balanced through collaborative NEPA processes?
- To what extent may multi-stakeholder collaborative groups participate in NEPA reviews and affect natural resource management decisions?
- When should cooperating agency status be granted to state and local governments and how can such cooperation be managed most fairly and productively?
- How can collaborative processes be used to improve the implementation of NEPA and in particular help achieve the substantive goals stated in Section 101?

In 1995, coinciding with the twenty-fifth anniversary of the passage of NEPA, the Council on Environmental Quality (CEQ) undertook a study of the effectiveness of NEPA implementation. This report, which refers to NEPA as a ''framework for collaboration,'' focused on five critical areas within which improvements could be made to the implementation of NEPA, including:

- Strategic planning—the extent to which agencies integrate NEPA goals into their internal planning processes at an early stage;
- Public information and input—the extent to which an agency provides information to and takes into account the views of the surrounding community and other interested members of the public during its planning and decision-making processes;
- Interagency coordination—how well and how early agencies share information and integrate planning responsibilities with other agencies;
- Interdisciplinary place-based approach to decision making that focuses the knowledge and values from a variety of sources on a specific place; and
- Science-based and flexible management approaches once projects are approved.

This current effort is guided by an interest in soliciting broad-based and balanced feedback on a pilot projects initiative, designing a well-managed and transparent project, and providing timely and useful information. Based on the Senators' request and with the assistance of the Meridian Institute, the U.S. Institute is seeking input from those with interest and experience in NEPA review activities and multi-stakeholder collaborative processes. To date, the U.S. Institute and Meridian staff have conducted approximately fifty interviews with individuals representing a diversity of interests and perspectives on this initiative.

D. Working Definitions

For the purpose of this draft document, the following working definitions will be used:

Collaboration and Collaborative Processes involve people who represent diverse interests, perspectives, and institutions that agree to work together to identify problems, share information, and, where possible, develop mutually acceptable solutions. Collaborative processes frequently take place prior to a formal decision being made by the responsible institution. The term collaboratives is sometimes used to refer to privately organized rather than governmentally organized collaborative processes.

Consensus-Building Processes constitute a form of collaboration that explicitly includes the goal of reaching a consensus agreement on policy matters, environmental conflicts, or other issues in controversy. Consensus is often, although not always, defined as ''no dissent.'' Consensus building processes often, although not always, involve the assistance of a neutral convenor, facilitator, or mediator.

Dispute Resolution Processes aim to resolve specific and definable disputes over formal agency decisions that have been or are about to be made. The parties to a dispute resolution process are typically entities that can be granted standing to participate in the dispute resolution process. Under this definition, litigation is a form of dispute resolution process. The terms *appropriate* or *alternative dispute resolution* refer to non-adversarial processes that take place in advance of or in conjunction with formal litigation usually involving a neutral mediator to assist the parties in their negotiations.

Non-governmental interests refer broadly to non-governmental organizations (NGOs), such as national environmental groups, local citizens groups, and other public interest oriented groups, as well as companies, associations, and organizations representing commercial and private sector interests. Given the focus on federal lands and natural resource management issues in this document, non-governmental interests also include resource users such as ranchers, loggers, timber companies, miners, mining companies, oil and gas companies, etc.

Stakeholders refers to the individuals, organizations, and institutions that have a stake in the outcome of a decision because they are either directly affected by the decision or have the power to influence or block the decision.

II. Findings From Preliminary Research and Interviews

A. Introduction

Based on a review of currently available literature and the results of the interviews described above, a number of challenges appear to be associated with NEPA implementation, as well as with the use of collaborative processes initiated in conjunction with NEPA implementation (whether the collaborative process is before or early in a NEPA process or, alternatively, after the NEPA process has begun and actual or potential disputes have emerged). The challenges with both NEPA implementation and collaborative approaches, which are reviewed below, should be considered as the basis for focusing the pilot projects.

B. Reported Problems Related to NEPA Implementation

Some of the stakeholders interviewed expressed concern about whether the Senators who initiated the request or the U.S. Institute believe ''NEPA is broken and needs to be fixed'' and, if so, whether there is a belief that the use of collaboration and dispute resolution is the way to fix the problem. It is important to point out that almost without exception the stakeholder representatives interviewed indicated they do not believe there is a problem with the statute itself, but many felt there are concerns with how the statute is being implemented.

The interviews also evidenced concerns about the underlying authority and standards for agency decisions contained in other environmental statutes. In some cases the criticisms initially leveled at the NEPA process were found to be based primarily on concerns with requirements of other substantive laws. In the case of federal lands and natural resource management issues, the statutes that intersect with NEPA include but are not limited to the Endangered Species Act (ESA), the Federal Lands Policy and Management Act (FLPMA), the National Forest Management Act (NFMA), and the Clean Water Act (CWA).

Since the focus of this effort is on the use of collaborative processes and appropriate dispute resolution in NEPA

implementation, it will be important to clearly distinguish between perceived problems and concerns with the authority and standards of decision making contained in other statutes, and perceived problems and concerns with how agencies are fulfilling their NEPA duties and obligations. While this will be a challenge when identifying criteria for selecting pilot projects, it will be even more of a challenge in evaluating the effectiveness of the pilot projects and translating any new insights from the pilots to concrete suggestions for improving NEPA implementation.

Some stakeholders have suggested that the U.S. Institute undertake a systematic retrospective analysis of collaboration and NEPA implementation to help inform the development of clearly delineated problem statements with respect to the pilot projects initiative. The U.S. Institute agrees with the need to have clearly delineated problem statements that can be used to develop criteria for selecting and evaluating pilot projects. However, it appears that there is sufficient clarity regarding problems reported with NEPA implementation to proceed with the development of a pilot initiative, which would include a systematic retrospective analysis in parallel with the pilot projects.

From its interviews and a preliminary review of the literature, the U.S. Institute has compiled the following list of perceived problems with NEPA implementation.

1. Inconsistent NEPA Implementation. Inconsistent implementation and interpretation by lead federal agencies of the statutory requirements of NEPA and the CEQ implementing regulations and guidelines.

2. Efficiency and Effectiveness. How to ''streamline'' NEPA implementation by making it more efficient, less time consuming, and equally, if not more, effective.

3. Inappropriate Timing of Interagency or Intergovernmental Coordination. Many times a lead agency consults with other agencies with overlapping regulatory authority after alternatives have been identified and publicly discussed with stakeholders, only to find that one or more of the alternatives under consideration is unacceptable to the agency with overlapping jurisdiction.

4. Overemphasis on Documentation with Insufficient Attention to Planning and Decision Making. There is an excessive focus on NEPA documentation and efforts to make NEPA documents ''litigation proof'' rather than using NEPA to improve strategic planning and decision-making.

5. Inadequate Attention to Section 101. CEQ's regulations for implementing the procedural provisions of NEPA (40 CFR 1502.2(d)) states that an environmental impact statement:

> Shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

Section 101 of the Act includes the declaration of environmental policy that is the cornerstone of NEPA. Section 102(1) of the statute directs that,

> To the fullest extent possible the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act.

Some stakeholders believe there has been inadequate attention paid to the requirements of NEPA and its implementing regulations.

C. Reported Problems Associated With But Not Limited to NEPA Implementation

Both the interviews and the NEPA-related literature cite two additional issues that influence the NEPA implementation process but are not exclusive to that process. The first is information management and use of technical information. The second issue is the role of the Federal Advisory Committee Act in the NEPA process.

1. Information and Information Technology Related Problems

The quality of NEPA analysis depends in large part on the quality of information that is available to and considered by decision-makers and the general public. As a consequence, a number of reported information and information technology related problems may warrant consideration in the design of pilot projects. These include:

a. Lack of Baseline Data. The lack of high quality baseline environmental data, especially for land management agencies, that can be periodically updated and used as the basis for NEPA analysis, often results in the re-creation of high quality data on a case-by-case basis.

b. Insufficient Utilization of Information Technology. Information technology, especially decision-support tools and geographic information systems are not widely available or are under-utilized.

c. Excessive Data Demands. Guidance is needed on how to identify what data would be useful in improving the quality of the decision. While thorough documentation and requests for additional information are often warranted, excessive data generation and reporting can overwhelm the ability of decision makers and the public to understand the key points.

2. The Federal Advisory Committee Act (FACA)

Federal agencies have the option of utilizing citizen advisory committees and work groups to advise agencies during the NEPA process. However, many report real and perceived limitations to the use of a federal advisory committee.

a. Limitations and Perceptions. Most federal agencies are limited in the number of advisory committees they can establish. In addition, there is a widespread perception that the FACA can be an impediment to undertaking governmentally organized multi-stakeholder collaboration. These real and perceived limitations can create incentives to circumvent the requirement to establish an official advisory committee when in reality a FACA-chartered committee may be the best course of action.

b. Advisory vs. Decisional. Federal advisory committees advise agencies on specific issues. There is a need for clearer guidance about how to ensure governmentally organized multi-stakeholder collaboration processes maintain this advisory role and yet, where appropriate, strive to achieve a consensus that includes commitments from the sponsoring agency (akin to what takes place in a regulatory negotiation).

D. Reported Problems Associated With Collaborative Processes and Dispute Resolution

From the literature surveyed and the interviews conducted, the U.S. Institute and Meridian Institute staff identified a number of perceived problems with the use of collaborative and appropriate dispute resolution processes. It was apparent from the interviews that it is useful to distinguish between among four types of collaborative processes based on their organizational context:

- Interagency collaboration and coordination involving affected agencies within the federal government;
- Intergovernmental collaboration and coordination involving the lead federal agency and affected agencies from other levels of government, including tribal, state, and local government;
- Governmentally organized multi-stakeholder collaboration that is initiated and organized by the lead federal agency, or a cooperating governmental agency, and involves

representatives of affected non-governmental interests; and

• Privately organized collaborative processes that are initiated, organized, and conducted by non-governmental interests who have a stake in the outcome of agency decisions where there is limited or no direct involvement of the lead federal agency.

While specific issues and concerns were raised within each of these contexts, there were several cross-cutting problems reported, including:

1. Problems That Arise When Initiating Collaborative Processes

a. Lack of Guidance for Deciding How to Collaborate. Agencies lack guidance on whether and how to engage in multi-stakeholder collaborative processes, separate one-on-one consultations with stakeholder representatives, or standard public participation techniques. In some cases, such processes are initiated after an agency decision has already been made, for example, which undermines the efficacy of the collaboration.

b. Inadequate Stakeholder Representation. Lead agencies often do not involve all government agencies and/or non-governmental interests that have a stake in the outcome of the collaborative process. There is a lack of awareness and practical guidance for determining the major stakeholders who need to be represented in a collaborative process.

c. Lack of Resources. Agencies have limited financial and personnel resources to undertake and organize a multi-stakeholder collaboration. Similarly, the lack of financial and personnel resources may limit some stakeholder groups from effectively participating in multi-stakeholder collaboration.

d. Involving Nationally Oriented Groups in Locally Oriented Processes. Where locally oriented, federally organized multi-stakeholder collaborative processes include issues that are of a broader national interest, it is difficult to involve national groups directly in the collaborative process.

2. Problems That Arise During Collaborative Processes

a. Roles and Responsibilities of Agency Representatives. Lack of clarity regarding the decisionmaking roles, responsibilities, and authority of agency representatives who are ''at the table'' in relation to those who are at ''higher'' levels. This is especially problematic in locally oriented processes that require decisions to be made at the regional and/or national levels.

b. Maintaining Balanced Stakeholder Representation. It can be difficult to maintain balanced involvement of all major stakeholder interests throughout the course of the collaborative process. There is a need for guidance on how to handle instances where stakeholder representatives participate in a collaborative process until they feel their interests are not being fully satisfied and then pullout and resort to traditional adversarial strategies.

c. Length of Time Needed to Complete Multi-Stakeholder Collaboration. The time it takes to complete multi-stakeholder collaborative processes, especially consensus-based processes.

d. Goal Confusion. In some cases, the process of collaboration itself may develop into the primary goal of the participants rather than focusing on improved and informed decisions and designing a process that will effectively achieve this end.

3. Problems That Arise When Agency Decisions Are Made

a. Unrealistic Stakeholder Expectations. Nongovernmental stakeholders can be disappointed if the decision making framework is not specified. When non-governmental stakeholders participate in collaborative processes or assisted negotiations, sometimes the decision rules within the group are not clarified at the outset and the legal duties and obligations of the agency representatives for specific decisions or actions are not fully understood.

b. Inconsistent Decisions. Sometimes agency decision makers choose courses of action different from those arrived at by consensus in a collaborative process or by assisted negotiation in a conflict resolution process. The value of such participatory processes can be undermined. Guidance is needed to minimize this occurrence by assuring consistent communication within agencies during their participation.

c. Implementation Challenges. Recommendations from collaborative processes or conflict resolution processes may not always take into account their feasibility or resource requirements. Institutional structures may not exist or be limited to assure appropriate follow-through and monitoring to ensure implementation. Mechanisms for assuring the practicality of implementation requirements should be developed.

4. Problems Associated With Privately Organized Collaborative Processes

In addition to the cross-cutting issues raised in the sections above, there are some specific concerns reported regarding privately organized multi-stakeholder collaborations. Some examples of issues that may need to be addressed include:

• What should agency personnel do when the process explicitly excludes certain stakeholder interests?

• How should they respond when there is clear evidence of an attempt to include representation of all stakeholder interests but not everyone chooses to participate?

• What should the agency do when the process includes a balanced representation of the diverse stakeholders that have an interest in the issues being discussed?

• Should federal agency staff participate in such processes if they are requested to do so and, if so, to what degree?

• Should the results of privately convened collaborative processes be given special weight or consideration by agencies and, if so, how and under what conditions?

III. The Potential Value of Pilot Projects

The results of the interviews and the preliminary review of the literature indicate there is some dissatisfaction with how agencies are implementing NEPA. These concerns are reflected in the list of reported problems outlined above. At the same time, many of the concerns that are attributed to NEPA implementation reflect broader concerns about the role of the federal government in public lands and natural resource management issues and with environmental decision-making in general.

Notwithstanding Congress' declaration more than 30 years ago of a national environmental policy in Section 101 of NEPA, it is clear the value conflicts that underlie environmental issues remain pronounced. Collaborative problem solving, consensus building, and dispute resolution processes have been used to address these value conflicts in a variety of situations since the mid-1970s. While these processes have been utilized in increasingly sophisticated ways and in a wide variety of circumstances by virtually every federal agency, as is evident from the problem statements outlined above, there is still much that can be learned about how to more effectively utilize these processes.

Undertaking a carefully designed pilot projects program will permit the U.S. Institute and those who have an interest in improving the quality of federal agency NEPA analyses and decision-making processes on public lands and natural resource management issues to:

• Clearly distinguish problems and concerns related to NEPA and the manner in which NEPA is being

implemented from concerns about other environmental statutes and/or broader societal concerns;

• Demonstrate innovative and practical solutions to clearly delineated NEPA implementation problems; and

• Learn more about the conditions under which collaborative problem solving, consensus-building, and dispute resolution processes can improve implementation of NEPA.

There are differing views regarding the effectiveness of NEPA implementation, reflecting legitimate underlying differences in values and perspectives about the nature and extent of the environmental impacts of proposed projects and how these impacts can best be avoided or mitigated. Most would agree, however, there is room for improvement in the application of NEPA procedures and in the achievement of its substantive objectives articulated in Section 101. Collaborative processes and conflict resolution strategies often involve or implicate NEPA review and analysis activities. Well-managed and highly visible pilot projects may bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses.

As indicated by the interviews and preliminary review of the literature, pilot projects could yield important insights into possible improvements in NEPA implementation and guidance with respect to:

• CEQ regulations and implementing NEPA;

• Federal agency regulations;

• Tribal, state, and local government guidance; and

• NGO guidelines and practices for participating in NEPA implementation.

IV. Designing a Pilot Projects Initiative

A. Challenges

The design and implementation of a pilot projects initiative raises a number of challenges, including how to best:

• Ensure that all interests will be fairly represented in the selection, evaluation, and analysis of such projects,

• Identify and respond to potential institutional barriers,

• Address concerns on the one hand that this initiative might lead to unanticipated changes in NEPA implementation, and on the other, that reform of NEPA implementation may not be forthcoming, and

• Manage the projects with appropriate public oversight.

To address these challenges, the U.S. Institute recommends establishing some fundamental conditions for undertaking a pilot projects initiative, identifying a set of criteria for selecting the pilot projects, and establishing a separate set of criteria for evaluating the results of the pilot projects.

B. Basic Features of a Pilot Projects Initiative

The U.S. Institute recommends four basic features for a pilot projects initiative. First, there must be a sufficient number of pilot projects from which to draw reliable lessons across the four different types of collaborative processes (i.e., interagency, intergovernmental, governmentally organized, and privately organized) and across a spectrum of agencies that have responsibility for federal lands and natural resource management issues.

Second, it is important not to ''reinvent the wheel.'' The use of collaboration and dispute resolution on environmental issues, of which NEPA implementation is a subset, is not new. For this reason, the pilot projects under this initiative should be oriented less toward introducing a new concept or approach and more toward solving specific problems regarding the use of collaboration and dispute resolution in NEPA implementation. At the same time, the initiative would include research and a retrospective analysis of past and present NEPA projects involving collaborative and dispute resolution processes, in parallel with current projects in the pilot program, in order to broaden the information gained.

Third, pilot projects are not enough in and of themselves. Evaluation of the results of the pilot projects is essential in order to learn from both the successes and the failures. Articulating the criteria for assessing the outcomes of these pilot projects will be central to such an initiative. Dissemination of the results of the evaluations is essential to ensure that the lessons learned from these pilot projects are broadly understood and utilized.

Finally, a transparent, open, and public process is needed to build consensus regarding the desired outcomes of this pilot projects initiative in relation to NEPA implementation on federal lands and natural resource management issues. The interviews conducted thus far along with this request for public comment are a step toward laying the initial foundation for such a process.

C. Input Sought on How To Interpret the Suggestion of the Senators To Focus on Federal Lands and Natural Resource Management Issues

The U.S. Institute seeks input on how broadly or narrowly it should interpret the suggestion from the Senators to focus on ''federal lands and natural resource management'' issues. This question should be considered in light of the work to ''streamline'' NEPA implementation in several agencies such as the Federal Highway Administration as well as in specific situations such as the U.S.D.A. Forest Service's and the Department of the Interior's National Fire Plan. There are concerns that NEPA streamlining efforts should seek to retain NEPA's effectiveness and at the same time improve its efficiency. Streamlining efforts will likely require a significant level of collaboration and dispute resolution planning to meet these ends. The need for effective collaboration, particularly interagency and intergovernmental collaboration, may be even more significant in instances where efforts are being made to streamline NEPA implementation.

The U.S. Institute would value input on how broadly this initiative should define its focus on federal lands and natural resource management issues. The strictest interpretation might limit the focus to NEPA reviews conducted by land management agencies such as the U.S.D.A. Forest Service, Bureau of Land Management, and National Park Service. Alternatively, a broader focus would include federal agencies whose mission includes, but not exclusively, the management of a natural resource, e.g., military reserves, or the mitigation of impacts on natural resources, e.g., transportation projects, airport expansions. It might also include opportunities to work with tribal governments with resource management issues impacting tribal lands and adjacent federal or state lands.

D. The U.S. Institute's Role

The U.S. Institute proposes to serve as the lead agency for the purpose of administering the NEPA Pilot Projects Initiative consistent with its mission to assist with the implementation of the provisions of Section 101 of NEPA. This role would include:

• Providing program administration and oversight;

• Making the final decisions on the criteria for selecting the pilot projects;

• Selecting the pilot projects;

• Collaborating with participating agencies as necessary and appropriate to select and oversee neutral third party service providers such as conveners,

facilitators, fact-finders, trainers, mediators, etc.;

• Identifying the criteria by which to evaluate the outcome of the pilot projects;

• Selecting and overseeing the work of independent evaluators;

• Reporting on the lessons that are learned from a retrospective analysis and prospective pilot projects; and

• Establishing and managing a federal advisory committee that will be used to provide input on all of the above.

Several commenters strongly recommended the use of a federal advisory committee to help guide the U.S. Institute on these matters to assure transparency and build trust in the NEPA pilot projects initiative. The U.S. Institute proposes to form a federal advisory committee made up of a balanced but manageable number of individuals representing organizations that have an interest in the initiative.

E. Criteria for Selecting Pilot Projects

A preliminary list of the criteria the U.S. Institute proposes to use in selecting the pilot projects is as follows:

• Geographic balance (while it is expected that a majority of projects will be drawn from the Western U.S., an attempt should be made to select projects from the entire nation);

• Diversity of agency participation from lead federal agencies, states, counties, and tribes;

• Diversity of the federal lands and natural resource management issues to be addressed;

• Balance of projects across the four different categories of collaboration (i.e., interagency, intergovernmental, governmentally organized multi-stakeholder, and privately organized multi-stakeholder) as well as projects that employ dispute resolution processes;

• Projects of local, state, regional, and national scale representing the spectrum of issues that are the focus of the NEPA analysis and collaborative process;

• Projects that are occurring at a variety of different stages in the NEPA review and decision-making process (where a range of collaborative and dispute resolution processes could or are occurring).

In addition, the U.S. Institute is considering giving priority to pilot projects that:

• Are explicitly designed to address one or more of the NEPA implementation and/or collaborative process problems identified above;

• Have a genuine potential for success (e.g., for collaborative processes, decisions have not been predetermined, adequate incentives exist for collaboration or dispute resolution, etc.); and

• Emphasize innovative approaches to the integration of the substantive aspirations of Section 101 of NEPA with the implementing procedures of Section 102.

The U.S. Institute encourages comments on this list.

F. Evaluation and Reporting

In order to have value, the proposed NEPA pilots project initiative must include both an evaluation component and a reporting component. The evaluation component will include evaluations of the results and outcomes of the pilot projects by independent and professionally qualified evaluators. A concerted effort will be made with the guidance of the federal advisory committee to establish agreed upon criteria for assessing the efficacy and effectiveness of the pilot projects. At the conclusion of the initiative, the U.S. Institute will report on lessons learned, taking into consideration the findings of the independent evaluations and the retrospective analysis of the research, and make recommendations for changes, if any, that might be made to existing NEPA policies, guidelines or regulations.

As noted above, the U.S. Institute proposes to establish a federal advisory committee to advise the Institute on critical components of the NEPA pilot projects initiative, including the criteria for conducting evaluations of the pilot projects and how to best select and oversee the independent evaluators. The proposed role for the advisory committee includes the review and interpretation of the evaluation results and the identification of what it sees as key findings that the U.S. Institute should consider.

V. Conclusion

In order to explore the proposal for pilot projects more fully, the U.S. Institute is holding two public workshops which will be facilitated by the Meridian Institute. The workshops are scheduled for June 8, 2001 in Denver, Colorado and June 14, 2001 in Washington, DC Representatives of resource user groups, environmental organizations, academia, state, local, and tribal governments, and federal agencies are being invited in order to participate in a balanced and constructive discussion on this initiative. These participants will not act as a committee and there will not be any attempt to seek a group recommendation on any issue. Additional seats will be available for members of the public, who will be given limited time on the agenda to provide comments.

If you would like to attend the workshop, please contact the Meridian Institute (see **ADDRESSES** section) by June 1, 2001 so that it can determine the amount of interest and prepare sufficient materials.

Based on the input provided at this workshop and any written comments received, as well as the information summarized in this document, the U.S. Institute will prepare formal recommendations to the Senators on a NEPA pilot projects initiative. Further development of such an initiative relies on the feedback of the public, interested stakeholders, and the Senators who requested the information.

Public Comments Solicited

The U.S. Institute will take into consideration any comments and additional information received on or prior to the close of the 45-day comment period.

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Authority: 20 U.S.C. 5601–5609.

Dated: May 7, 2001.

Christopher L. Helms,

Executive Director, Morris K. Udall Foundation.

[FR Doc. 01–11898 Filed 5–10–01; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

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 June 25, 2001. 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@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: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@ 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's 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 them 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, Food Safety and Inspection Service (N1–462–01–2, 15 items, 12 temporary items). Working papers, including drafts and reference materials, relating to the preparation of plans and reports stemming from the Government Performance and Results Act. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of strategic plans, annual performance plans, and annual performance reports.

2. Department of Agriculture, Forest Service (N1–95–01–1, 3 items, 3 temporary items). Records relating to agency Y2K activities, including risk assessments, the testing and modification of automated systems, briefings, and training. Electronic copies of documents created using electronic mail and word processing are included.

3. Department of the Army, Army-wide (N1–AU–01–17, 1 item, 1 temporary item). Master file of the Central Issue Facility System, an electronic information system containing information concerning the receipt, storage, issue, exchange, and turn-in of clothing and equipment at installations.

4. Department of the Army, Agency-wide (N1–AU–00–39, 2 items, 2 temporary items). Master file and outputs of the Hazardous Substance Management System, an electronic information system used to support and facilitate the tracking and reporting of hazardous materials at installations. The system includes such data as quantities of hazardous chemicals and information concerning their location, handling, storage, disposal, release, and transfer. Copies of reports generated by this system that pertain to the release of hazardous material are sent to the Environmental Protection Agency (EPA) and incorporated into an EPA system that was previously approved for permanent retention.

5. Department of Defense, Defense Logistics Agency (N1–361–01–2, 1 item, 1 temporary item). The Safety and Health Information Reporting System, an electronic information system consisting of employee exposure records used to produce an occupational safety and health log and summary. Included are reports on hazards, accident investigations, and surveys and inspections. Records are proposed for retention for 30 years, as required by 29 CFR 1910.

6. Department of Energy, Agency-wide (N1–434–01–2, 5 items, 5 temporary items). Records provided by manufacturers containing safety information concerning hazardous chemicals and records relating to the inventorying and integrity testing of sealed radioactive sources. Electronic copies of documents created using electronic mail and word processing are included. Recordkeeping copies of these files are proposed for a 75-year retention period.

7. Department of Energy, Agency-wide (N1–434–01–3, 8 items, 7 temporary items). Records relating to spent nuclear fuels. Included are records pertaining to such matters as safety at installations, air sampling, planning, project reviews, and transfers of nuclear material. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files relating to offsite storage facilities and final repositories for spent nuclear fuels are proposed for permanent retention.

8. Department of Energy, Agency-wide (N1–434–01–4, 4 items, 4 temporary items). Records relating to identifying and avoiding conflicts of interest by employees and consultants involved in technology transfer activities. Included are such records as annual certifications, correspondence, evaluation forms, review and approval forms, and mitigation plans. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of Health and Human Services, National Institutes of Health (N1–443–00–4, 1 item, 1 temporary item). Records relating to agency advisory committees. Records consist of an electronically maintained directory that includes for each committee information concerning its organization, functions, and membership. This information is also available in paper records that were previously approved for permanent retention.

10. Department of Labor, Office of the Assistant Secretary for Policy (N1–174–01–1, 5 items, 5 temporary items). Records relating to surveys to assess customer satisfaction with the Department of Labor web site. Included are surveys completed on-line by the public, master files, electronic and paper outputs, and system documentation.

11. Environmental Protection Agency, Office of Prevention (N1–412–01–2, 3 items, 2 temporary items). Paper records that have been microfilmed relating to new chemical registrations under Section 5 of the Toxic Substances Control Act. Also included are electronic copies of documents created using electronic mail and word processing. Microfilm copies and paper records that have not been filmed, consisting of such documents as pre-manufacture notices, chemical submissions and supporting data, and test data documenting health and environmental effects are proposed for permanent retention.

Dated: May 2, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–11863 Filed 5–10–01; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: Wednesday, May 30, 2001, 8:30 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Surface Engineering and Material Design, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd. Room 545, Arlington, VA 22230, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY '01 Surface Engineering and Material Design Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11920 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis MRI Panel in Civil and Mechanical Systems (1205).

Date/Time: June 4–5, 2001 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Richard Fragaszy, Program Director, Geomechanics and Geotechnical Systems, Division of Civil and Mechanical Systems, Room 545, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY '00 Mechanics and Structures of Materials and Surface Engineering and Material Design Review Panel as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11922 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: June 1, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4021 Wilson Boulevard, Room 380, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Miriam Heller, Program Director, Information Technology and Infrastructure Systems, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA 22230 (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY' 00 Mechanics and Structures of Materials and Surface Engineering and Material Design Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personnel information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11924 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date/Time: May 24 and 25, 2001 from 8:30 a.m. to 5 p.m.

Place: National Science Foundation, Stafford Place I—4201 Wilson Boulevard, Room 830, and Stafford Place II—Conference Center, 4121 Wilson Boulevard, Rooms 517, 565, 575, 585, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Marilyn Suiter, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 292–5121.

Purpose of Meeting: To provide advice and recommendations concerning nominations submitted to NSF for financial support.

Agenda: To review and evaluate the Presidential Awards for Excellence in Science, Mathematics, & Engineering Mentoring nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11925 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203.

Dates/Times: May 29 and 30, 2001; 7:30 a.m.–9 p.m., May 31, 2001; 7:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–4938.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists for support for the FY Nanoscale Science and Engineering Centers (NSEC) Competition.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11923 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (1171)

Date/Time: May 31, 2001; 9 a.m.–5 p.m., June 1, 2001; 9 a.m.–12:15 p.m.

Place: NSF, 4201 Wilson Blvd., Rm 1235, Arlington, VA

Type of Meeting: Open.

Contact Person: Dr. Kenneth M. Brown, Executive Secretary; Directorate for Social, Behavioral, and Economic Sciences, NSF, Suite 905; 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8741.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to SBE programs and activities.

Agenda: Discussions on issues, role and future direction of the NSF Directorate for Social, Behavioral and Economic Sciences.

Note: Visitors from outside of NSF should call (703) 292–8700 to arrange for a visitor's badge in order to facilitate getting into the building.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11919 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (1171) Subcommittee for Human Subjects.

Date/Time: June 12, 2001, 8:30 a.m.–5 p.m. and June 13, 2001; 8:30 a.m.–1 p.m.

Place: National Science Foundation, Room 970, 4021 Wilson Boulevard, Arlington, VA.

Contact Person: Dr. Stuart Plattner, Division of Behavioral and Cognitive Sciences, NSF, Suite 995; 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8740.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on issues related to the use of human subjects in social and behavioral research.

Type of Meeting: Open (Members of the public who wish to attend should arrange access ahead of time with the contact person listed below).

Agenda: Discussions addressing the following topics:

Foreign Institutional Review Boards (IRBs)
Training (for principal investigators, research personnel, IRBs)
Consent (forms, signing, group/individual, students as research subjects)
Ethnography/oral history; ''ethical proofreading''
Confidential/privacy
Secondary subjects/secondary data; linking data
Expanding the ''exempt'' category
Deception
Subpart ''D'' of the Common Rule
Research on the World Wide Web
Data archiving

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11921 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 39—Licenses and Radiation Safety Requirements for Well Logging.

2. *Current OMB approval number:* 3150–0130.

3. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. *Who is required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material in well logging.

5. *The number of annual respondents:* 126 (36 NRC licensees and 90 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 27,352 hours. The NRC licensees total burden is 7,815 hours (113 reporting hrs and 7,702 recordkeeping hrs). The Agreement State licensees total burden is 19,537 hours (282 reporting hrs and 19,255 recordkeeping hrs). The average burden per response for both NRC licensees and Agreement State licensees is 19 hours.

7. *Abstract:* 10 CFR part 39 establishes radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports, and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and 3 byproduct material is in compliance with license and regulatory requirements.

Submit, by July 10, 2001 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: http://www.nrc.gov/NRC/PUBLIC/OMB/index.html. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *bjs1@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of May 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11902 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 34—Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.

2. *Current OMB approval number:* 3150–0007.

3. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. *Who is required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

5. *The number of annual respondents:* 364 (104 NRC licensees and 260 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 139,644 hours. The NRC licensees total burden is 39,990 hours (87 reporting hrs plus 39,903 recordkeeping hrs). The Agreement State licensees total burden is 99,654 hours (218 reporting hrs plus 99,436 recordkeeping hrs). The average burden per response for both NRC licensees and Agreement State licensees is 256 hours.

7. *Abstract:* 10 CFR part 34 establishes radiation safety requirements for the use of radioactive material in industrial radiography. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Submit, by July 10, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *bjs1@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of May 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11904 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3073]

Notice of Consideration of Amendment Request for Cushing Refinery Site, Cushing, Oklahoma and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License SNM–1999. The Kerr-McGee Corporation's (Kerr-McGee or the licensee) has requested to have a portion of the property released, for unrestricted use, from the Cushing Refinery Site (Cushing) License. This action is taken in response to Kerr-McGee's license amendment request, dated November 10, 2000, and supplemented by letter dated January 19, 2001. The licensee requested that the portion of site blocks 116, 117, 124, and 125 south of Skull Creek be released for unrestricted use and removed from the license. The area that is being considered for release from the license encompasses a sediment pond located in Unaffected Area 2 (UA–2). This sediment pond is normally used as a collection area for sediments generated during treatment of water removed from Pit 5. A routine discharge of treated wastewater to Skull Creek in June 1998, resulted in the inadvertent release of some of the pond sediment not releasable under the licensee's discharge permit. Although Skull Creek was radiologically decontaminated in 1991, it is located within a radiologically affected area. Therefore, sediments removed from Skull Creek and placed into UA–2 Sediment Pond had a potential of containing licensed material. The proposed boundary of the licensed area is shown in Figure 1, ''Cushing, Oklahoma Refinery Site, Proposed Licensed Site'', of the January 19, 2001, letter.

If the NRC approves the license amendment, the approval will be documented in a license amendment to NRC's license SNM–1999. However, before approving the proposed license amendment, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings'', of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to: Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays; or

2. By mail, telegram, or facsimile addressed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Center, P.O. Box 25851, Oklahoma City, Oklahoma, 73125, Attention: Mr. Jeff Lux, and;

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

For Further Information:

The application for the license amendment and supporting documentation are available for inspection on NRC's Public Electronic Reading Room at http://www.nrc.gov/NRC/ADAMS/index.html. Questions with respect to this action should be referred to Mr. Stewart Brown, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6605; Fax: (301) 415–5397; Internet: SWB1@NRC.GOV.

Dated at Rockville, Maryland, this 2nd day of May 2001.

For the Nuclear Regulatory Commission.

Stewart W. Brown,

Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–11903 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 10–11, 2001, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The notice of this meeting was previously published in the **Federal Register** on Thursday, April 19, 2001 (66 FR 20168).

Thursday, May 10, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:20 A.M.: Final Review of the License Renewal Application for Arkansas Nuclear One (ANO), Unit 1 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Entergy Operations, Inc. regarding the license renewal application for ANO, Unit 1 and the associated staff's Safety Evaluation Report.

10:30 A.M.–12:30 P.M.: Members Attendance at the Commission Meeting on the Office of Nuclear Regulatory Research Programs and Performance (Open)—Drs. Powers and Wallis are scheduled to participate in this meeting which will be held in the Commissioners' Conference Room, One White Flint North. Other members will be attending this meeting as observers.

1:30 P.M.–3 P.M.: Risk-Based Performance Indicators (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's draft document entitled,'Risk-Based Performance Indicators: Results of Phase 1 Development,'' and related matters.

3:15 P.M.–4:15 P.M.: Discussion of South Texas Project Nuclear Operating Company (STPNOC) Exemption Request (Open)—The Committee will discuss the South Texas Project Nuclear Operating Company Exemption Request.

4:15 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on Management Directive 6.4 associated with the revised Generic Safety Issue Process.

Friday, May 11, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10 A.M.: Discussion of Topics for Meeting with the NRC Commissioners (Open)—The Committee will discuss topics scheduled for its meeting with the NRC Commissioners.

10:30 A.M.–12:30 P.M.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners, Commissioners' Conference Room, One White Flint North to discuss: Proposed framework for risk-informed changes to 10 CFR Part 50; South Texas Project Exemption Request; Issues Associated with Thermal-Hydraulic Codes; Status Report on Steam Generator Tube Integrity Issues; and Status of ACRS Activities Associated with License Renewal.

1:30 P.M.–2:30 P.M.: Discussion of General Design Criteria (Open)—The Committee will hear a presentation by and hold discussions with Mr. Sorensen, ACRS Senior Fellow, regarding his views on risk-informing the General Design Criteria that are included in Appendix A to 10 CFR Part 50.

2:30 P.M.–3:15 P.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

3:30 P.M.–3:45 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

3:45 P.M.–4 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60476). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. James E. Lyons, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. James E. Lyons prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. James E. Lyons if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Mr. James E. Lyons (telephone 301–415–7371), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 2, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–11942 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24973; File No. 812–12386]

Allstate Life Insurance Company, et al.

May 7, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Applicant for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to contributions made under certain deferred variable annuity contracts.

Applicants: Allstate Life Insurance Company (''Allstate Life''), Allstate Life Insurance Company Separate Account A (''Allstate Life Separate Account''), Allstate Life Insurance Company of New York (''Allstate Life of New York''), Allstate Life Insurance Company of New York Separate Account A (''Allstate Life of New York Separate Account''), Glenbrook Life & Annuity Company (''Glenbrook''), Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Life & Annuity Company Separate Account A

(''Glenbrook Separate Account A''), Glenbrook scudder Variable Account (A), Lincoln Benefit Life Company (''Lincoln Benefit''), Lincoln Benefit Life Variable Annuity Account (''Lincoln Separate Account''), Northbrook Life Insurance Company (''Northbrook''), Allstate Distributors, LLC, (''Allstate Distributors''), ALFS, Inc. (''ALFS'') (collectively ''Applicants'').

Summary of Application: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit under specified circumstances the recapture of credits applied to contributions made (i) under certain deferred variable annuity contracts and certificates (the ''Contracts'' or, individually, the ''Contract'') described herein that Lincoln Benefit, Glenbrook, and Allstate Life will issue through the Lincoln Separate Account, Glenbrook Separate Account A, and the Allstate Life Separate Account, respectively, and (ii) under other deferred variable annuity contracts and certificates (''Future Contracts'') that Allstate Life, Allstate Life of New York, Glenbrook, Lincoln Benefit and Northbrook (the ''Insurance Company Applicants'') may in the future issue through their respective separate accounts named as applicants above (the ''Separate Account Applicants'') or through other separate accounts that they may establish in the future (the ''Future Accounts''), which contracts will be substantially similar in all material respects to the Contracts. Applicants request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Allstate Life whether existing or created in the future that serves as a distributor or principal underwriter for Contracts or Future Contracts offered through the Separate Account Applicants or any Future Account (''Affiliated Broker-Dealer(s)'').

Filing Date: The Application was filed on December 26, 2000, and amended on May 3, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 1, 2001, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Lincoln Benefit Life Company, 2940 South Eighty-fourth Street, Lincoln, Nebraska 68506, Attn: Carol S. Watson, Esq.; copies to Joan E. Boros, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Suite 400E Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Patrick Scott, Attorney, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Divisions of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicant's Representations

1. Allstate Life is a stock life insurance company organized under the laws of the State of Illinois. The Allstate Life Separate Account is a segregated asset account of Allstate Life, which is registered with the Commission as a unit investment trust under the 1940 Act. Allstate Life serves as depositor of the Allstate Life Separate Account.

2. Allstate Life of New York is a stock life insurance company organized under the laws of the State of New York. The Allstate Life of New York Separate Account is a segregated asset account of Allstate Life of New York, which is registered with the Commission as a unit investment trust under the 1940 Act. Allstate Life of New York serves as depositor of the Allstate Life of New York Separate Account.

3. Glenbrook is a stock life insurance company organized under the laws of the State of Illinois, and re-domesticated under the laws of the State of Arizona in 1998. Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Separate Account A, Glenbrook Scudder Variable Account (A), and Allstate Life of New York Separate Account A (the ''Glenbrook Separate Accounts'') are segregated asset accounts of Glenbrook, which are registered with the Commission as unit investment trusts under the 1940 Act. Glenbrook serves as depositor of the Glenbrook Separate Accounts.

4. Lincoln Benefit is a stock life insurance company organized under the laws of the State of Nebraska. The Lincoln Separate Account is a segregated asset account of Lincoln Benefit, which is registered with the Commission as unit investment trust under the 1940 Act. Lincoln Benefit serves as depositor of the Lincoln Separate Account.

5. Northbrook is a stock life insurance company organized under the laws of the State of Illinois in 1978.

6. Allstate Distributors is an affiliate of Lincoln Benefit and serves as distributor of certain deferred variable annuity contracts, including certain Contracts, issued by the Insurance Company Applicants through the Separate Account Applicants. Allstate Distributors is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the National Association of Securities Dealers (''NASD''). The Contracts issued by Allstate Life will be offered through registered representatives of broker-dealers, which are registered under the 1934 Act and members of the NASD, that have selling agreements with Allstate Distributors.

7. ALFS is an affiliate of Lincoln Benefit and serves as distributor of certain deferred variable annuity contracts, including certain Contracts, issued by the Insurance Company Applicants through the Separate Account Applicants. ALFS is registered with the Commission as a broker-dealer under the 1934 Act, and is a member of the NASD. The Contracts (other than the Contracts issued by Allstate Life) will be offered through registered representatives of broker-dealers, which are registered under the 1934 Act and members of the NASD, that have selling agreements with ALFS.

8. All of the Insurance Company Applicants, Allstate Distributors, and ALFS are direct or indirect wholly-owned subsidiaries of Allstate Insurance Company.

9. The variable portions of the Contracts issued by Lincoln Benefit, Glenbrook, and Allstate Life are registered under the Securities Act of 1933 (the ''1933 Act''). The variable portion of Future Contracts also will be registered under the 1933 Act. That portion of the assets of each Separate Account Applicant that is equal to the reserves and other contract liabilities with respect to Contracts is not chargeable with liabilities arising out of any other business of the corresponding Insurance Company Applicant. Any income, gains or losses, realized or unrealized, from assets allocated to a Separate Account Applicant will be, in accordance with such Account's

Contracts, credited to or charged against such Separate Account Applicant, without regard to other income, gains or losses of the corresponding Insurance Company Applicant.

10. Each of the Separate Accounts Applicants are divided into multiple subaccounts; each subaccount invests in shares of a corresponding portfolio (''Portfolio''), that serves as an investment option under Contracts issued through the separate account.

11. Each time Lincoln Benefit receives a Purchase Payment from an owner of a Lincoln Benefit Contract, it will add to the owner's contract value a Credit Enhancement of 4% of the Purchase Payment amount. Lincoln Benefit will allocate Credit Enhancements among the available Portfolios, according to the allocation instructions in effect for the Purchase Payments. Lincoln Benefit will fund Credit Enhancements from its general account assets.

12. The Lincoln Benefit Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Sub-accounts, dollar cost averaging, and other features. The Lincoln Benefit Contract contains the following charges: (i) A contingent deferred sales charge as a percentage of Purchase Payments surrendered, which is 8% in year one, 7% in years two and three, 6% in years four and five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (ii) a $35 annual administrative charge (which is waived if total Purchase Payments exceed $50,000; (iii) a mortality and expense risk fee of 1.30% annually; (iv) an administrative charge of 0.10% annually; and (v) a transfer fee of $10 per transfer with certain exceptions, which currently is being waived. Lincoln Benefit also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the Sub-accounts are charged with the operating expenses of the Portfolios.

13. Each time Glenbrook receives a Purchase Payment from an owner of a Glenbrook Contract, it will add to the owner's contract value a Credit Enhancement. There are two Credit Enhancement options available under the Glenbrook Contract:

- Under option 1, Glenbrook will add to the owner's contract value a Credit Enhancement equal to 4% of the Purchase Payment amount.
- Under option 2, Glenbrook will add to the owner's contract value a Credit Enhancement equal to 2% of the Purchase Payment amount. In addition, on every 5th contract anniversary during the accumulation phase, Glenbrook will add to the owner's contract value a Credit Enhancement equal to 2% of the owner's contract value as of such contract anniversary.

Glenbrook will allocate Credit Enhancements among the available Portfolios, according to the allocation instructions in effect for the Purchase Payments. Glenbrook will fund Credit Enhancements from its general account assets.

14. The Glenbrook Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Sub-accounts, dollar cost averaging, and other features. The Contract contains the following charges: (i) A withdrawal charge as a percentage of Purchase Payment surrendered, which is 8% in years one and two, 7% in years three and four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (ii) a $35 annual administrative charge (which is waived if total Purchase Payments exceed $50,000); (iii) a mortality and expense risk fee of 1.40% annually; and (iv) a transfer fee of $10 on transfers in excess of twelve in any Contract year, which currently is being waived. Glenbrook also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the Sub-accounts are charged with the annual operating expenses of the Portfolios.

15. Each time Allstate Life receives a Purchase Payment from an owner of an Allstate Life Contract, it will add to the owner's contract value a Credit Enhancement of 4% of the Purchase Payment amount. Allstate Life will allocate Credit Enhancements among the available Portfolios, according to the allocation instructions in effect for the Purchase Payments. Allstate Life will fund Credit Enhancements from its general account assets.

16. The Allstate Life Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Sub-accounts, dollar cost averaging, and other features. The Contract contains the following charges: (i) A withdrawal charge as a percentage of Purchase Payments surrendered, which is 8% in years one, two, and three, 7% in year four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (ii) a mortality and expense risk fee of 1.60% annually; and (iii) a transfer fee of .50% of the amount transferred on transfers in excess of twelve within a calendar year. (The Allstate Life Contract does not assess an annual contract maintenance charge or annual administrative fees.) Allstate Life also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the Sub-accounts are charged with the annual operating expenses of the Portfolios.

17. Each Insurance Company Applicant will recapture Credit Enhancements if the owner returns the Contract for a refund during the free look period. The free look period is 20 days or such longer period as may be required under state law. The Insurance Company Applicants will not seek to recapture Credit Enhancements under any other circumstance.

18. The free look period is the period during which an owner may return a Contract after it has been delivered and receive a full refund of the contract value, less any Credit Enhancements. No other charges will apply to the refund, but the owner bears the investment risk from the time of purchase until he or she returns the Contract. The owner also will bear any expenses charged with respect to the Credit Enhancement amount incurred prior to return of the Contract, e.g., any mortality and expense risk charge. The refund amount may be more or less than the Purchase Payment the owner made, unless state insurance law requires that the full amount of the Purchase Payment be refunded.

19. Applicants seek relief pursuant to Section 6(c) from Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary (i) to permit Lincoln Benefit, Glenbrook, and Allstate Life to recapture an amount equal to the Credit Enhancements when an owner returns a Contract or Future Contract for a refund during the ''free look'' period, in which case the issuing Insurance Company Applicant will recover the amount of any Credit Enhancement applicable to such contribution, and (ii) to permit all of the Insurance Company Applicants to recapture Credit Enhancements under Future Contracts Insurance Company Applicants may issue through the Separate Accounts Applicants or through Future Accounts that contain Credit Enhancement features, including recapture provisions, that are substantially similar in all material respects to the Contracts. Applicants also request that the order being sought extend to any Affiliated Broker-Dealer that serves as a distributor or principal underwriter for Contracts or Future

Contracts offered through the Separate Account Applicants or any Future Account.

Applicants' Legal Analysis

1. Section 6(c) the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that it is not administratively feasible to track the Credit Enhancement amount in the Sub-accounts after the Credit Enhancement is applied. Accordingly, the asset-based charges applicable to the Sub-accounts will be assessed against the entire amounts held in the Sub-accounts, including the Credit Enhancement amount, during the ''free look'' period. As a result, during such period, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's contract value did not include the Credit Enhancements.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Credit Enhancement recapture provisions of the Contracts would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the Credit Enhancement amount allocated to his or her contract value upon receipt of an initial Purchase Payment is not vested until the applicable free-look period has expired without return of the Contract. Until the free look period has expired and any Credit Enhancement amount is vested, Applicants submit that the issuing Insurance Company Applicant retains the right and interest in the Credit Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when an Insurance Company Applicant recaptures any Credit Enhancement, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of the Separate Account's assets.

5. In addition, Applicants state that permitting an owner to retain a Credit Enhancement under a contract upon the exercise of the free look period would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it, but simply to return it for a quick profit.

6. Applicants state that the Credit Enhancement will be attractive to and in the interest of investors because it will permit owners to put either 102% (under Credit Enhancement option 2 of Glenbrook's Contracts) or 104% (under Lincoln's and Allstate Life's Contracts and Credit Enhancement option 1 of Glenbrook's Contract) of their Purchase Payments to work for them in the selected Sub-accounts. In addition, the owner will retain any earnings attributable to the Credit Enhancement, as well as the principal amount of the Credit Enhancement if he or she does not cancel the Contract.

7. Applicants submit that the provisions for recapture of any Credit Enhancement under the Contracts do not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit Enhancements under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

8. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

9. Arguably, the recapture of a Credit Enhancement might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Account. Applicants contend, however, that recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. To effect a recapture of a Credit Enhancement the issuing Insurance Company Applicant will redeem an owner's interest in a Sub-account at a price determined on the basis of current net asset value of the Sub-account. The amount recaptured will equal the amount of the Credit Enhancements paid out of its general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit Enhancement, the amount of such gain will be determined on the basis of the current net asset value of the relevant Sub-accounts. Thus, no dilution will occur upon the recapture of the Credit Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit Enhancements

under the Contracts and Future Contracts.

10. Applicants submit that their request for an order, which applies to Future Accounts established by the Insurance Company Applicants, and Future Contracts that are substantially similar in all material respects to the Contracts described herein, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications in the future, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that requiring them to file additional Applications would impair their ability effectively to take advantage of business opportunities as they arise, and that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in this Application.

Conclusion

Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11895 Filed 5–10–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 11, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Financing Eligibility Statement-Social Disadvantaged-Economic Disadvantaged.

No's: 1941A, 1941B, 1941C.

Frequency: On Occasion.

Description of Respondents: SBA Businesses seeking financing from Specialized Small Business Investment Companies (SSBIC).

Annual Responses: 293.

Annual Burden: 586.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–11930 Filed 5–10–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 11, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Portfolio Financing Report.

No: 1031.

Frequency: On Occasion.

Description of Respondents: SBA Business Investment Companies.

Annual Responses: 293.

Annual Burden: 586.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–11931 Filed 5–10–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3670]

Notice of Meeting of the Cultural Property AdvisoryCommittee

ACTION: Notice.

The Cultural Property Advisory Committee will meet on Wednesday, June 13, 2001, from approximately 9 a.m. to 5 p.m., and on Thursday, June 14, from approximately 9 a.m. to 5 p.m., at the Department of State, Annex 44, Room 800–A, 301 4th St., SW., Washington, DC. During its meeting the Committee will review the proposal to extend the Memorandum of Understanding between the Government of the United States of America and the Government of Peru concerning the Imposition of Import Restrictions on Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru. The Committee's responsibilities are carried out in accordance with the provisions of the Convention on Cultural PropertyImplementation Act 19 U.S.C. 2601 *et seq.*). A copy of the Act, the subject Memorandum of Understanding, and related information may be found at this web site: http://exchanges.state.gov/education/culprop.

During its meeting on June 13, the Committee will hold an open session,

9:15–10:45 a.m. to receive public comment on the proposal to extend the Memorandum of Understanding. The Committee also invites written comment, and requests that both oral and written comments be limited to the proposal to extend the US-Peru Memorandum of Understanding. Other portions of the meeting on June 13 and 14 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). Written comments may be sent to Cultural Property, Department of State, Annex 44, 301 4th Street, SW., Rm. 247, Washington, DC 20547; or faxed to (202) 619–5177. Persons wishing to attend the open portion of the meeting on June 13, must notify the Cultural Property Office, (202) 619–6612, no later than 3 p.m., Friday, June 8, 2001, to arrange for admission. Seating is limited.

Dated: May 8, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–12051 Filed 5–10–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Notice Number 3610]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, May 24, 2001, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 74th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 30—June 8, 2001, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

—Large passenger ship safety
—Adoption of amendments to the International Convention for the Safety of Life at Sea (SOLAS)
—Bulk carrier safety
—Implementation of the revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)
—Piracy and armed robbery against ships
—Reports of seven subcommittees: Training and watchkeeping, Stability, loadlines and fishing vessel safety, Radiocommunications and search and rescue, Fire protection, Bulk liquids and gases, Flag State implementation and Ship design and equipment.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: May 2, 2001.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee U.S. Department of State.

[FR Doc. 01–11956 Filed 5–10–01; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Computer Matching Program

AGENCY: Tennessee Valley Authority.

ACTION: Notice of computer matching program.

SUMMARY: Pursuant to the Privacy Act of 1974 5 U.S.C. 552(a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508), and the Office of Management and Budget's Guidelines on the Conduct of Matching Programs, notice is hereby given that the Tennessee Valley Authority (TVA) proposes to conduct a computer match program. The program will match United States Department of Labor (DOL), Office of Workers' Compensation Program (OWCP) records against records of claims paid under TVA self-insured medical and pharmacy plans. This information will be used to identify individuals who may have received improper duplicate medical reimbursements under a TVA self-insured medical plan and the Federal Employees' Compensation Act (FECA). No action will be taken based on the results of the match alone; rather, TVA and/or OWCP will evaluate the results of the match and other relevant information to help identify and/or recover any erroneous payments to either individuals or medical providers.

EFFECTIVE DATE: This proposed action will become effective June 11, 2001, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to Wilma H. McCauley, Privacy Act Officer, TVA, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402. As a convenience to commenters, TVA will accept public comments transmitted by facsimile at (423) 751–3400 or e-mail at whmccauley@tva.gov. Receipt of FAX or e-mail transmittals will not be acknowledged.

FOR FURTHER INFORMATION CONTACT: W. H. McCauley, TVA Privacy Act Officer, (423) 751–2523.

SUPPLEMENTARY INFORMATION: TVA and OWCP intend to conduct a computer matching program for the purposes stated below. This notice meets the publication requirements under subsection (e)(912) of the Privacy Act of 1974, as amended. A copy of the computer matching agreements and a copy of this notice have been transmitted to the Office of Management and Budget, the U.S. House of Representatives, and the U.S. Senate.

Set forth below is a description of the matching program.

Report of Computer Matching Program Between TVA and OWCP

A. Participating Agencies

TVA is the recipient agency and will coordinate the computer matches with records provided by OWCP and the administrator of the TVA self-insured medical plan for the purpose of the match.

B. Purposes of the Match

The computer matching program involves the U.S. Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), and the Tennessee Valley Authority (TVA), Office of the Inspector General (OIG). The purpose of the matching program is: To match medical claims paid under the Federal Employees' Compensation Act (FECA), 5 U.S.C. (8101 *et seq.*, with claims paid under TVA self-insured medical and pharmacy plans. This information will be used to identify individuals who may have received improper duplicate medical reimbursements under TVA self-insured medical and pharmacy plans and FECA. No action will be taken based on the results of the match alone; rather, TVA and/or OWCP will evaluate the results of the match and other relevant information to help identify and/or recover any erroneous payments to either individuals or medical providers.

C. Authority for Conducting Matching Program.

The authority for undertaking this match is found in FECA, 5 U.S.C. (8101 *et seq.*; the Tennessee Valley Authority Act, 16 U.S.C. (831 *et seq.*; and the Inspector General Act, 5 U.S.C. App.

D. Categories of Individuals and Identification of Records to be Matched.

The DOL system of records published as DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation File, 58 FR 49548, 49556, September 23, 1993, amended 59 FR 47361, September 15, 1994. OWCP's file contains relevant data for approximately 2300 individuals who are receiving workers' compensation benefits based on their TVA employment.

The TVA system of records published as TVA–9, Medical Records System, 55 FR 34816, 34823, August 24, 1990. TVA receives data for approximately 16,000 TVA employees who file claims, or who have claims filed on their behalf, for medical plan reimbursement. Records from the match will be included in TVA–31, OIG Investigative Records.

E. Inclusive Dates of the Matching Program

This program will begin 40 days after a copy of this agreement is sent to Congress. The match initially will cover the period January 1, 1998 to December 31, 2000. Thereafter, it will be conducted periodically for 18 months and may be renewed for another 12 months.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 01–11870 Filed 5–10–01; 8:45 am]

BILLING CODE 8120–08–U

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Computer Matching Program

AGENCY: Tennessee Valley Authority.

ACTION: Notice of computer matching program.

SUMMARY: Pursuant to the Privacy Act of 1974 5 U.S.C. 552(a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508), and the Office of Management and Budget's Guidelines on the Conduct of Matching Programs, notice is hereby given that the Tennessee Valley Authority (TVA) proposes to conduct a computer match program. The program will match United States Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP) records against wages reported to the Tennessee Department of Labor and Workforce Development (TDLWD) to identify individuals receiving both wage replacement benefits and earning wages. This information will be used to identify individuals receiving workers' compensation benefits who have not reported their employment and to assist OWCP in determining the individuals appropriate level of benefits.

EFFECTIVE DATE: This proposed action will become effective June 11, 2001 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget (OMB) or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to Wilma H. McCauley, Privacy Act Officer, TVA, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402. As a convenience to commenters, TVA will accept public comments transmitted by facsimile at (423) 751–3400 or e-mail at *whmccauley@tva.gov*. Receipt of FAX or e-mail transmittals will not be acknowledged.

FOR FURTHER INFORMATION CONTACT: W. H. McCauley, TVA Privacy Act Officer, (423) 751–2523.

SUPPLEMENTARY INFORMATION: TVA, OWCP, and the TDLWD intend to conduct a computer matching program for the purposes stated below. This notice meets the publication requirements under subsection (e)(912) of the Privacy Act of 1974, as amended. A copy of the computer matching agreements and a copy of this notice have been transmitted to the OMB, the U.S. House of Representatives, and the U.S. Senate.

Set forth below is a description of the matching program.

Report of Computer Matching Program Between TVA, OWCP, and TDLWD

A. Participating Agencies

TVA is the recipient agency and will coordinate the computer matches with records provided by OWCP and TDLWD for the purpose of the match.

B. Purposes of the Match

The computer matching program involves the U.S. Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), the Tennessee Valley Authority (TVA), Office of the Inspector General (OIG), and the Tennessee Department of Labor and Workforce Development. The purpose of the matching program is:

To compare beneficiaries receiving (1) workers' compensation benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, and (2) wages reported to TDLWD. The match will identify beneficiaries receiving for the same period both (1) wage replacement compensation for disability under the FECA and (2) wages from employment. The information will be used to assist OWCP in determining whether the individual who did not correctly report their employment are receiving the appropriate level of benefits.

C. Authority for Conducting Matching Program

The authority for undertaking this match is found in FECA, 5 U.S.C. 8101 *et seq.*; the Tennessee Valley Authority Act, 16 U.S.C. 831 *et seq.*; and the Inspector General Act, 5 U.S.C. App.

D. Categories of Individuals and Identification of Records To Be Matched

The DOL system of records is published as DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation File, 58 FR 49548, 49556, September 23, 1993, amended 59 FR 47361, September 15, 1994. OWCP's file contains relevant data for approximately 2300 individuals who are receiving workers' compensation benefits based on their TVA employment. Records from TDLWD will be included in TVA–31, OIG Investigative Records.

E. Inclusive Dates of the Matching Program

This program will begin 40 days after a copy of this agreement is sent to Congress. The match initially will cover the period January 1, 1998, to December 31, 2000. Thereafter, it will be conducted periodically for 18 months and may be renewed for another 12 months.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 01–11871 Filed 5–10–01; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Heber Valley Historic Railroad Authority

[Docket Number FRA–2000–7413]

The Heber Valley Historic Railroad Authority seeks a waiver of compliance with the *Inspection and Maintenance Standards for Steam Locomotives*, 49 CFR part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a *one thousand four hundred seventy-two service day inspection* (49 CFR 230.17) performed prior to being allowed to operate under the requirements of part 230. The Heber Valley Historic Railroad Authority seeks this waiver for one locomotive number 618 which had the flue tubes replaced and was returned to service May 13, 1995, one hundred-fifty-five days prior to the cut off date published in part 230.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–7413) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at: *http://dms.dot.gov.*

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11952 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 219 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Indiana Northeastern Railroad Company

[Docket Number FRA–2001–9014]

The Indiana Northeastern Railroad Company (IN) seeks a permanent waiver of compliance, docket number FRA–2001–9014, from the requirements of the Control of Alcohol and Drug Use, 49 CFR Part 219, Subpart G, which requires the railroad to have a random alcohol and drug testing program. In seeks a waiver for total relief from the requirement to have a random alcohol and drug testing program because of the serious financial burdens the costs of both the training and the hours involved to implement this program will place on the railroad operation as a small entity.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–9014) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards, and Program Development.

[FR Doc. 01–11947 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

North Star Rail

[Docket Number FRA–2001–8961]

The North Star Rail seeks a waiver of compliance with the *Inspection and Maintenance Standards for Steam Locomotives,* 49 CFR part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a *one thousand four hundred seventy-two service day inspection* (49 CFR 230.17) performed prior to being allowed to operate under the requirements. North Star Rail seeks this waiver for one locomotive number 261 which was built in 1944. The railroad's records indicate the locomotive was overhauled and had the flue tubes replaced in 1993. Since the overhaul the locomotive has operated under steam a total of 240 days. North Star Rail states that the locomotive is stored year round indoors in a modern shop facility.

Interested parties are invited to participate in these proceedings by

submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings, since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–8961) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401, Washington, DC., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC. on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–11953 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2001–9020

Applicant: Canadian National/Illinois Central, Mr. L.W. Winn, Manager-Signal & Communications, 2921 Horn Lake Road, Memphis, Tennessee 38109.

The Illinois Central Railroad seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track of the Gulf Division, between milepost 394.7 and milepost 397.5, on the Memphis Subdivision, and between milepost 397.5 and milepost 398.2, on the Grenada Subdivision, near Memphis, Tennessee.

The reason given for the proposed changes is that the signal system is no longer necessary, because the signal system is located wholly within the Memphis Terminal Yard Limits, where all movements must be coordinated with the person in charge of the yard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11948 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2001–9021

Applicant: Canadian National/Illinois Central, Mr. L.W. Winn, Manager-Signal & Communications, 2921 Horn Lake Road, Memphis, Tennessee 38109.

The Illinois Central Railroad seeks approval of the proposed discontinuance and removal of the power-operated switch and associated signal arrangement, at milepost 362.5, on the Gulf Division, Baton Rouge Subdivision, near Baton Rouge, Louisiana.

The reason given for the proposed changes is that the switch and signal arrangement is no longer necessary, because it is within yard limits where all movements must be coordinated with the person in charge of the yard, at Baton Rouge, Louisiana.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the

docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11949 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2001–9022

Applicant: Canadian National/Illinois Central, Mr. L.W. Winn, Manager-Signal & Communications, 2921 Horn Lake Road, Memphis, Tennessee 38109.

The Illinois Central Railroad seeks approval of the discontinuance and removal of the existing signal arrangement, consisting of two signals, at milepost 148.6, on the Gulf Division, Central Subdivision, near Natchez, Mississippi.

The reason given for the proposed changes is that the signal arrangement is no longer necessary, because it is within yard limits where all movements must be coordinated with the person in charge of the yard at Natchez, Mississippi.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11950 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2001–9238

Applicants: Peninsula Corridor Joint Powers Board

Mr. Darrell J. Maxey, P.E., Chief Engineer, 1250 San Carlos Avenue, P.O. Box 3006, San Carlos, California 94070–1306

Mr. David Obedoza, Manager of Signals, 1250 San Carlos Avenue, P.O. Box 3006, San Carlos, California 94070–1306

The Peninsula Corridor Joint Powers Board seeks approval of the proposed modification of the automatic block signal system, on the two main tracks, near milepost 31.9, on the Peninsula Division, at Palo Alto, California, consisting of the removal of the electric lock from the hand-operated switch, on Main Track 2, of the north crossover.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation; the electric lock is no longer necessary due to the previous removal of the Permanente Branch Line.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11951 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No NHTSA–2001–9423]

National Survey of Speeding, Driving While Distracted, and Other Unsafe Driving Behaviors

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice and request for comments on data collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) plays a central role in the national effort to reduce motor vehicle related traffic injuries and deaths. Speeding has been implicated as a cause of about a third of all fatal crashes. The contributions of driving while distracted, fatigued and aggressive driving to motor vehicle crashes are thought to be substantial, however, estimates are not available. The most recent survey data collected by NHTSA on unsafe driving behaviors was administered in 1997. Since that time there have been various changes in the driving environment including an extraordinary increase in the use of wireless phones in vehicles. The purpose of this study is to gather information on driver behavior with respect to speeding, driving while distracted, aggressive driving, and fatigue. The survey will also collect data on the conditions under which these behaviors typically occur as well as the public's views toward various unsafe driving behaviors and countermeasures they would support. To acquire these data, two surveys of about 15 minutes in length will each be developed and administered to two separate national probability samples of 2,000 persons. As required by the Paperwork Reduction Act of 1995, NHTSA invites the general public and Federal Agencies to comment on the need for the proposed data collection, the types of questions respondents should be asked, ways to enhance the quality of the collection, and ways to minimize the burden on respondents.

DATES: Written comments must be submitted on or before July 10, 2001.

ADDRESSES: Direct all written comments to US DOT, Docket Management Facility, Docket Operations, PL–401, Docket # NHTSA–2001–9423, 400 7th Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Paul J. Tremont, Ph.D., Project Officer, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, e-mail *ptremont@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day period to allow the public and affected agencies sufficient time to comment on the proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information;

(iv) How to minimize the burden of the information collection on those being asked to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection methods or other forms of information technology, (*e.g.*, permitting electronic response submissions).

In response to these requirements, NHTSA asks for public comment on the following collection of information:

National Survey of Speeding, Driving While Distracted, Aggressive Driving and other Unsafe Driving Behaviors

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection uses no standard forms.

Requested Approval Expiration date: June 30, 2002.

Summary of the Collection of Information

The National Highway Traffic Safety Administration (NHTSA) plays a key role in the national effort to reduce motor vehicle related traffic injuries and deaths. Last year more than 38,000 deaths and several million injuries occurred as a direct result of motor vehicle crashes. There is strong evidence to suggest that most of these crashes are caused by human errors, such as speeding, aggressive driving, driver distraction and fatigue, and are thus avoidable.

The proposed survey, to be administered in the 3rd quarter of 2001, will gather data on the nature and extent of these problem-driving behaviors with the objective of providing the basis for the development of countermeasures to them. Data will be collected on topics covered in the 1997 Speeding & Unsafe Driving survey, and also will include questions on distracted, aggressive and fatigue-related driving. Question areas will cover characteristics of drivers who perform these various unsafe driving actions, and the situations accompanying unsafe actions. Data will also be acquired on distractions drivers are subject to, including wireless phones, the situations that lead to these distractions, and the way they are managed while driving.

In order to include measurement of all topic areas of interest in a thorough manner while keeping the interview length to a level to avoid respondent fatigue and data degradation, two separate surveys will be administered. The survey topics will be divided such that most of the speed and aggressive driving items will be included in version 1, while most of the distracted driver and fatigue items will be included in version 2. General attitudinal items concerning problem driving overall and respondent characteristics will appear on both survey versions.

These surveys will be administered by telephone to separate national probability samples of the driving age public (age 16 and older as of their last birthday). Participation by respondents is completely voluntary. To keep interview time to about 15–20 minutes, and to minimize errors, surveys will be conducted using computer assisted interviewing. A Spanish-language questionnaire administered by bi-lingual interviewers will be used to ensure Spanish-speaking respondents are included in the sample. All respondents' answers will remain anonymous and completely confidential. Participant names are not collected during the interview and the telephone number used to reach the respondent is separated from the data record prior to its entry into the analytical database.

Description of the Need for and Proposed Use of the Information

More than 38,000 persons were fatally injured in motor vehicle crashes in 2000, and up to 1/3 of these fatalities are associated with to excessive speeds. While the number of speeding-related and alcohol-related crashes have dropped slightly since the mid-1990's (National Center for Statistics and Analysis), the number of fatal crashes attributed to non-speeding and non-

alcohol related causes have increased. These other causes include driver-controlled behaviors such as driving while fatigued, aggressive driving, and distracted driving (including cell phone use, talking to others in the vehicle, eating, and reading). NHTSA is committed to the development of effective programs to reduce the incidence of these crashes

While alcohol-related driving is studied by numerous sources, relatively little is known about the public's attitudes and behaviors with respect to those other driver-controlled factors. In order for NHTSA to properly plan and evaluate programs directed at reducing crashes, and to provide information to support states, localities and law enforcement agencies, it needs to understand the public's current beliefs and behaviors.

The findings from these proposed collections will assist NHTSA in identifying the extent of the problem, the public's perceptions of the dangers of these various problem-driving actions and potential acceptance of various strategies to reduce related fatalities. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drivers engaging in these problem-driving behaviors, and to provide informational support to states, and localities that will aid them in their efforts to reduce problem-driving related crashes and injuries.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under these proposed collections, telephone interviews averaging approximately 15 minutes in length will be administered to two separate randomly selected samples of 2,000 persons of the general driving age public age 16 and older. The respondent samples would be selected from all 50 states, plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected using a modified random-digit-dialing methodology. No more than one respondent per household would be selected, and each sample member would complete just one interview. Businesses are ineligible for the sample and would not be interviewed.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 15 minutes to complete the telephone interview. Thus, estimated reporting burden on the general public would total 1,000 hours for the proposed surveys. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator, Office of Traffic Safety Programs.

[FR Doc. 01–11945 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of General Motors Corporation (GM) for an exemption of a high-theft line, the Chevrolet Venture, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated October 5, 2000, General Motors Corporation (GM), requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the Chevrolet Venture vehicle line beginning withMY 2002. The petition is pursuant to 49 CFR part 543, Exemption From Vehicle Theft Prevention Standard, which provides for exemptions based on the installation of an antitheft device as standard equipment on a vehicle line.

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts marking requirements for not more than one additional line of a manufacturer for MYs 1997—2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. § 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to section 330103(d)(3).

GM's submission is considered a complete petition as required by 49 CFR part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for that vehicle line. GM will install its PASS-Key III antitheft device as standard equipment on its MY 2002 Chevrolet Venture vehicle line. GM stated that the PASS-Key III device provides the same kind of functionality as the PASS-Key and PASS-Key II devices, which have been the basis for exemptions previously granted to GM. However, the PASS-Key III device uses more advanced technology than the PASS-Key II device and provides new features and refinements.

Specifically, the PASS-Key III device uses a transponder embedded in the head of the key which is excited by a coil surrounding the key cylinder. The transponder in the key then emits a modulated signal at a specified radio frequency. The identity of the key is a unique code within the modulated signal. The key cylinder coil receives and sends the modulated signal to the

decoder. When the decoder module recognizes a valid key code, it sends an encoded message to the Powertrain Control Module (PCM) to enable fuel flow and starter operation. If an invalid key is detected, the PASS-Key III decoder module will transmit a different password to the PCM to disable fuel flow and starter operation.

The PASS-Key III device has the potential for over four trillion unique electrical key codes. GM believes that the sheer volume of these codes is a highly effective deterrent to the common intruder. The PASS-Key III device is designed to shut down for three to four minutes if an invalid key is detected, preventing further attempts to start the vehicle during that shutdown.

GM states that the design and assembly process of the PASS-Key III device and components are validated for a vehicle life of 10 years and 150,000 miles of performance. In order to ensure the reliability and durability of the device, GM conducted tests, based on its own specified standards. GM provided a detailed list of the tests conducted. GM stated its belief that the device is reliable and durable since it complied with the specified requirements for each test.

GM compared the PASS-Key III device proposed for the Chevrolet Venture line with its first generation PASS-Key device, which the agency has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM stated that its PASS-Key III device is activated when the owner/operator turns off the ignition of the vehicle and removes the key. According to GM, no other intentional action is necessary to achieve protection of the vehicle other than removing the key from the ignition.

GM stated that the theft rates, as reported by the National Crime Information Center, are lower for GM models equipped with PASS-Key-like devices which have been granted exemptions from the parts-marking requirements than theft rates for similar, earlier models that have been parts-marked. Therefore, GM concludes that the PASS-Key-like devices are more effective in deterring motor vehicle theft than the parts-marking requirements of 49 CFR part 541.

Further, GM states that the PASS-Key III device has been designed to significantly enhance the functionality and theft protection provided by earlier generations of PASS-Key devices. Based on the performance of PASS-Key and PASS-Key II devices on other GM models, and the advanced technology utilized in the PASS-Key III device, GM believes that the PASS-Key III device will be more effective in deterring theft than the parts-marking requirements of 49 CFR part 541.

GM also stated that as with previous PASS-Key devices, the PASS-Key III device will not provide any visible or audible indication of unauthorized entry. However, based on comparison of the reduction in theft rates of Chevrolet Corvettes using a passive antitheft device and an audible/visible alarm with the reduction in theft rates for the Chevrolet Camaro and Pontiac Firebird models equipped with a passive antitheft device without an alarm, GM believes that an alarm or similar attention attracting device is not necessary and does not compromise the antitheft performance of these systems.

The agency notes that the reason that the vehicle lines whose theft data GM cites in support of its petition received only a partial exemption from parts-marking was that the agency did not believe that the antitheft devices on these vehicles (PASS-Key and PASS-Key II) by itself would be as effective as parts-marking in deterring theft because it lacked an alarm system. On that basis, it decided to require GM to mark the vehicle's most interchangeable parts (the engine and transmission), as a supplement to the antitheft device. Like those earlier antitheft devices GM used, the device on which this petition is based also lacks an alarm system. Accordingly, it cannot perform one of the functions listed in 49 CFR part 543.6(a)(3), that is, it cannot call attention to unauthorized attempts to enter or move the vehicle.

After deciding those petitions, however, the agency obtained theft data that show declining theft rates for GM vehicles equipped with either version of the PASS-Key device. Based on that data, it concluded that the lack of a visible or audible alarm had not prevented the antitheft device from being effective protection against theft and granted three GM petitions for full exemptions for car lines equipped with the PASS-Key II device. The agency granted in full the petition for the Buick Riviera and Oldsmobile Aurora car lines beginning with model year 1995, (see 58 FR 44874, August 25, 1993); the Chevrolet Lumina and Buick Regal car lines beginning with model year 1996, (see 60 FR 25938, May 15, 1995); and, the petition for the Cadillac Seville car line beginning with model year 1998, (see 62 FR 20058, April 24, 1997). In all three of those instances, the agency concluded that a full exemption was warranted because PASS-Key II had shown itself as likely as parts-marking to be effective protection against theft despite the absence of a visible or audible alarm.

The agency concludes that, given the similarities between the PASS-Key III device and the earlier PASS-Key devices (PASS-Key and PASS-Key II), it is reasonable to assume that PASS-Key III device, like those devices, will be as effective as parts-marking in deterring theft. The agency believes that the device will provide the other types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its antitheft device, some of which includes confidential information describing reliability and functional tests conducted by GM for the antitheft device and its components. GM requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to GM dated January 2, 2001, the agency granted the petitioner's request for confidential treatment of these materials.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the MY 2002 Chevrolet Venture vehicle line from the parts-marking requirements of 49 CFR part 541.

If GM decides not to use the exemption for this line, it must notify the agency formally, and thereafter must mark the line fully as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an

antitheft device. The significance of many such changes could be de minimis. The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 7, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 01–11946 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34037]

General Railway Corporation d/b/a Iowa Northwestern Railroad Corporation—Operation Exemption—Line of Dickinson Osceola Railroad Association

General Railway Corporation d/b/a Iowa Northwestern Railroad Corporation (GRC), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to operate approximately 37.21 miles of rail line currently owned by Dickinson Osceola Railroad Association (DORA). The rail line to be operated extends between milepost 79.34, at a point west of Superior, IA, and the end of the line at approximately milepost 116.55, a point west of Allendorf, IA, in Dickinson and Osceola Counties, IA. GRC states that, on April 2, 2001, an agreement was reached between it and DORA, wherein DORA designated GRC as operator of the line. GRC further states that ownership of the line is expected to be transferred to GRC from DORA in the near future. GRC certifies that its projected revenues will not exceed those that would qualify it as a Class III rail carrier and its revenues are not projected to exceed $5 million.[1]

The transaction was scheduled to be consummated on or shortly after May 2, 2001 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34037, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John Larkin, General Railway Corporation, 4814 Douglas St., Omaha, NE 68132.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: May 4, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–11825 Filed 5–10–01; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Dickinson Osceola Railroad Association—Acquisition and Operation Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 34008 (STB served Mar. 5, 2001).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 588X)]

CSX Transportation, Inc.—Abandonment Exemption—in Polk and McMinn Counties, TN

On April 23, 2001, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 43.47-mile portion of its line of railroad in the Southern Region, Atlanta Division, Etowah Old Line Subdivision, between milepost OKX 339.00 in Etowah and milepost OKX 382.47 in Copperhill, in McMinn and Polk Counties, TN. The line traverses U.S. Postal Service Zip Codes 37317, 37325, 37326, 37331, 37333, 37369, and 37391.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 10, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 31, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 588X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before May 31, 2001.

Persons seeking further information concerning abandonment 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. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: May 4, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–11824 Filed 5–10–01; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 66, No. 92

Friday, May 11, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–2001]

Foreign-Trade Zone 33—Pittsburgh, Pennsylvania, Application for Subzone, Sony Technology Center—Pittsburgh (Television Manufacturing Facilities) Mount Pleasant, Pennsylvania

Correction

In notice document 01–10860, appearing on page 21740, in the issue of May 1, 2001, make the following correction:

In the third column, in the second complete paragraph, in the 11th line, ''July 2, 2001'' should read ''July 16, 2001.''

[FR Doc. C1–10860 Filed 5–10–01; 8:45 am]

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

Privacy of Consumer Financial Information

Correction

In rule document 01–10398 beginning on page 21236 in the issue of Friday, April 27, 2001, make the following correction:

§160.18 [Corrected]

On page 21261, in the second column, in § 160.18(a), last line, ''June 21, 2001'' should read ''March 31, 2001''.

[FR Doc. C1–10398 Filed 5–10–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[USCG 1999-6224]

RIN 2115-AF23

Licensing and Manning for Officers of Towing Vessels

Correction

In rule document 01–10284 beginning on page 20931 in the issue of Thursday, April 26, 2001, make the following correction:

On page 20931, in the third column, in the first line, ''October 7, 2000'' should read ''October 27, 2000.''

[FR Doc. C1–10284 Filed 5–10–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
May 11, 2001

Part II

Federal Reserve System

12 CFR Parts 223 and 250

Transactions Between Banks and Their Affiliates; Proposed Rule

Applicability of Section 23A of the Federal Reserve Act to the Purchase of Securities From Certain Affiliates; Final Rule Loans and Extensions of Credit Made by a Member Bank to a Third Party; Final Rule

Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions With Affiliates and Intraday Extensions of Credit to Affiliates; Interim Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R–1103]

Transactions Between Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing a new rule (Regulation W) to implement comprehensively sections 23A and 23B of the Federal Reserve Act. The proposed rule would combine statutory restrictions on transactions between a bank and its affiliates with numerous existing and proposed Board interpretations and exemptions in an effort to simplify compliance with sections 23A and 23B.

DATES: Comments must be submitted on or before August 15, 2001.

ADDRESSES: Comments should refer to Docket No. R–1103 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 (or mailed electronically to regs.comments@federalreserve.gov). Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. weekdays and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street, NW., between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in section 261.14 of the Board's Rules Regarding Availability of Information (12 CFR 261.14).

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; or Michael G. Martinson, Associate Director (202/452–3640), or Molly S. Wassom, Associate Director (202/452–2305), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Introduction

Sections 23A and 23B of the Federal Reserve Act are two of the most important statutory protections against a bank suffering losses because of its transactions with affiliates and, correspondingly, are two of the most effective means of limiting the ability of a bank to transfer to its affiliates the subsidy arising from the bank's access to the Federal safety net. Although sections 23A and 23B of the Federal Reserve Act each explicitly grant the Board broad authority to issue regulations to administer the section,[1] the Board has never issued a regulation fully implementing either section. Instead, banks seeking guidance on how to comply with sections 23A and 23B have relied on a series of Board interpretations and informal staff guidance. Banks have increasingly sought guidance from the Board on section 23A issues in recent years as a result of the increasing scope of activities conducted by modern financial holding companies and the growing complexities of the U.S. financial markets.

The Board now believes that adoption of a comprehensive regulation implementing sections 23A and 23B would be appropriate for several reasons. First, the new regulatory framework established by the Gramm-Leach-Bliley Act (''GLB Act'')[2] emphasizes the importance of sections 23A and 23B as a means to protect banks from losses in connection with the newly authorized affiliates under the GLB Act. In addition, the GLB Act amended section 23A in several important respects and requires the Board to address by rule under section 23A the credit exposure arising from derivative transactions and intraday credit extensions.

Moreover, the Board believes that adoption of a comprehensive regulation would simplify the interpretation and application of sections 23A and 23B, ensure that the statute is consistently interpreted and applied, and minimize burden to the extent consistent with the statute's goals. Finally, issuing a proposed regulation would allow the public an opportunity to comment on Board and staff interpretations of sections 23A and 23B, many of which were adopted without the benefit of a public comment process.

The proposed regulation would supersede outdated Board and staff interpretations concerning sections 23A and 23B and would incorporate other existing interpretations. In addition, the regulation would incorporate the results of the Board's earlier proposals to clarify the scope of the attribution rule, expand the section 23A(d)(6) exemption for purchases of readily marketable assets, and, consistent with the GLB Act, extend the coverage of section 23A to subsidiaries of a bank engaged in activities that the bank cannot conduct directly.[3] Finally, the proposed regulation would answer questions that have arisen frequently in the Board's administration of the statutory provisions and in their enforcement by each of the Federal banking agencies.

The Board emphasizes that Regulation W is a proposed rule and expects to make changes to the rule to reflect public comments as appropriate. Until Regulation W is finalized, all previously issued valid Board interpretations and staff opinions regarding sections 23A and 23B will remain in full force and effect. After the Board issues the regulation in final form, any Board interpretations or staff opinions on the statute that are inconsistent with the regulation will be deemed superseded by the rule.

Background

As noted above, sections 23A and 23B of the Federal Reserve Act are designed to limit the risks to a bank (and the Federal deposit insurance funds) from transactions between the bank and its affiliates and to limit the ability of a bank to transfer to its affiliates the subsidy arising from the bank's access to the Federal safety net. Section 23A achieves these goals in three major ways. First, it limits a bank's ''covered transactions'' with any single ''affiliate'' to no more than 10 percent of the bank's capital and surplus, and transactions with all affiliates combined to no more than 20 percent of capital and surplus. ''Covered transactions'' include purchases of assets from an affiliate, extensions of credit to an affiliate, investments in securities issued by an affiliate, guarantees on behalf of an affiliate, and certain other transactions that expose the bank to an affiliate's credit or investment risk. A bank's ''affiliates'' include, among other companies, any companies that control the bank, any companies under common control with the bank, and certain investment funds that are advised by the bank or an affiliate of the bank.

Second, the statute requires all transactions between a bank and its affiliates to be on terms and conditions that are consistent with safe and sound banking practices, and prohibits a bank from purchasing low-quality assets from its affiliates. Finally, the statute requires that a bank's extensions of credit to

[1] 12 U.S.C. 371c(f), 371c–1(e).

[2] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[3] *See* 63 FR 32766, June 16, 1998; 62 FR 37744, July 15, 1997.

affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B protects a bank by requiring that certain transactions between the bank and its affiliates occur on market terms; that is, on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies this restriction to any covered transaction (as defined in section 23A) with an affiliate as well as certain other transactions, such as the sale of securities or other assets to an affiliate and the payment of money or furnishing of services to an affiliate.

Section 23A originally was enacted as part of the Banking Act of 1933 and applied only to banks that were members of the Federal Reserve System (''member banks''). Since 1933, Congress has amended the statute several times, including a comprehensive revision in 1982.[4] Congress also amended the Federal Deposit Insurance Act in 1966 to extend section 23A to cover insured nonmember banks.[5] In 1989, Congress further extended the coverage of section 23A to insured savings associations.[6] Congress enacted section 23B of the Federal Reserve Act as part of the Competitive Equality Banking Act of 1987,[7] and has subsequently expanded its scope to cover the same set of depository institutions as are covered by section 23A. Consequently, sections 23A and 23B now apply to all insured depository institutions and uninsured member banks.

As part of its comprehensive revision of section 23A in 1982, Congress amended the statute to exempt transactions between a bank and its subsidiaries.[8] In 1982, a subsidiary of a bank generally was permitted to engage only in activities that its parent bank could conduct. Since 1982, however, some subsidiaries of banks have begun to engage in activities impermissible to the banks themselves.[9] In 1997, to address these subsidiaries, the Board issued for comment a proposal to extend sections 23A and 23B to transactions between a bank and a subsidiary of the bank engaged in activities not permissible for the bank to engage in directly.[10] Consistent with this proposal, the GLB Act recently amended the Federal Reserve Act so that sections 23A and 23B would apply to transactions between a bank and its ''financial subsidiaries.'' Section 23A, as amended by the GLB Act, defines a financial subsidiary as any subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States.[11] This statutory provision defines a financial subsidiary of a national bank as a subsidiary of an insured depository institution that engages in activities that are not permissible for a national bank to engage in directly (unless a national bank is authorized by the express terms of a Federal statute (other than the GLB Act) to own or control the subsidiary). The GLB Act provides that a financial subsidiary of a bank is considered an ''affiliate'' of the bank for purposes of sections 23A and 23B and requires, with certain limited exceptions, that any covered transactions between a bank and its financial subsidiaries comply with the same quantitative, collateral, and other restrictions imposed by sections 23A and 23B on other affiliates.

The GLB Act also establishes certain special rules for financial subsidiaries. For example, the GLB Act extends the restrictions of sections 23A and 23B to investments by a bank's affiliate in securities issued by any financial subsidiary of the bank. The GLB Act also authorizes the Board to extend sections 23A and 23B to loans and other extensions of credit made by a bank's other affiliates to any financial subsidiary of the bank, if the Board determines that such action is necessary or appropriate to prevent evasions of the Federal Reserve Act or the GLB Act. Finally, the GLB Act provides that the 10 percent restriction on covered transactions with any individual affiliate does not apply to transactions between a bank and any individual financial subsidiary of the bank.[12] The proposed regulation addresses these provisions of the GLB Act.

In addition, the GLB Act requires the Board to adopt, by May 12, 2001, final rules to address as a covered transaction the credit exposure arising out of derivative transactions between banks and their affiliates and intraday extensions of credit by banks to their affiliates.[13] Concurrently with proposed Regulation W, the Board is issuing interim final rules that address these credit exposures to affiliates as covered transactions under section 23A, in accordance with this statutory requirement, by requiring banks to adopt policies and procedures to manage the credit exposures. The interim final rules also require banks to ensure that their intraday extensions of credit to an affiliate and their derivative transactions with affiliates comply with the market terms requirement of section 23B.

The proposed Regulation W sets forth a more comprehensive proposal on the treatment of intraday extensions of credit under section 23A than is contained in the interim final rules and includes a detailed request for comment on the appropriate treatment of credit exposure arising from bank-affiliate derivative transactions under section 23A. If, after further analysis and review of the comments received on this regulation and the interim final rule on derivatives, the Board believes that additional measures are needed to address credit exposure on derivative transactions under section 23A, the Board will develop a specific proposal and seek comment on that proposal.

Explanation of Proposed Rule

I. Format of Regulation

The proposed Regulation W seeks to provide users with a single, comprehensive reference tool for complying with and analyzing issues arising under sections 23A and 23B. Accordingly, the regulation includes Board interpretations of the sections and also restates the statutory definitions, restrictions, and exemptions. Although including the statutory language lengthens the text of the regulation, the Board believes that eliminating the need to cross-reference the statute should make understanding and using the regulation easier.

The regulation first sets forth, in subpart B, the principal restrictions and requirements imposed by section 23A. Next, in subpart C, the regulation discusses the appropriate valuation and timing principles for covered

[4] Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, § 410, 96 Stat. 1515 (1982) (codified at 12 U.S.C. 371c).

[5] Pub. L. No. 89–485, § 12(c), 80 Stat. 242 (1966) (codified at 12 U.S.C. 1828(j)).

[6] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101–73, § 301, 103 Stat. 342 (1989) (codified at 12 U.S.C. 1468) (''FIRREA'').

[7] Pub. L. No. 100–86, § 102, 101 Stat. 552, 564 (1987) (codified at 12 U.S.C. 371c–1).

[8] Section 23A excludes from the definition of ''affiliate'' most subsidiaries of a bank. *See* 12 U.S.C. 371c(b)(2)(A).

[9] *See* 12 U.S.C. 24a, 1464(c)(4)(B), and 1831a; 12 CFR 5.39 and 362.4.

[10] 62 FR 37744, July 15, 1997.

[11] *See* 12 U.S.C. 24a.

[12] Covered transactions between a bank and any of its financial subsidiaries would count toward the bank's 20 percent limit for covered transactions with all affiliates in the aggregate.

[13] GLB Act section 121(e)(3) (codified at 12 U.S.C. 371c(f)(3)).

transactions. Subpart D discusses the appropriate treatment under section 23A for transactions with financial subsidiaries, bank-affiliate derivative transactions, and certain bank-affiliate merger and acquisition transactions. Subpart E sets forth available exemptions from certain of the restrictions and requirements of section 23A. Subpart F lays out the operative provisions of section 23B. Subpart G discusses the application of the statutory provisions and rule to U.S. branches and agencies of foreign banks. Subpart H provides a comprehensive glossary of the terms used in the regulation and sections 23A and 23B.

The proposed regulation also includes examples illustrating how several of the rule's provisions would apply in particular circumstances. The examples included in the rule are considered part of the rule and compliance with an example, to the extent applicable, would constitute compliance with the rule. Each example included in the rule illustrates only the scope and application of the particular topic addressed by the example and does not illustrate any other topic or issue that may arise under the rule.

The Board requests comment on the proposed format of the regulation, including the Board's decision to restate and reorganize the statutory provisions and include examples in the rule. The Board also requests comment on whether additional examples should be added to the rule and, if so, in what areas. In addition, the Board requests comment on whether there are additional methods for making the regulation more user-friendly or for reducing unnecessary regulatory burden.

II. Scope of Regulation

As proposed, Regulation W applies to all ''banks.'' As noted above, although sections 23A and 23B apply by their terms only to member banks, the Federal Deposit Insurance Act subjects insured nonmember banks to the restrictions of sections 23A and 23B as if they were member banks. Referring to banks (rather than member banks) should clarify the scope of the regulation for the reader. By using the defined term ''bank,'' the Board does not intend to expand the scope of sections 23A and 23B beyond member banks and insured nonmember banks. [14]

The Home Owners' Loan Act (''HOLA'') also subjects insured savings associations to sections 23A and 23B as if they were member banks. HOLA imposes several restrictions on transactions between an insured savings association and certain of its affiliates that are not contained in section 23A [15] and provides the Office of Thrift Supervision (''OTS'') with authority to impose additional restrictions on transactions between an insured savings association and its affiliates.[16] In light of the stricter regulatory regime governing transactions between an insured savings association and its affiliates and in light of a request by the OTS that the proposed Regulation W not specifically cover such institutions, the proposed rule does not apply by its terms to savings associations. The Board notes, however, that because insured savings associations are subject to sections 23A and 23B as if they were member banks, any parallel regulation adopted by the OTS to govern transactions with affiliates must be at least as strict on insured savings associations as Regulation W is on banks.

III. General Provisions of Section 23A—Subpart B

Subpart B of the proposed regulation sets forth the principal restrictions of section 23A. These restrictions include:

(i) the quantitative limits on covered transactions by a bank with any individual affiliate and all affiliates in the aggregate;

(ii) the requirement that all transactions with an affiliate be on terms and conditions that are consistent with safe and sound banking practices;

(iii) the collateral requirements for extensions of credit and similar transactions with an affiliate;

(iv) the prohibition on the purchase of low-quality assets from an affiliate; and

(v) the attribution rule, which provides that any transaction with any person that is not an affiliate will be considered a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

Subpart B also incorporates previous Board and staff interpretations of these provisions. In addition, the subpart includes a few new interpretations of the statute's quantitative limits, collateral requirements, and attribution rule. These clarifications of the statute are discussed below.

A. Quantitative Limits—223.2 and 223.3

Section 23A(a)(1) provides that a bank may engage in a covered transaction with an affiliate only if, upon consummation of the proposed transaction, the aggregate amount of the bank's covered transactions (i) with any single affiliate would not exceed 10 percent of the bank's capital stock and surplus and (ii) with all affiliates would not exceed 20 percent of the bank's capital stock and surplus.[17] Sections 223.2 and 223.3 of the proposed regulation set forth these quantitative limits. The quantitative limits of Regulation W (consistent with section 23A) only prohibit a bank from engaging in a new covered transaction if the bank would be in excess of the 10 or 20 percent thresholds after consummation of the new transaction. The regulation (consistent with section 23A) generally does not require a bank to unwind existing covered transactions if the bank exceeds the 10 or 20 percent limits because its capital declined or a pre-existing covered transaction increased in value.

Section 23A(a)(1)(A) states that a bank ''may engage in a covered transaction with an affiliate only if * * * in the case of any affiliate,'' the aggregate amount of covered transactions of the bank will not exceed 10 percent of the capital stock and surplus of the bank. Regulation W makes clear that this limitation prevents a bank from engaging in a new covered transaction with an affiliate if the aggregate amount of covered transactions between the bank and any affiliate (not only the particular affiliate with which the bank proposes to engage in the new covered transaction) would be in excess of 10 percent of the bank's capital stock and surplus after consummation of the new transaction. This interpretation of the section is consistent with the statutory language and would have the salutary effect of encouraging banks with covered transactions in excess of the 10 percent threshold with any affiliate to reduce those transactions before expanding the scope or extent of the bank's relationships with other affiliates.

B. Collateral Requirements—223.5

Section 223.5 of the proposed regulation sets forth the collateral requirements established by section

[14] The regulation implements sections 23A and 23B of the Federal Reserve Act. The regulation does not contain or implement statutory or regulatory restrictions on transactions between banks and their affiliates that may be applicable under other provisions of law, including that may apply to banks subject to prompt corrective action under section 38 of the Federal Deposit Insurance act (12 U.S.C. 1831o).

[15] HOLA prohibits an insured savings association from (i) making loans or extending credit to any affiliate unless that affiliate is engaged solely in activities that the Board has determined to be permissible under section 4(c) of the Bank Holding Company Act (12 U.S.C. 1843(c)); and (ii) purchasing or investing in shares issued by an affilate other than a subsidiary of the savings association.

[16] 12 U.S.C. 1468(a)(4).

[17] 12 U.S.C. 371c(a)(1).

23A(c) for loans and extensions of credit to an affiliate, and guarantees, acceptances, and letters of credit issued on behalf of an affiliate (collectively, ''credit transactions''). As a general matter, section 23A requires any credit transaction by a bank with an affiliate to be secured with a statutorily prescribed amount of collateral. The required collateral varies from 100 percent of the value of the credit extended (when the collateral is a deposit account or U.S. government securities) to 130 percent of the credit extended (when the collateral is stock, leases, or certain other ''real or personal property'').[18]

1. *Deposit account as collateral—223.5(b)(1)(iv).* Under section 23A(c)(1)(A)(iv), a bank may satisfy the collateral requirements of the statute by securing a credit transaction with an affiliate with a segregated, earmarked deposit account maintained with the bank in an amount equal to 100 percent of the credit extended. The proposed regulation clarifies that to satisfy the statute's ''earmarked'' requirement, the account must exist for the sole purpose of securing the credit extended and be so identified.

2. *Ineligible collateral—223.5(c).* The purpose of section 23A's collateral requirements is to ensure that banks that engage in credit transactions with an affiliate have legal recourse, in the event of affiliate default, to tangible assets with a value at least equal to the amount of the credit extended. The statute recognizes that certain types of assets are not appropriate to serve as collateral for credit transactions with an affiliate. In particular, the statute provides that low-quality assets and securities issued by an affiliate are not eligible collateral for such covered transactions.[19]

In light of the purposes of section 23A, the Board believes that intangible assets (as defined by generally accepted accounting principles (''GAAP'')) — including mortgage servicing assets and other servicing assets—are not acceptable collateral to secure credit transactions with an affiliate. Intangible assets are particularly hard to value, and a bank may have significant difficulty in collecting and selling such assets in a reasonable period of time. For these reasons, Board staff opined in 1987 that mortgage servicing rights may not be used to satisfy the collateral requirements of section 23A.[20] The Board believes that these reasons continue to justify the exclusion of mortgage servicing assets, as well as other intangible assets, from the types of collateral eligible to satisfy the requirements of section 23A. The Board seeks comment on whether banks should be permitted to use any particular types of intangible assets to meet section 23A's collateral requirements.

In addition, the Board does not consider guarantees and letters of credit to be eligible collateral for section 23A purposes. These agreements are not balance sheet assets under GAAP and, accordingly, would not constitute ''real or personal property'' under section 23A. Moreover, section 23A(c) requires that credit transactions be ''secured'' by collateral. A credit transaction between a bank and an affiliate supported only by a guarantee or letter of credit from a third party would not appear to meet the statutory requirement that the credit transaction be secured by collateral.

As noted above, section 23A prohibits a bank from accepting securities issued by an affiliate as collateral for an extension of credit to an affiliate. The Board also proposes to clarify that securities issued by the bank itself are not eligible collateral to secure a credit transaction with an affiliate. If the bank were forced to foreclose on such a credit transaction, the bank may be unwilling to liquidate its own securities promptly to recover on the credit transaction because the sale might depress the price of the bank's outstanding securities or result in a change in control of the bank. In addition, to the extent that a bank is unable or unwilling to sell its own securities acquired through foreclosure, the transaction may result in a reduction in the bank's capital, thereby offsetting any potential benefit provided by the collateral. The Board seeks comment on whether this exclusion should apply to debt and equity securities issued by the bank or whether the exclusion should apply only to bank-issued equity securities.

3. *Perfection and priority required—223.5(d).* To ensure that the bank has good access to the assets serving as collateral for its transactions with affiliates, the proposed regulation also provides that a bank's security interest in any collateral required by section 23A must be perfected in accordance with applicable law. This requirement is consistent with court decisions on the issue[21] and ensures that the bank has the legal right to realize on the collateral in case of default, including one resulting from the affiliate's insolvency, liquidation, or similar circumstances.

For similar reasons, the proposed regulation requires that a bank either must obtain a first priority security interest in the required collateral or must deduct from the amount of collateral obtained by the bank the lesser of (i) the amount of any security interests in the collateral that are senior to that obtained by the bank or (ii) the amount of any credits secured by the collateral that are senior to that of the bank. For example, if a bank lends $100 to an affiliate and takes as collateral a second lien on a parcel of real estate worth $200, the arrangement would only satisfy the collateral requirements of section 23A if the affiliate owed the holder of the first lien $70 or less (a credit transaction secured by real estate must be secured at 130 percent of the amount of the transaction).

4. *Undrawn portion of an extension of credit—223.5(g).* Section 23A requires that the ''amount'' of an extension of credit be secured by the statutorily prescribed levels of collateral. Board staff traditionally has advised that a bank that provides a line of credit to an affiliate must secure the full amount of the line of credit throughout the life of the credit. That is, staff has not viewed section 23A as permitting a bank to satisfy the collateral requirements of section 23A by securing only the portion of a credit line that has been drawn down by the affiliate. The Board acknowledges that this treatment may be too strict for some lines of credit. Accordingly, the regulation provides that the collateral requirements of section 23A do not apply to the undrawn portion of an extension of credit to an affiliate so long as the bank does not have any legal obligation to advance additional funds under the credit facility until the affiliate has posted the amount of collateral required by the statute with respect to the entire drawn portion of the extension of credit.[22] In such credit arrangements, securing the undrawn portion of the credit line is unnecessary from a safety and soundness perspective because the affiliate can never require the bank to advance additional funds without posting the additional collateral required by section 23A. If a bank voluntarily advanced additional funds under such a credit arrangement without obtaining the additional collateral required under section 23A to secure the entire drawn amount (despite

[18] 12 U.S.C. 371c(c)(1).

[19] 12 U.S.C. 371c(c)(3) and (4).

[20] *See* Letter dated Aug. 31, 1987, from Michael Bradfield, General Counsel of the Board, to Gail Runnfeldt.

[21] *See Fitzpatrick* v. *FDIC,* 765 F.2d 569 (6th Cir. 1985).

[22] This proposed treatment would not apply to guarantees, acceptances, and letters of credit issued on behalf of an affiliate, which must be fully collateralized at inception.

its lack of legal obligation to make such an advance), the Board would view this action as a violation of the collateral requirements of the statute.

C. Prohibition on the Purchase of Low-Quality Assets—223.6

Section 223.6 of the proposed regulation restates the statute's general prohibition on a bank purchasing low-quality assets from an affiliate.[23] This section also provides an exception to the general prohibition, which is based on a long-standing staff interpretation.[24] The exception allows a bank that purchased a loan participation from an affiliate to renew its participation in the loan, or provide additional funding under the existing participation, even if the underlying loan has become a low-quality asset, so long as certain criteria are met. These renewals or additional credit extensions may enable both the affiliate and the participating bank to avoid or minimize potential losses. It would be inconsistent with the purposes of section 23A to bar a participating bank from using sound banking judgment to take the necessary steps (consistent with the criteria established in the rule) to protect itself from harm in such a situation.

The exception is available only if the underlying loan was not a low-quality asset at the time the bank purchased its participation, and the proposed transaction does not increase the bank's proportional share of the credit facility. The transaction also must be approved by the bank's board of directors, and the bank must provide its appropriate Federal banking agency with 20 days' prior notice of the transaction. The notice requirement represents an additional condition to the exception that is not contained in the staff's outstanding interpretive letter on the exception. The Board proposes to add this condition at the request of a Federal banking agency that expressed an interest in monitoring these transactions.

The Board believes that this exception allows banks appropriate flexibility to resolve problems associated with a troubled loan participation.

D. Attribution Rule—223.7

Section 23A(a)(2) provides that any transaction between a bank and a third party is deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.[25] For example, a bank's loan to a customer for the purpose of purchasing securities from the inventory of a broker-dealer affiliate of the bank would be a covered transaction under section 23A. This ''attribution rule'' was included in section 23A to prevent a bank from evading the restrictions in the section by using intermediaries and to limit the exposure that a bank has to customers of affiliates of the bank. Section 223.7 of the proposed regulation restates this provision and provides interpretive guidance and exemptions on the following topics.

1. *Agency and riskless principal transactions—223.7(b)(1) and (2).* In June 1998, the Board proposed several exemptions for covered transactions between a bank and its securities affiliates (the ''1998 Proposal'').[26] In the 1998 Proposal, the Board proposed to exempt from section 23A loans by a bank to an unaffiliated customer who uses the proceeds to purchase securities through a broker-dealer affiliate of the bank that is acting solely in an agency or riskless-principal capacity. The Board is adopting an expanded form of this exemption in a separate final rule issued concurrently with Regulation W. The exemptive aspects of the final rule also are contained in Regulation W, and the Board asks for further comment on the exemption. In particular, the Board asks whether the riskless principal exemption should be expanded to cover purchases of assets other than securities.

2. *Preexisting Lines of Credit—223.7(b)(3).* In the 1998 Proposal, the Board also proposed an exemption from section 23A for extensions of credit by a bank to an unaffiliated customer that uses the credit to purchase securities underwritten by or held in the inventory of a broker-dealer affiliate of the bank when that extension of credit was made pursuant to a preexisting line of credit (the ''Preexisting Line of Credit Exemption''). The Board is adopting this exemption substantially as proposed in another separate final rule issued concurrently with Regulation W. The exemption is also included in Regulation W, thus allowing an opportunity for further comment on the exemption.

3. *General Purpose Credit Cards—223.7(b)(4).* Section 23A's attribution rule, by its terms, would cover an extension of credit by a bank to a nonaffiliate where the proceeds of the extension of credit are used by the nonaffiliate to purchase products or services from an affiliate of the bank. Regulation W would exempt such an extension of credit from the attribution rule if the extension is made pursuant to a general purpose credit card issued by the bank to the nonaffiliate. The regulation defines a general purpose credit card as a credit card issued by a bank, if (i) the card may be used to buy products or services from a nonaffiliate of the bank, (ii) the card is widely accepted by merchants that are not affiliates of the bank, and (iii) less than 25 percent of the aggregate amount of products and services purchased with the card by all cardholders are products or services purchased from affiliates of the bank (*see* § 223.26(n)). In these circumstances, the funding benefit received by the affiliate from the unaffiliated borrower's use of the general purpose credit card is likely to be minimal, and a bank's decision to issue a general purpose credit card (and make loans pursuant to such credit card) to an unaffiliated borrower likely would be based on independent credit standards unrelated to any possible affiliate transaction. Extensions of credit to unaffiliated borrowers pursuant to special purpose credit cards (that is, credit cards that may only be used or are substantially used to buy goods or services from affiliates of the bank), however, would continue to be subject to the attribution rule because the affiliate would be a significant and intended beneficiary of the bank's credit extensions pursuant to the cards.

IV. Valuation and Timing Principles Under Section 23A—Subpart C

Subpart C of the proposed regulation sets forth the rules that banks must use to calculate the value of covered transactions for purposes of determining compliance with the quantitative limits and collateral requirements of section 23A. This subpart also sets forth several rules that banks must employ to determine when a transaction becomes or ceases to be a covered transaction. Although most of these valuation and timing rules are consistent with previous advice given by Board staff on these issues, certain of the principles represent new positions. The rules are discussed below.

A. Credit Transactions—223.8

The regulation provides generally that a credit transaction initially must be valued at the amount of funds provided by the bank to, or on behalf of, the affiliate plus any additional amount that the bank could be required to provide to, or on behalf of, the affiliate. For example, a $100 term loan is a $100

[23] 12 U.S.C. 371c(a)(3). Section 23A does not prohibit an affiliate from donating a low-quality asset to a bank, so long as a bank provides no consideration for the asset.

[24] *See* Letter dated Aug. 10, 1984, from Michael Bradfield, General Counsel of the Board, to Margie Goris.

[25] 12 U.S.C. 371c(a)(2).

[26] 63 FR 32766, June 11, 1998, and 63 FR 32768, June 11, 1998.

covered transaction, a $300 revolving credit facility is a $300 covered transaction (regardless of how much of the facility the affiliate has drawn down), and a guarantee backstopping a $500 debt issuance of the affiliate is a $500 covered transaction.

The regulation also would make clear that a bank has entered into a credit transaction with an affiliate at the time *during the day* that the bank becomes legally obligated to make the extension of credit to, or issue the guarantee, acceptance, or letter of credit on behalf of, an affiliate. This timing rule represents a departure from the industry practice of complying with section 23A only with respect to overnight positions. The rule is consistent, however, with the regulation's proposal to incorporate intraday credit extensions into section 23A, as described below. This timing rule also clarifies that a covered transaction occurs at the moment that the bank executes a legally valid, binding, and enforceable credit agreement or guarantee document, and does not occur only when a bank funds a credit facility or makes payment on a guarantee.

Under section 23A and the proposed regulation, a bank has made an extension of credit to an affiliate if the bank purchases from a third party a loan previously made to an affiliate of the bank. The regulation refers to this type of transaction as an ''indirect'' credit transaction. In these circumstances, the bank must value the credit transaction at the price paid by the bank for the loan plus any additional amount that the bank could be required to provide to, or on behalf of, the affiliate under the terms of the credit agreement.

For example, if a bank pays a third party $90 for a $100 term loan that the third party previously made to an affiliate of the bank (because, for example, the loan was at a fixed rate and has declined in value due to a rise in the general level of interest rates), the covered transaction amount is $90 rather than $100. The lower covered transaction amount reflects the fact that the bank's maximum loss on the transaction is $90 rather than the original principal amount of the loan. If a bank pays a third party $70 for a $100 line of credit to an affiliate of which $70 had been drawn down by the affiliate, the covered transaction amount would be $100 (the $70 purchase price paid by the bank for the credit plus the remaining $30 that the bank could be required to lend under the credit line). For these indirect credit transactions, the regulation deems a bank to engage in a covered transaction at the moment during the day that the bank acquires the credit transaction from the third party.

Although a bank's purchase of, or investment in, a debt security issued by an affiliate is considered an ''extension of credit'' under the regulation, these transactions are not valued like other extensions of credit. The valuation rules for purchases of, and investments in, the debt securities of an affiliate are set forth in section 223.10 of the rule, which is discussed in Part IV.C. below.

Banks sometimes lend money to, or issue guarantees on behalf of, unaffiliated companies that later become affiliates of the bank. The regulation provides that credit transactions with a nonaffiliate become covered transactions at the time that the nonaffiliate becomes an affiliate of the bank. The Board does not believe that section 23A should be read to prevent the affiliation or to require that the indebtedness be reduced to meet the applicable section 23A quantitative limits before the affiliation occurs or thereafter. The bank must ensure, however, that any such credit transaction satisfies the collateral requirements of section 23A promptly after the nonaffiliate becomes an affiliate. The bank also must include the amount of any such transaction in the aggregate amount of its covered transactions for purposes of determining whether any *future* covered transactions would comply with the quantitative limits of section 23A.

In cases where the bank entered into the credit transaction with the nonaffiliate *in contemplation of* the nonaffiliate becoming an affiliate of the bank, however, there is an additional requirement. In such cases, the bank must, at or prior to the time the nonaffiliate becomes an affiliate, reduce the aggregate amount of its covered transactions with affiliates if necessary so as not to exceed the quantitative limits of section 23A. The regulation provides an example of how section 23A applies in these circumstances.

B. Asset Purchases—223.9

Regulation W provides that a purchase of assets by a bank from an affiliate initially must be valued at the total amount of consideration given by the bank in exchange for the asset. This consideration can take any form, and the regulation makes clear that it would include an assumption of liabilities by the bank.[27] The regulation also indicates that an asset purchase remains a covered transaction for a bank for as long as the bank holds the asset, and that the value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP and are reflected on the bank's financial statements.[28]

In contrast with credit transactions, an asset purchase from a nonaffiliate that later becomes an affiliate generally does not become a covered transaction for the purchasing bank. However, as set forth in the proposed rule, if a bank purchases assets from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, the asset purchase becomes a covered transaction at the time the nonaffiliate becomes an affiliate. In addition, the bank must ensure that the aggregate amount of the bank's covered transactions (including any such asset purchase from the nonaffiliate) would not exceed the quantitative limits of section 23A at the time that the nonaffiliate becomes an affiliate.

The regulation provides several examples designed to assist banks in valuing purchases of assets from an affiliate.

C. Purchases of and Investments in Securities Issued by an Affiliate—223.10

Section 23A includes as a covered transaction a bank's purchase of, or investment in, securities issued by an affiliate. Regulation W would require a bank to value a purchase of, or investment in, securities issued by an affiliate (other than a financial subsidiary, which is subject to special rules under the GLB Act) at the greater of the bank's purchase price or carrying value of the securities.[29] Under the rule, a bank that pays no consideration in exchange for affiliate securities must nevertheless value the covered transaction at no less than the bank's carrying value for the securities.[30] In addition, under the rule, if the bank's carrying value of the affiliate securities increased or decreased after the bank's initial investment (due to profits or losses at the affiliate), the amount of the bank's covered transaction would increase or decrease to reflect the bank's changing financial exposure to the

[27] The purchase by a bank of a security issued by an affiliate is addressed in Part IV.C. below, and the purchase by a bank of any other note or obligation of an affiliate is addressed in Part IV.A. above.

[28] The Board also has determined to treat certain bank-affiliate merger and acquisition transactions as constructive asset purchases. These transactions are discussed in Part V.A. below.

[29] The valuation rule for investments in securities issued by a financial subsidiary is discussed in Part V.B.2. below.

[30] Carrying value refers to the amount at which the securities are carried on the GAAP financial statements of the bank.

affiliate, but could not decline below the amount paid by the bank for the securities.

The Board believes several considerations support the approach contained in the proposed regulation. First, the approach is generally consistent with GAAP, which would require the bank to reflect its investment in securities issued by an affiliate at carrying value throughout the life of the investment, even if the bank paid no consideration for the securities.

Second, the definition of covered transaction in section 23A includes both a ''purchase of'' and an ''investment in'' securities issued by an affiliate. Accordingly, the statute by its terms appears to cover situations where a bank purchases securities of an affiliate and situations where a bank receives affiliate securities and pays no consideration. If the rule permitted banks to value these transactions only at purchase price, the ''investment in'' language of the statute would be rendered superfluous. The Board believes, moreover, that the statute's ''investment in'' language indicates that Congress was concerned with a bank's continuing exposure to an affiliate through an ongoing investment in securities issued by the affiliate. The best way to give effect to this concern and the ''investments in'' prong of the statutory definition is to base the value of a bank's investment in the securities of an affiliate on the bank's actual financial exposure to the investment (as reflected on the bank's GAAP financial statements), even if the bank paid nothing to acquire the securities.

Third, amendments to section 23A made by the GLB Act indicate that the value of an investment in the securities of an affiliate under section 23A should reflect increases (or decreases) in the value of the securities caused by earnings (or losses) at the affiliate. In particular, the GLB Act defines a financial subsidiary of a bank as an affiliate of the bank, but specifically provides that the section 23A value of a bank's investment in the securities of a financial subsidiary does *not* include retained earnings of the subsidiary. The negative implication from this provision is that the section 23A value of a bank's investment in *other* affiliates *includes* the affiliates' retained earnings, which would be reflected in the bank's carrying value of the investment under the proposed valuation rule.

Finally, this valuation rule is consistent with the purposes of section 23A—limiting the financial exposure of banks to their affiliates and promoting safety and soundness. The proposed rule would require a bank to revalue upwards the amount of an investment in affiliate securities only when the bank's exposure to the financial condition of the affiliate has increased (as reflected on the bank's financial statements) and the bank's capital has increased to reflect the higher value of the investment. In these circumstances, the valuation rule merely reflects the bank's greater financial exposure to the affiliate and promotes safety and soundness by reducing the bank's ability to engage in additional transactions with an affiliate as the bank's exposure to that affiliate increases.

As noted above, the proposed rule provides that the section 23A value of a bank's investment in affiliate securities can be no less than the amount paid by the bank for the securities, even if the carrying value of the securities declines below that amount. The Board believes that this approach, although not consistent with GAAP, is reasonable because it establishes as a floor the amount of funds actually paid by the bank for the affiliate securities. Using the bank's purchase price for the securities as a floor for valuing the covered transaction also limits the ability of a bank to provide additional funding to an affiliate as the affiliate approaches insolvency. If the regulation were to value investments in securities issued by an affiliate strictly at carrying value, then the bank could lend more funds to the affiliate as the affiliate's financial condition worsened, because the carrying value of the affiliate's securities also would decline and thereby increase the bank's ability to provide additional funding under section 23A. This type of increasing support for an affiliate in distress is precisely what section 23A was intended to restrict.

The regulation provides several examples designed to assist banks in valuing purchases of and investments in the securities of an affiliate.

D. Posting Securities Issued by an Affiliate as Collateral—223.11

Section 23A defines as a covered transaction a bank's acceptance of securities issued by an affiliate as collateral for a loan or extension of credit to any person or company.[31] This type of covered transaction has two classes: one in which the only collateral for the loan is affiliate securities; and another in which the loan is secured by a combination of affiliate securities and other collateral. Section 23A does not explain how these different types of covered transactions should be valued for purposes of determining compliance with the quantitative limits of the statute.

As a general rule, Regulation W would value covered transactions of the first class, where the credit extension is secured exclusively by affiliate securities, at the full amount of the extension of credit. This approach reflects the difficulty of measuring the actual value of typically untraded and illiquid affiliate securities, and conservatively assumes that the value of the securities is equal to the full value of the loan that the securities collateralize. This position also reflects the traditional advice given by Board staff on this issue. Regulation W proposes an exception to the general rule where the affiliate securities held as collateral have a ready market. In that case, the transaction may be valued at the fair market value of the affiliate securities. The exception grants relief from staff's traditional position in those circumstances where the value of the affiliate securities is independently verifiable by reference to transactions occurring in a liquid market.[32]

Regulation W would value covered transactions of the second class, where the credit extension is secured by affiliate securities and other collateral, at the *lesser* of (i) the total value of the extension of credit minus the fair market value of the other collateral and (ii) the fair market value of the affiliate securities (if the securities have a ready market). Until 1999, staff advised banks to value this class of covered transactions at the total amount of the extension of credit. In January 1999, the staff modified its position on mixed collateral loans to permit banks to value these transactions in a manner similar to the proposed rule.[33]

The Board believes that in situations in which a loan is secured by securities

[31] 12 U.S.C. 371c(b)(7)(D). This covered transaction only arises when the bank's loan is to a nonaffiliate. Under section 23A, the securities issued by an affiliate are not acceptable collateral for a loan or extension of credit *to* any affiliate. *See* 12 U.S.C. 371c(c)(4). Moreover, if the proceeds of a loan that is secured by an affiliate's securities are transferred to an affiliate by the third party borrower (for example, to purchase assets or securities from the inventory of an affiliate), the loan should be treated as a loan to the affiliate. The loan must then be secured with collateral in an amount and of a type that meets the requirements of section 23A for loans by a bank to an affiliate.

[32] In either case, the transaction must comply with section 23B; that is, the bank must obtain the same amount of affiliate securities as collateral on the credit extension that the bank would obtain if the collateral were not affiliate securities.

[33] *See* Letter dated January 21, 1999, from J. Virgil Mattingly, General Counsel of the Board, to Bruce Moland. This letter set forth an opinion of Board staff that, for purposes of applying the quantitative limits in section 23A, such mixed-collateral loans should be valued at the lesser of (1) the total amount of the loan less the fair market value of nonaffiliate collateral (if any), or (2) the fair market value of the affiliate's securities that are used as collateral.

of an affiliate and other collateral, it is reasonable to reflect the fair market value of the other collateral in determining whether, and to what extent, the loan should count towards the bank's section 23A quantitative limits. Under the proposed method of calculation for mixed-collateral loans, if a loan is fully secured by nonaffiliate collateral with a fair market value that equals or exceeds the loan amount, then the loan would not be included in the bank's quantitative limits for purposes of section 23A. If the loan is not fully secured by other collateral, then the maximum amount that the bank must count against its quantitative limits is the difference between the full amount of the loan and the fair market value of the nonaffiliate collateral. This methodology takes account of the bank's reliance on the value of nonaffiliate collateral in a loan transaction, while also recognizing that a portion of the loan may be supported by securities issued by an affiliate.

The approach taken in Regulation W, however, is different from that of the 1999 interpretation in two respects. First, although the 1999 interpretation allows banks to use the fair market value of the affiliate securities as an upper limit on the value of the transaction regardless of the liquidity of the affiliate securities, the regulation only would allow banks to use the value of the affiliate securities as an upper limit if the affiliate securities have a ready market. If the affiliate securities do not have a ready market, a bank could understate the market value of the securities in order to shrink the size of the covered transaction. Second, the regulation's ready market requirement would replace an implicit condition of the 1999 interpretation that only a small amount of the total collateral could be affiliate securities. The valuation rule in Regulation W would apply regardless of the amount of affiliate collateral.

The Board also notes that, under section 23A, a loan that is secured with any amount of an affiliate's securities must be consistent with safe and sound banking practices.[34]

V. Other Considerations under Section 23A—Subpart D

Subpart D of the proposed rule would provide guidance to banks on three issues under section 23A: (i) merger and acquisition transactions between a bank and an affiliate; (ii) financial subsidiaries of a bank; and (iii) derivative transactions between a bank and an affiliate.

A. Bank-affiliate Merger and Acquisition Transactions—223.12

Section 23A includes a purchase of assets from an affiliate and the purchase of, or investment in, securities issued by an affiliate within the definition of covered transaction. In the past, the Board has been required to apply these provisions to transactions where a bank directly or indirectly acquires an affiliate. There are three principal methods by which a bank acquires an affiliate. The first method is where a bank (or one of its subsidiaries that is not treated as an affiliate of the bank under section 23A (an ''operations subsidiary'')) directly purchases or otherwise acquires the affiliate's assets and assumes the affiliate's liabilities. In this case, the transaction is treated as a purchase of assets, and the covered transaction amount is equal to the amount paid by the bank for the affiliate's assets plus the amount of any liabilities assumed by the bank in the transaction.

The second method is where a bank (or its operations subsidiary) acquires an affiliate by merger. Because a merger with an affiliate generally results in the bank acquiring all the assets of the affiliate and assuming all the liabilities of the affiliate, this transaction is effectively equivalent to the purchase and assumption transaction described in the previous paragraph. Accordingly, the merger transaction also is treated as a purchase of assets, and the covered transaction amount is again equal to the amount paid by the bank for the affiliate's assets (if any) plus the amount of any liabilities assumed by the bank in the transaction.

The third method involves the contribution or sale of an affiliate's shares by the affiliate's parent to the bank (or its operations subsidiary). The Board previously has treated these transactions as a purchase of assets covered by section 23A where the bank paid consideration for the shares or the affiliate whose shares were contributed to the bank had liabilities to any affiliate of the bank.[35]

The proposed rule does not alter the treatment of the first two types of transaction described above. The proposed rule does provide, however, a new treatment, which is consistent with the structure of section 23A, for the third type of transaction. The rule provides that the acquisition by a bank of securities issued by a company that was an affiliate of the bank before the acquisition is treated as a purchase of the assets of the company if (i) as a result of the transaction, the company becomes a subsidiary of the bank and ceases to be an affiliate of the bank; and (ii) the company has liabilities, or the bank gives cash or any other consideration in exchange for the securities. The rule also provides that such transactions must be valued initially at the sum of (i) the total amount of consideration given by the bank in exchange for the securities; and (ii) the total liabilities of the company whose securities have been acquired by the bank through the contribution or purchase. In effect, the rule requires banks to treat these sorts of share donations and purchases in the same manner as if the bank had purchased the assets of the transferred company at a purchase price equal to the liabilities of the transferred company (plus any separate consideration paid by the bank for the shares).

This treatment for affiliate share transfers would be consistent with the approach that section 23A takes on subsidiaries of banks and with economic and marketplace realities. Section 23A treats banks and their operations subsidiaries as a single unit. Transactions between a bank and its operations subsidiaries are not treated as covered transactions between a bank and an affiliate under section 23A; rather, they are treated as transactions entirely inside the bank. Similarly, a transaction between a bank's operations subsidiary and an affiliate of the bank is treated as a covered transaction between the bank itself and an affiliate under section 23A. Ignoring the separate corporate form of subsidiaries of banks and treating the assets and liabilities of subsidiaries of banks as assets and liabilities of the bank itself is, therefore, consistent with the structure of section 23A. Accordingly, under section 23A, these share transfers in which an affiliate of a bank becomes a subsidiary of the bank are properly viewed as a purchase of an affiliate's assets and an assumption of an affiliate's liabilities by the bank.

[34] 12 U.S.C. 371c(a)(4).

[35] *See, e.g.,* Letter dated June 11, 1999, from Robert deV. Frierson, Associate Secretary of the Board, to Mr. Robert L. Anderson. Some institutions have argued that this treatment is too strict and that a covered transaction should be deemed to occur in connection with a share contribution only if there is a net transfer of value from the bank to the affiliate (that is, if the liabilities of the transferred company exceed the value of the assets of the company). In many internal reorganizations, the Board has found that the value of the assets of the transferred company was uncertain. In addition, the transactions often were motivated by funding problems at the transferred affiliate and by a desire to use the bank's resources to alleviate those funding needs. Soon after consummating such reorganizations, bank funds typically were used to pay down liabilities that the transferred company had to the parent holding company of the bank.

The proposed treatment for affiliate share transfers is also consistent with the Board's supervisory experience. The Board has found that banks often operate their consolidated organizations—because of capital requirements, financial reporting requirements, and reputational risk concerns—as if the assets and liabilities of subsidiaries were actually assets and liabilities of the bank itself. Banks often attempt to shore up their subsidiaries in times of financial stress, despite the limited liability inhering in the corporate form. Accordingly, the Board proposes to treat the assets and liabilities of a subsidiary of a bank as assets and liabilities of the bank itself for purposes of section 23A.[36]

The proposed rule only imposes asset purchase treatment on affiliate share transfers where the company whose shares are being transferred to the bank was an affiliate of the bank before the transfer. If the transferred company were not an affiliate prior to transfer, it would not be appropriate to treat the share transfer as a purchase of the assets *of an affiliate.* Similarly, the rule only requires asset purchase treatment for share transfers where the transferred company becomes a subsidiary and not an affiliate of the bank through the transfer. If the company were not a subsidiary of the bank after the transfer (because, for example, the bank acquired less than 25 percent of a class of voting securities of the company) or if the company were an affiliate of the bank after the transfer (because, for example, the bank's holding company continued to own 25 percent or more of a class of voting securities of the company or because the company became a financial subsidiary of the bank after the transfer), the Board does not believe it would be appropriate to treat the liabilities of the company as the liabilities of the bank for purposes of section 23A. In those circumstances, section 23A would not treat the bank and the transferred company as a single unit.

The Board solicits comment on whether this method of treating affiliate share transfers is appropriate.

The Board notes that it has granted numerous section 23A exemptions, on a case-by-case basis, for transactions involving the transfer (by merger, purchase and assumption transaction, or otherwise) by a holding company of one of its nonbank subsidiaries to a subsidiary bank.[37] The Board typically has approved such exemptions only if certain conditions are met, including (i) the transfer of the affiliate must be the result of a one-time corporate reorganization, (ii) the entity transferring the shares to the bank must provide certain assurances concerning the quality of the assets being transferred, (iii) the disinterested directors of the bank must approve the transaction in advance, (iv) the transfer must not include any low-quality assets, and (v) the bank's appropriate Federal banking agency and the Federal Deposit Insurance Corporation must inform the Board that they have no objection to the transaction. Banks may continue to apply to the Board for such case-by-case exemptions.

The proposed regulation also contains a regulatory exemption for certain merger and acquisition transactions that result in the transfer of an affiliate to a bank. Section 223.12(d) of the regulation provides an exemption from the requirements of section 23A (other than the safety and soundness requirement) for transactions in which, for example, a bank holding company acquires the stock of an unaffiliated company and, immediately after consummation of the acquisition, transfers the shares of the acquired company to the holding company's subsidiary bank. Although these transactions technically would be subject to the asset purchase treatment discussed in this section—and the bank would be required to value the covered transaction at the total amount of the liabilities of the acquired company (plus any consideration paid by the bank for the company)—the Board believes that it would be inappropriate to treat this transaction as a covered transaction. If the bank had acquired the unaffiliated company directly, there would be no covered transaction, and the mere fact that the bank's holding company owned the target company for a moment in time does not change the fundamental nature of the transaction.

Accordingly, the regulation exempts these ''step'' transactions as long as certain conditions are met. First, the bank must acquire the target company immediately after the company becomes an affiliate (by being acquired by the bank's holding company, for example). To the extent that the bank acquires the target company some time after the company becomes an affiliate, the transaction looks less like a single transaction in which the bank acquires the target company and more like two separate transactions, the latter of which involves the bank acquiring assets from an affiliate. Second, the bank must acquire the entire ownership position in the target company that its holding company acquired. If the bank were to acquire less than all the shares or assets of the target company that its holding company acquired, the transaction again would not, in effect, involve the purchase of the company by the bank. Finally, the entire transaction must comply with the market terms requirement of section 23B.

B. Financial Subsidiaries—223.13

As noted above, the GLB Act amended section 23A to treat a financial subsidiary of a bank as an affiliate of the bank and to establish several special rules that apply to transactions with financial subsidiaries. The proposed regulation combines all of the special rules that apply to transactions with financial subsidiaries in a single section.

1. *Applicability of the 10 percent quantitative limit to transactions with a financial subsidiary—223.13(a).* First, consistent with the GLB Act, the regulation provides that the 10 percent quantitative limit in section 23A does not apply with respect to covered transactions between a bank and any individual financial subsidiary of the bank. Accordingly, a bank's aggregate amount of covered transactions with any individual financial subsidiary may exceed 10 percent of the bank's capital stock and surplus. A bank's covered transactions with its financial subsidiaries, however, are subject to the statutory and regulatory 20 percent quantitative limit. Thus, a bank may not engage in a covered transaction with any affiliate (including a financial subsidiary) if the bank's aggregate amount of covered transactions with all affiliates (including financial subsidiaries) would exceed 20 percent of the bank's capital stock and surplus.

2. *Valuation of investments in the securities of a financial subsidiary—223.13(b).* Because financial subsidiaries of a bank are considered affiliates of the bank for purposes of section 23A, purchases of and investments in the securities of a financial subsidiary are covered transactions under the statute. The GLB Act provides that a bank's investment in its financial subsidiary, for purposes of section 23A, shall not include the retained earnings of the

[36] Affiliate share transfers to a bank often are functionally equivalent to transactions in which a bank directly acquires the assets and assumes the liabilities of an affiliate, because a bank can usually merge the newly acquired subsidiary into itself. As noted above, in a direct acquisition of assets and assumption of liabilities, the covered transaction amount would be equal to the total amount of liabilities assumed by the bank.

[37] *See, e.g., Travelers Group Inc. and Citicorp,* 84 Federal Reserve Bulletin 985, 1013–14 (1998) and Letter dated November 14, 1996, from William W. Wiles, Secretary of the Board, to John Byam.

financial subsidiary.[38] In light of this statutory provision, the regulation contains a special valuation rule for investments in the securities of a financial subsidiary. Such investments must be valued at the greater of (i) the price paid by the bank for the securities; and (ii) the carrying value of the securities on the financial statements of the bank (determined in accordance with GAAP but without reflecting the bank's pro rata share of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the securities).[39]

This valuation rule differs from the general ''investment in the securities of an affiliate'' valuation rule only in that the financial subsidiary rule requires, consistent with the GLB Act, that the carrying value of the investment be computed without consideration of the retained earnings or losses of the financial subsidiary since the time of the bank's investment. As a result of this rule, the covered transaction amount for a bank's investment in the securities of its financial subsidiary would not increase except in the event that the bank made an additional capital contribution to the subsidiary or purchased additional securities of the subsidiary.

The regulation provides several examples designed to assist banks in valuing purchases of and investments in securities issued by a financial subsidiary.

3. *Anti-evasion rules—223.13(c).* Section 23A generally applies only to transactions between a bank and an affiliate of the bank and transactions between a bank and a third party where some benefit of the transactions accrues to an affiliate of the bank. The statute generally does not apply to transactions between two affiliates. The GLB Act establishes two special anti-evasion rules, however, that govern transactions between a financial subsidiary of a bank and another affiliate of the bank.[40] First, the GLB Act provides that any purchase of, or investment in, the securities of a bank's financial subsidiary by an affiliate of the bank will be deemed to be a purchase of, or investment in, such securities by the bank itself. Second, the GLB Act authorizes the Board to deem a loan or other extension of credit made by a bank's affiliate to any financial subsidiary of the bank to be an extension of credit by the bank to the financial subsidiary, if the Board determines that such action is necessary or appropriate to prevent evasions of the Federal Reserve Act or the GLB Act.

The proposed regulation incorporates both of these provisions.[41] The regulation also exercises the Board's authority under the second anti-evasion rule by stating that an extension of credit to a financial subsidiary of a bank by an affiliate of the bank would be treated as an extension of credit by the bank itself to the financial subsidiary if the extension of credit is treated as regulatory capital of the financial subsidiary. An example of the kind of credit extension covered by this provision would be a subordinated loan to a financial subsidiary that is a securities broker-dealer where the loan is treated as capital of the subsidiary under the SEC's net capital rules. The Board believes that such treatment is appropriate in these circumstances because the extension of credit by the affiliate has a similar effect on the subsidiary's regulatory capital as an equity investment by the affiliate, which is treated as a covered transaction by the terms of the GLB Act (as described above).

The Board may find certain other extensions of credit by an affiliate to a financial subsidiary to be covered transactions under section 23A on a case-by-case basis. The Board seeks comment on the appropriateness of considering other classes of credit extensions by an affiliate to a financial subsidiary as extensions of credit by the bank to the financial subsidiary.

C. Derivative Transactions—223.14

As noted above, the GLB Act requires the Board to address as covered transactions under section 23A credit exposure arising out of derivative transactions between banks and their affiliates.

Determining the appropriate treatment for derivative transactions under section 23A is a complex and important endeavor. In light of the complexities of the subject matter and in light of the May 12, 2001, statutory schedule in the GLB Act, the Board is taking two steps to address credit exposure on bank-affiliate derivative transactions under sections 23A and 23B. First, the Board is publishing an interim rule, concurrently with Regulation W, that (i) requires, under section 23A as amended by the GLB Act, that a bank establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the bank's derivative transactions with affiliates and (ii) clarifies that bank-affiliate derivative transactions are subject to the market terms requirement of section 23B. The policies and procedures must at a minimum provide for monitoring and controlling the credit exposure arising from the bank's derivative transactions with each affiliate, and all affiliates in the aggregate, and ensuring that the bank's derivative transactions with affiliates comply with section 23B.

The second step that the Board is taking to address the credit exposure arising from bank-affiliate derivative transactions under section 23A is contained in this section of the preamble to Regulation W. This section sets forth a set of questions regarding the appropriate treatment of these transactions under section 23A. In connection with the interim rule and proposed Regulation W, the Board solicits public comment on the most appropriate treatment under section 23A of the credit exposure arising from bank-affiliate derivative transactions.

In deciding how to address under section 23A credit exposure arising from derivative transactions, the initial question to be answered is how to define the term ''derivative transaction.'' The Board's interim rule on bank-affiliate derivatives defines the term by reference to the definition of ''derivative contract'' in the capital guidelines of the Federal banking agencies (''Capital Guidelines'').[42] The definition contained in the Capital Guidelines covers swaps, forwards, options, and other similar contracts on an interest rate, currency, equity, or commodity. The interim rule supplements the definition contained in the Capital Guidelines by also including ''any similar derivative contract, including credit derivative contracts.'' This supplementation recognizes that derivative instruments evolve in response to the needs of the financial marketplace.

Other options would include defining derivative transaction by reference to the definition of ''qualified financial contract'' or ''swap agreement'' in the

[38] GLB Act section 121(b)(1) (codified at 12 U.S.C. 371c(e)(3)(B)).

[39] The regulation also makes clear that if a financial subsidiary is consolidated with its parent bank under GAAP, the carrying value of the bank's investment in the financial subsidiary shall be determined based on parent-only financial statements of the bank.

[40] GLB Act section 121(b)(1) (codified at 12 U.S.C. 371c(e)(4)).

[41] The proposed regulation also provides an exception to the anti-evasion rules for transactions between a bank's financial subsidiary and another affiliate if the other affiliate is itself a bank or savings association subject to section 23A. In that event, the anti-evasion rules are not needed because the transaction will count as a covered transaction for the affiliated bank or savings association. Without this exception, the same transaction would double count as a covered transaction both for the parent bank of the financial subsidiary and for the other affiliated institution.

[42] 12 CFR part 225, appendix A.III.E.1.a–d.

Federal Deposit Insurance Act[43] or to borrow from definitions contained in the Bankruptcy Code. Another option would involve taking a broad, functional approach that defines a derivative transaction as ''a bilateral contract the value of which derives from the value of some underlying security, financial instrument, rate, index, event, commodity, or other asset or indicator.'' Although such a broad definition may be somewhat overinclusive and more ambiguous in scope than a targeted definition, it also may provide the Board with more flexibility in responding to market trends.

The remainder of this section seeks comment on a set of questions regarding how the Board should address bank-affiliate derivative transactions under section 23A.

First, the Board notes that some derivative transactions—like deep in-the-money options or swaps with an exchange of principal on different dates—are the functional equivalent of a loan, which is an explicit type of covered transaction under section 23A. Although the Board is not aware that banks and their affiliates are entering into these types of derivative transactions, the Board expects that it may need to address these derivatives separately from the other types of derivatives because of their functional equivalence to an existing type of covered transaction under the statute. In this regard, the Board solicits comment on how to determine when a derivative transaction is (or contains an aspect that is) the functional equivalent of a loan by a bank to an affiliate. The Board believes that it may be appropriate to treat such a derivative transaction (or the relevant part of the transaction that functions as a loan) as a loan from the bank to the affiliate for purposes of section 23A.

The Board requests comment on whether and how Regulation W should provide additional guidance for banks on identifying derivative transactions that are, or have aspects that are, the functional equivalent of a loan. The Board understands that the Internal Revenue Service has adopted a regulation that requires financial institutions, for tax purposes, to recharacterize as loans portions of certain swap and other derivative transactions based on the significance of any nonperiodic payments provided for under the terms of the transaction.[44] The Board requests comment on whether the standards used by the Internal Revenue Service to determine the inherent loan elements of a swap transaction also would be appropriate for the Board to use for section 23A purposes. The Board also solicits comment on whether the regulation should treat the entirety of a bank-affiliate derivative transaction as a loan under section 23A if any portion of the transaction is the functional equivalent of a loan or should impose loan treatment only on that portion of the transaction that functions as a loan.

The Board also asks for public comment on whether Regulation W should provide a separate treatment for any other specific types of derivatives. In particular, the Board seeks comment on whether a credit derivative between a bank and an affiliate in which the bank provides credit protection to the affiliate with respect to the affiliate's assets should be treated as a covered transaction and made subject to all the requirements of section 23A. Such a credit derivative generates risks for the bank that closely resemble the risks incurred by a bank when it purchases assets from an affiliate. The Board notes that a credit derivative transaction between a bank and an unaffiliated company that references the obligations of an affiliate of the bank and is the functional equivalent of a guarantee by the bank on behalf of the affiliate is a guarantee by the bank on behalf of an affiliate for purposes of section 23A.

Second, the Board asks whether banks should be required to adopt any specific policies and procedures with respect to their derivative transactions with affiliates. These policies and procedures might include provisions that require a bank to adopt the following ''best practices'': (i) entering into a legally enforceable bilateral netting agreement with each of its affiliated derivatives counterparties; (ii) revaluing its derivative transactions with affiliates on a daily basis; and (iii) collateralizing its net mark-to-market credit exposure on derivative transactions with affiliates. The Board asks for comment on the appropriateness of requiring these types of policies and procedures and on whether additional policies or procedures should be required to ensure that a bank's derivative transactions with affiliates are conducted safely and soundly.

Third, the Board solicits comment on whether banks should be required to disclose to Federal bank supervisors or the public, on a quarterly or other periodic basis, their net credit exposure to affiliates on derivative transactions. The Board solicits comment on the types of disclosures that banks reasonably could be required to provide with respect to their derivative transactions with affiliates in order to assist the Federal banking agencies in monitoring and supervising such transactions.

Fourth, the Board invites comment on whether any final rule addressing bank-affiliate derivatives should impose a quantitative limit on the aggregate amount of a bank's net credit exposure on such transactions. The rule could require that the aggregate amount of a bank's net credit exposure on derivative transactions with affiliates not exceed some percentage of the capital stock and surplus of the bank, unless the bank obtains the prior approval of its appropriate Federal banking agency. Such a separate limit for derivatives would be in addition to the general 20 percent limit for covered transactions with all affiliates under section 23A. The Board asks for comment on whether 10 percent of the bank's capital stock and surplus would be an appropriate size for a separate cap on net derivatives credit exposure that a bank has to affiliates. Instead of establishing a separate limit, the rule could require that a bank incorporate its net credit exposure arising from derivative transactions with affiliates into its overall section 23A quantitative limits. The Board seeks comment on the appropriateness of either of these alternatives.

Fifth, the Board asks whether banks should be required to collateralize their net derivatives credit exposure to affiliates in accordance with the collateral requirements of section 23A.

Finally, in the event that the Board were to impose a quantitative limit on bank-affiliate derivative transactions (whether by establishing a separate limit for derivatives or by requiring banks to include derivatives in their overall section 23A limits), the Board seeks comment on how banks should be required to determine the amount of their derivative transactions with affiliates. One valuation option would be to require banks to value a derivative transaction with an affiliate at the current exposure of the bank to the affiliate on the transaction. Under this option, the amount of a bank's section 23A exposure to an affiliate on a derivative transaction would be based on the mark-to-market value of the transaction for the bank. If the mark-to-market value of the transaction were positive, then the current exposure would be that mark-to-market value. If the mark-to-market value were zero or negative, the current exposure would be zero. The Board specifically asks for comment on whether these mark-to-market values should be adjusted to reflect counterparty credit quality.

[43] *See* 12 U.S.C. 1821(e)(8)(D)(i) and (vi).

[44] 26 CFR 1.446–3.

Another valuation option would require banks to value a derivative transaction with an affiliate at the current exposure of the bank to the affiliate on the transaction *plus* an estimate of the bank's potential future exposure (''PFE'') to the affiliate on the transaction. This is the approach to measuring derivatives exposure that most banks take with third parties and that the Federal banking agencies have taken in the Capital Guidelines.[45] The Board seeks comment on whether banks should be required to include an estimate of PFE when determining the amount of their credit exposure on bank-affiliate derivative transactions and, if so, how banks should be required to calculate PFE.

PFE could be measured in a wide variety of ways. The Capital Guidelines provide one possible methodology. Under the Capital Guidelines, a bank calculates its PFE by multiplying the notional principal amount of the derivative transaction times a conversion factor specified in the Guidelines that varies depending upon the remaining maturity of the derivative transaction and the nature of the asset underlying the derivative transaction. This methodology has the benefits of being easy to calculate and of being a method that is already employed by banks for regulatory capital purposes and, consequently, eliminates the burden that would attend a requirement for a different calculation method. The methodology has the drawback of being rather insensitive to gradations of risk and rather conservative in its estimates of PFE. Another possible PFE computation methodology would be to permit banks with sophisticated internal models to use those models to calculate their PFE on bank-affiliate derivative transactions. The Board also seeks comment on whether the appropriate time horizon for estimating PFE on a derivative transaction is the remaining maturity of the transaction or some shorter ''close-out'' period.

The Board also invites comment on whether and how banks should be allowed to take into account credit risk mitigators such as collateral in determining the amount of their derivative transactions with affiliates. Under section 23A, transactions *fully* secured by cash on deposit or U.S. government or agency securities are generally exempt from the requirements of the statute. Outside of this exemption, the statute does not allow banks to reduce the amount of a covered transaction by securing the transaction with collateral or obtaining a third-party guarantee of the transaction. Transactions secured by municipal securities, corporate debt or equity securities, or real estate, for example, are treated the same as unsecured transactions for purposes of the quantitative limits of the statute.

The Board solicits comment on whether Regulation W should provide banks with partial credit for partially securing derivative transactions with affiliates. The Board also solicits comment on what types of collateral the regulation should recognize for the purpose of reducing the section 23A credit exposure of a bank to its affiliates on derivative transactions. As noted, the only types of collateral that have an impact on a bank's quantitative limits under the terms of section 23A are cash on deposit and U.S. government and agency securities. The Board could use this same limited list of collateral with respect to bank-affiliate derivative transactions. The Board seeks comment on whether it should expand the list of collateral acceptable for reducing the section 23A amount of these transactions and, if so, what kinds of other collateral should be acceptable as credit risk mitigators for the transactions, and what haircuts should apply to any added collateral types.

The Board also solicits the public's view on how, if the general 10 and 20 percent quantitative limits of section 23A are applied to bank-affiliate derivative transactions, increased credit exposure of the bank to an affiliate on a pre-existing derivative transaction should be treated. For example, a bank could be required promptly to unwind existing derivatives or other covered transactions or otherwise promptly reduce the amount of its exposure to affiliates in order to restore itself to compliance with the quantitative limits of section 23A in the event that the credit exposure on a derivative transaction causes the bank to exceed the limits. Alternatively, a bank could be allowed to retain existing derivative transactions and only be required to cease engaging in new covered transactions until the bank's aggregate amount of covered transactions falls below the statute's quantitative limits.

If the Board were to determine that bank-affiliate derivative transactions are subject to some sort of quantitative limit under section 23A, the Board would have to address the question of whether and how to recognize netting agreements. The Board solicits comment on whether it should recognize bilateral netting agreements when computing the amount of a bank's derivatives credit exposure to an affiliate and, if so, whether the principles set forth in the Capital Guidelines are appropriate minimum requirements for determining what is a qualifying netting agreement.[46]

In addition, the Board solicits comment on how often a bank should mark to market its derivative transactions with affiliates. The Board requests information on how often banks mark to market their derivative transactions with third parties and on the potential burden and benefits of requiring banks to mark to market their derivative transactions with affiliates on a daily basis.

As a more general matter, the Board invites comment on whether it is necessary or appropriate to grandfather existing derivative transactions between banks and their affiliates. The Board understands that, depending on the approach ultimately taken on bank-affiliate derivatives, bringing existing derivative transactions into compliance with Regulation W may require expensive and time-consuming adjustments to positions or renegotiation of agreements and, if existing exposures are above any quantitative limits established by Regulation W, may prevent banks from engaging in future derivative transactions with affiliates.

The Board will analyze comments on this proposal and the concurrently issued interim final rule on derivative transactions. If, based on that analysis, the Board believes additional measures are needed in this area, the Board will issue a detailed proposed rule for public comment.

VI. Exemptions—Subpart E

Section 23A specifies several types of transaction that are exempt from the statute's quantitative and collateral requirements and other types of transaction that are exempt from the statute's quantitative, collateral, and low-quality asset requirements.[47] The proposed regulation sets forth the statutory exemptions, clarifies certain of these exemptions, and exempts several additional types of transactions. The clarifications and additional exemptions are discussed below.

A. Sister-Bank Exemption—223.15(a) and (b)

Section 23A(d)(1) exempts any transaction between a member bank and a ''bank'' if the member bank controls 80 percent or more of the voting securities of the bank, the bank controls 80 percent or more of the voting securities of the member bank, or a company controls 80 percent or more of the

[45] *See, e.g.,* 12 CFR part 225, appendix A.III.E.2.

[46] *See, e.g.,* 12 CFR part 225, appendix A.III.E.3.

[47] 12 U.S.C. 371c(d).

voting securities of both the member bank and the bank.[48] Section 23A states that the term ''bank'' includes ''any State bank, national bank, banking association, and trust company,'' and other federal law provides that an insured savings association should be treated as a ''bank'' for purposes of the sister-bank exemption.[49] Section 23A also provides the Board with authority to issue definitions consistent with the section as may be necessary to carry out the purposes of the section and to prevent evasions thereof.[50]

Regulation W proposes to clarify that the sister-bank exemption generally applies only to transactions between a bank (as defined in the regulation to mean a member bank or an insured nonmember bank), on the one hand, and an insured depository institution, on the other hand. Such an interpretation is consistent with the legislative intent behind the sister-bank exemption, which was to permit the flow of funds from one insured depository institution to another insured depository institution. In this regard, the Board notes that, under the cross-guarantee provisions of the Federal Deposit Insurance Act, an insured depository institution is generally liable for any loss incurred by the FDIC in connection with the default of a commonly controlled insured depository institution.[51] Without such an interpretation of the sister-bank exemption, a bank would be able to engage in unlimited covered transactions with certain uninsured depository affiliates. Permitting a bank to provide an unlimited amount of funding to an uninsured depository affiliate would contravene one of the principal purposes of the statute-protecting the deposit insurance funds from loss.[52]

B. Purchases of Loans on a Nonrecourse Basis—223.15(c)

Under section 23A(d)(6), a bank may purchase loans on a nonrecourse basis from an affiliated ''bank'' exempt from section 23A, even if the transaction does not qualify for the sister-bank exemption under section 23A(d)(1). The proposed rule clarifies that the scope of this exemption parallels that of the sister-bank exemption by stating that this exemption applies to a bank's purchase of a loan on a nonrecourse basis from an affiliated insured depository institution.

Section 23A(d)(6) also exempts the purchase from an affiliate of assets that have a readily identifiable market quotation. This exemption is set forth separately in the regulation for purposes of clarity and is discussed in detail below.

C. Correspondent Banking—223.16(a)

Section 23A exempts from its quantitative limits and collateral requirements any deposit by a bank in an affiliated bank or affiliated foreign bank that is made in the ordinary course of correspondent business, subject to any restrictions that the Board may impose.[53] The proposed rule provides that such deposits must represent ongoing, working balances maintained by the bank in the ordinary course of conducting the correspondent business. An occasional deposit in an affiliated institution would not be in the ordinary course of correspondent business. The proposed rule also indicates that correspondent deposits in an affiliated insured savings association are exempt if they otherwise meet the requirements of the exemption.

D. Fully Secured Credit Transactions—223.16(c)

Section 23A exempts any credit transaction by a bank with an affiliate that is fully secured by obligations issued or guaranteed by the United States or its agencies or by a ''segregated, earmarked'' deposit account.[54] The proposed rule clarifies that a deposit account meets the ''segregated, earmarked'' requirement only if the account exists for the sole purpose of securing the extension of credit and is so identified. This requirement would parallel the provision in section 223.5(b)(1)(iv) of the rule relating to which deposits count toward the collateral requirements of section 23A. Thus, if an earmarked deposit is sufficient to fully secure the transaction, then the transaction is exempt under this section; if the deposit represents less than full security, then the amount of the deposit counts toward the required collateral under section 223.5(b).

E. Purchases of Assets with Readily Identifiable Market Quotes—223.16(e)(1)

Section 23A(d)(6) exempts the purchase of assets from an affiliate if the assets have a ''readily identifiable and publicly available market quotation'' and are purchased at their current market quotation.[55] The Board generally has limited the availability of this exemption (the ''(d)(6) exemption'') to purchases of U.S. Treasury securities, securities issued by a U.S. government agency, and assets with market prices that are recorded in widely disseminated publications such as newspapers with a national circulation. Because only exchange-traded assets are recorded in such publications, the test ensures that the qualifying assets are traded actively enough to have a true ''market quotation'' and that examiners can verify that the assets are purchased at their current market quotation. Regulation W codifies this Board interpretation of the (d)(6) exemption and clarifies that the exemption applies to a bank's purchase of assets having a readily identifiable and publicly available market quotation if the assets are purchased at *or below* the asset's current market quotation.

F. Purchases of Securities with a Ready Market From a Securities Affiliate—223.16(e)(2)

The Board proposed in its 1998 Proposal to exempt from section 23A the purchase by a bank of certain types of securities from a securities affiliate.[56] The Board has determined to adopt a somewhat revised form of this expanded (d)(6) exemption in a separate final rule being issued concurrently with Regulation W. Regulation W also contains this exemption, and the Board seeks further comment on the scope and conditions of the exemption. In particular, the Board solicits the views of the public on (i) whether the exemption should be limited to purchases from registered U.S. securities broker-dealers; (ii) whether it would be appropriate to use independent dealer quotations to establish a market price for a security under the exemption; and (iii) whether it would be appropriate to allow a bank to use the exemption to purchase asset-backed securities issued by an affiliate of the bank or to purchase securities

[48] The sister-bank exemption in section 23A does not allow a bank to avoid any restrictions on sister-bank transactions that may apply to the bank under the prompt corrective action framework set forth in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) and regulations adopted thereunder by the bank's appropriate Federal bankings agency.

[49] 12 U.S.C. 371c(b)(5), 1468(a)(2).

[50] 12 U.S.C. 371c(f)(1).

[51] *See* 12 U.S.C. 1815(e).

[52] As noted above, a bank and its operations subsidiaries are considered a single unit for purposes of section 23A. Accordingly, under the statute and the proposed regulation, transactions between a bank (or its operations subsidiary) and the operations subsidiary of a sister insured depository institution generally are exempt under the sister-bank exemption.

[53] 12 U.S.C. 371c(d)(2).

[54] 12 U.S.C. 371c(d)(4).

[55] 12 U.S.C. 371c(d)(6).

[56] 63 FR 32768, June 11, 1998.

issued by a mutual fund advised by the bank or an affiliate of the bank.

G. Purchasing Municipal Securities—223.16(f)

The Board also proposes to exempt a bank's purchase of municipal securities from an affiliate, if the purchase meets a revised and somewhat shorter version of the requirements applicable to the expanded (d)(6) exemption contained in section 223.16(e)(2) of the proposed rule.[57] First, as in the expanded (d)(6) exemption, the bank must purchase the municipal securities from a broker-dealer affiliate that is registered with the SEC. Second, also as in the expanded (d)(6) exemption, the municipal securities must be eligible for purchase by a State member bank and the bank must report the transaction as a securities purchase in its Call Report. Third, the municipal securities must either be rated by a nationally recognized statistical rating organization or must be part of an issue of securities that does not exceed $25 million in size. Finally, the price for the securities purchased must be (i) quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, (ii) verified by reference to two or more actual independent dealer quotes on the securities to be purchased or securities that are comparable to the securities to be purchased, or (iii) in the case of securities purchased during the underwriting period, verified by reference to the price indicated in the syndicate manager's written summary of the underwriting.[58] Under any of the three pricing options, the bank must purchase the municipal securities at or below the quoted or verified price.

The Board believes that this streamlined set of requirements for purchases of municipal securities is appropriate because municipal obligations generally have a lower default risk than the other instruments whose quotations would be difficult to obtain, such as emerging market and high yield debt. In addition, these relaxed requirements are consistent with the expressed desire of Congress to support local communities' use of municipal securities to help meet their financing needs.

H. Purchases of Assets by De Novo Banks—223.16(h)

The proposed rule would exempt a purchase of assets by a newly chartered bank from an affiliate if the appropriate Federal banking agency for the bank approved the transfer. This exemption would allow companies to charter a *de novo* bank and to transfer assets to the bank from its affiliates outside the restrictions of section 23A.[59] Currently, if a company (usually a bank holding company) establishes a credit card bank or a trust company, the newly chartered institution cannot acquire a critical mass of assets from an affiliate because of the quantitative limits and other requirements of section 23A. The Board has received many comments that these restrictions are burdensome and unnecessary because the chartering authority for the new bank reviews the transaction (and, in the case of a bank holding company, the Board also reviews the transaction) to ensure that the transfer does not result in any safety or soundness problems. For this reason, the Board has proposed the exemption.

I. Transactions Approved Under the Bank Merger Act—223.16(i)

The Board previously has exempted from section 23A any merger or consolidation transaction between affiliated insured depository institutions if the transaction has been approved by the appropriate Federal banking agency pursuant to the Bank Merger Act.[60] The proposed rule includes this exemption.

J. Purchases of Extensions of Credit—223.16(j)

Section 23A includes as a covered transaction a purchase of assets from an affiliate, except such purchases of real and personal property as may be specifically exempted by the Board by order or regulation.[61] In 1979, the Board issued a formal interpretation that exempted a bank's purchase of a mortgage note or participation therein from a mortgage banking affiliate, provided that the bank's commitment to purchase is (i) obtained by the affiliate within the context of each proposed loan, (ii) obtained prior to the affiliate's commitment to make each loan, and (iii) based upon the bank's independent evaluation of the creditworthiness of each mortgagor (the ''250.250 exemption'').[62] Although this interpretation did not impose a strict dollar limit on the amount of an affiliate's mortgage loans that a bank could purchase under the exemption, the interpretation cautioned that the purpose of the exemption was to allow a bank to take advantage of an investment opportunity and not to provide all the working capital needed by an affiliate.

By 1995, some bank holding companies were using the 250.250 exemption extensively to fund their lending affiliates. In these cases, banks were providing all or nearly all of their affiliates' funding needs. In response, staff indicated in an interpretive letter that the 250.250 exemption was not available if the dollar amount of the bank's purchases from the affiliate represented more than 50 percent of the total dollar amount of loans originated by the affiliate.[63] Staff reasoned that, in these circumstances, the asset purchases look less like the bank taking advantage of an investment opportunity brought to it by the affiliate and more like the bank providing an ongoing funding mechanism for the affiliate. Staff intended that this restriction would require the affiliate to have alternative funding sources and reduce the pressure on the bank to purchase the affiliate's extensions of credit.

The proposed rule incorporates the 250.250 exemption and formally expands the exemption to cover the purchase of any type of loan or extension of credit from an affiliate. Regulation W also includes staff's 50 percent test and another test designed to ensure that the bank is not a principal ongoing funding source for the affiliate. In particular, the rule provides that the 250.250 exemption is unavailable if (i) the amount of the bank's total purchases from the affiliate, when aggregated with all other assets purchased from the affiliate by affiliated banks and insured savings associations, represents more than 50 percent of the credit portfolio of the affiliate; or (ii) the bank and its affiliated banks and insured savings associations provide substantial, ongoing funding to the affiliate. The Board recognizes that the ''substantial, ongoing funding'' condition may create some uncertainty for banks, but believes that the condition would provide examiners with additional flexibility to stop arrangements in which a bank provides a significant amount of

[57] The regulation defines municipal securities by reference to section 3(a)(29) of the Securities Exchange Act, which defines municipal securities as direct obligations of, or obligations guaranteed as to principal or interest by, a State or agency, instrumentality, or political subdivision thereof, and certain tax-exempt industrial development bonds. 17 U.S.C. 78c(a)(29).

[58] Under the Municipal Securities Rulemaking Board's Rule G–11, the syndicate manager for a municipal bond underwriting is required to send a written summary to all members of the syndicate. The summary discloses the aggregate par values and prices of bonds sold from the syndicate account.

[59] The Board also would not consider such transfers to be subject to the requirements of section 23B.

[60] 12 CFR 241.

[61] 12 U.S.C. 371c(b)(7)(C).

[62] 12 CFR 250.250.

[63] *See* Letter dated April 24, 1995, from J. Virgil Mattingly, General Counsel of the Board, to William F. Kroener, III; *see also* Letter dated January 21, 1987, from Michael Bradfield, General Counsel of the Board, to Jeffrey C. Gerrish.

funding to an affiliated lending company but does not provide a majority of the affiliate's working capital. The Board seeks comment on whether the regulation should contain staff's 50 percent test or the ''substantial, ongoing funding'' test.

The Board also seeks comment on whether the rule should limit the amount of assets that a bank may purchase from an affiliate pursuant to the 250.250 exemption to some percentage of the *bank*'s total assets. The Board recently reviewed a case where a nonbanking company proposed to charter a bank for the sole purpose of purchasing loans or leases from the nonbanking company. In these circumstances, a bank's credit underwriting process may be compromised as a result of the complete dependence of the bank on the affiliate for asset growth. Prohibiting a bank from using the 250.250 exemption to accumulate a substantial percentage of its assets may help prevent such compromises.

The Board notes that the 250.250 exemption only applies to the initial purchase of assets by the bank and not any covered transaction that may result from the bank's ongoing holding of the asset purchased. For example, if a bank purchases from the selling affiliate a loan originated by the selling affiliate to a second affiliate, the exemption may exempt the bank's purchase of the loan, but it would not exempt the ongoing extension of credit by the bank to the second affiliate that results from the purchase.

To qualify for this exemption, a bank must independently review the creditworthiness of each obligor prior to committing to purchase each loan. The Board does not believe that a bank can satisfy this requirement by simply having its affiliates use the bank's underwriting standards or the underwriting standards of the Federal National Mortgage Association or any other government agency or government-sponsored enterprise. The bank must itself review and approve each loan prior to giving a purchase commitment to its affiliate. Consistent with the Board's published interpretation on this exemption, the bank also must not make a legally enforceable blanket advance commitment to purchase a stipulated amount of loans from the affiliate.

K. Intraday Extensions of Credit—223.16(k)

As noted above, the GLB Act requires the Board to ''address as covered transactions credit exposure arising out of * * * intraday extensions of credit'' by banks to their affiliates. Banks regularly provide transaction accounts to their affiliates in conjunction with providing payment and securities clearing services. As in the case of unaffiliated commercial customers, these accounts are subject to overdrafts during the day that are repaid in the ordinary course of business. The Board has not to date ruled on whether these or other types of intraday credit extensions are covered transactions under section 23A or are subject to the market terms requirement of section 23B. Industry practice does not treat an intraday credit extension as subject to sections 23A or 23B unless the extension remains outstanding at the end of the day.[64]

Existing business practices indicate that the potential risk reduction benefits afforded by full application of the requirements of section 23A to intraday credit exposures may not justify the costs to banking organizations of implementing these requirements at this time. Intraday overdrafts and other forms of intraday credit extensions are generally not used as a means of funding or otherwise providing financial support for an affiliate. Rather, these credit extensions typically facilitate the settlement of transactions between an affiliate and its customers when there are mismatches between the timing of funds sent and received during the business day. Although some risk exists that such intraday credit extensions could turn into overnight funding of an affiliate, this risk may be sufficiently remote that the strict collateral and other requirements of section 23A would not be warranted for the intraday credit exposure. Moreover, mandating that banks collateralize intraday exposures could require banks to measure exposures across multiple accounts, offices, and systems on a global basis and to adjust collateral holdings in real time throughout the day. The Board seeks comment on whether banks currently have these capabilities and, if not, whether they would be costly to implement.

Regulation W would provide that an intraday extension of credit is not subject to the quantitative limits or collateral requirements of section 23A if the credit extension arises in connection with the performance by a bank, in the ordinary course of business, of securities clearing and settlement transactions or payment transactions (for example, wire transfers, check clearing, and ACH transactions) on behalf of an affiliate, and the bank (i) has no reason to believe that the affiliate will have difficulty repaying the extension of credit in the ordinary course of business; (ii) establishes limits on the net amount of intraday credit that the bank may extend to affiliates; and (iii) establishes and maintains policies and procedures for assessing affiliate credit quality, monitoring each affiliate's compliance with the established limits, reviewing intraday credit extensions to an affiliate in the event of the affiliate's violation of the limits, and ensuring that intraday credit received by each affiliate complies with section 23B. The bank also must maintain records and supporting information that are sufficient to enable the appropriate Federal banking agency for the bank to review the position limits and required policies and procedures.

Intraday extensions of credit by a bank to an affiliate that do not meet the conditions set forth above would be subject to the quantitative, collateral, and other requirements of section 23A. All intraday extensions of credit by a bank to an affiliate, including those that meet the conditions set forth above, would be subject to the market terms requirement of section 23B.

Under Regulation W, all intraday credit extensions (on a worldwide basis) that exist at the end of the bank's business day in the United States would become subject to section 23A at that time. The Board requests comment on whether the regulation should adopt a different rule for determining when an ''intraday'' exposure become an ''overnight'' exposure. In particular, the regulation could provide that an ''intraday'' exposure becomes an ''overnight'' exposure at the end of the bank's business day in the local jurisdiction in which the credit was extended.[65]

The Board may adopt a different approach to intraday credit under section 23A if it finds that banks are not implementing satisfactory controls to measure, monitor, and limit intraday credit extensions to affiliates. The Board requests comment on prudent risk management measures for intraday credit exposures.

The Board also requests comment on whether the Board should find that other types of intraday credit, not related to payment transactions or securities clearing and settlement

[64] The text of section 23A in no way suggests that a transaction must extend overnight to qualify as an extension of credit.

[65] If the Board were to take this approach, the regulation may also have to require that a bank not transfer any intraday credit extensions to other jurisdictions. Such a requirement may be necessary to prevent a bank from cycling its ''intraday'' transactions around the world to prevent them from ever becoming ''overnight'' exposures.

transactions effected through an affiliate's transaction accounts at the bank, should be exempt from the quantitative limits and collateral requirements of section 23A. In particular, the Board understands that some credit card banks issue special purpose credit cards that customers may use only at affiliates of the bank. These banks extend credit on an intraday basis to their credit card customers to enable the customers to purchase goods or services from the banks' affiliates. At the end of the day, however, many of these banks sell their credit card receivables to a third party or to another affiliate to prevent the extensions of credit from becoming overnight credits subject to section 23A.[66] These intraday credit extensions would be covered transactions subject to all the requirements of section 23A under Regulation W.[67]

Finally, the Board requests comment on how long a transition period banks need to put the necessary policies and procedures in place in order to take advantage of the exemption for intraday credit extensions.

VII. General Provisions of Section 23B–Subpart F

Subpart F of the proposed regulation sets forth the principal restrictions of section 23B. These include (i) the requirement that certain transactions between a bank and its affiliates be on terms and circumstances that are substantially the same as those prevailing at the time for comparable transactions with nonaffiliates; (ii) the restriction on a bank's purchase as fiduciary of assets from an affiliate; (iii) the restriction on a bank's purchase, during the existence of an underwriting syndicate, of any security if a principal underwriter of the security is an affiliate; and (iv) the prohibition on a bank's or its affiliate's publishing an advertisement or entering into an agreement stating that the bank will be responsible for the obligation of its affiliates. For the most part, subpart F restates the operative provisions of section 23B, and these provisions are not discussed below. The remainder of this section highlights four areas in which Regulation W provides additional guidance on section 23B.

A. Transactions Exempt from Section 23B–223.19(a)(1)

The market terms requirement of section 23B applies to, among other transactions, any ''covered transaction'' between a bank and an affiliate.[68] Section 23B(d)(3) makes clear that the term ''covered transaction'' in section 23B has the same meaning as the term ''covered transaction'' in section 23A, but does not include any transaction that is exempt under section 23A(d)-for example, transactions between sister banks, transactions fully secured by a deposit account or U.S. government securities, and purchases of assets from an affiliate at a readily identifiable and publicly available market quotation. The regulation also excludes from section 23B any covered transaction that is exempt from section 23A under section 223.17(h) or (i) of Regulation W (that is, asset purchases by a *de novo* bank and transactions approved as part of a bank merger). The Board is proposing to exclude from section 23B this additional set of transactions because, in each case, the appropriate Federal banking agency for the bank involved in the transaction would be expected to ensure that the terms of the transaction are not unfavorable to the bank.

B. Purchases of Securities for Which an Affiliate is the Principal Underwriter–223.20(b)

The GLB Act amended section 23B in one respect. Since its passage in 1987, section 23B(b)(1)(B) has prohibited a bank, whether acting as principal or fiduciary, from purchasing securities during the existence of an underwriting or selling syndicate if a principal underwriter of the securities is an affiliate of the bank.[69] Prior to the GLB Act, a bank could escape this prohibition only if a majority of the *outside* directors of the bank approved the securities purchase before the securities were initially offered to the public.[70] The GLB Act permits a bank to purchase securities during an underwriting conducted by an affiliate if the following two conditions are met. First, a majority of the directors of the bank (with no distinction drawn between inside and outside directors) must approve the securities purchase before the securities were initially offered to the public. Second, such approval must be based on a determination that the purchase would be a sound investment for the bank irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities.[71] The proposed regulation incorporates this new standard and clarifies that if a bank proposes to make such a securities purchase in a fiduciary capacity, then the directors of the bank must base their approval on a determination that the purchase is a sound investment for the person on whose behalf the bank is acting as fiduciary.

Obviously, a bank may satisfy this director approval requirement by obtaining specific prior director approval of each securities acquisition otherwise prohibited by section 23B(b)(1)(B). The regulation clarifies, however, that a bank also may satisfy this director approval requirement if a majority of the directors of the bank approve appropriate standards for the bank's acquisition of securities otherwise prohibited by section 23B(b)(1)(B) and each such acquisition meets the standards adopted by the directors. In addition, a majority of the bank's directors must periodically review such acquisitions to ensure that they meet the standards and must periodically review the standards to ensure they meet the ''sound investment'' criterion of section 23B. The appropriate period of time between reviews would vary depending on the scope and nature of the bank's program, but such reviews should be conducted by the directors at least annually. Prior to the passage of the GLB Act, Board staff informally allowed banks, based on the legislative history of section 23B, to meet the director approval requirement in this fashion, and there is no indication that Congress in the GLB Act intended to alter the procedures that a bank could use to obtain the requisite director approval.[72]

For these reasons, the proposed regulation would codify staff's preexisting approach to the director approval requirement. The Board seeks comment on whether this approach remains appropriate in light of the amendment made to section 23B by the GLB Act.

[66] Other credit card banks avoid section 23A by securing their receivables with a segregated, earmarked deposit account.

[67] Under section 23A and the proposed rule, an extension of credit by a bank to a third party where the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate of the bank is a covered transaction between the bank and the affiliate. 12 U.S.C. 371c(a)(2).

[68] 12 U.S.C. 371c–1(a)(2)(A).

[69] 12 U.S.C. 371c–1(b)(1)(B).

[70] Many smaller banking organizations had difficulty meeting this standard because most or all of their banks' directors were officers or employees of the banks or affiliates of the banks.

[71] GLB Act section 738 (codified at 12 U.S.C. 371c–1(b)(2)).

[72] The Conference Report accompanying the Competitive Equality Banking Act of 1987 stated that the prior approval requirement of section 23B(b)(2) could be met ''by the establishment in advance of specific standards by the outside directors for such acquisitions. If the outside directors establish such standards, they must regularly review acquisitions to assure that the standards have been followed, and they must periodically review the standards to assure that they continue to be appropriate in light of market and other conditions.'' H.R. Conf. Rep. No. 100–261, at 133 (1987).

C. The Definition of Affiliate Under Section 23B–223.24(c)

Section 23B(d)(1) states that the term ''affiliate'' under section 23B has the meaning given to such term in section 23A except that the term ''affiliate'' under section 23B does not include a ''bank,'' as defined in section 23A.[73] Other federal law provides that an insured savings association should be treated as a ''bank'' for purposes of section 23B.[74] As in the case of the sister-bank exemption, Regulation W proposes to clarify that the only companies that qualify for the ''bank'' exception to section 23B's definition of affiliate are *insured* banks and *insured* savings associations. Without such an interpretation, a bank would be able to engage in transactions with certain uninsured depository affiliates on terms and conditions that were highly unfavorable to the bank. Entering into these kinds of transactions would not be consistent with bank safety and soundness and would contravene one of the goals of section 23B—protecting the deposit insurance funds.

D. The Advertising Restriction–223.21

Section 23B(c), the ''advertising restriction,'' prohibits a bank from publishing any advertisement or entering into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.[75] Read literally, this provision appears to prohibit a bank from issuing a guarantee or letter of credit on behalf of an affiliate. Because section 23A includes as a covered transaction the issuance by a bank of a guarantee or letter of credit on behalf of its affiliates, Board staff traditionally has read the advertising restriction of section 23B in light of section 23A. That is, the Board does not believe that section 23B(c) prohibits a bank from issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate to the extent permitted under section 23A.[76] The regulation contains this clarification.

VIII. Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks-Subpart G

Subpart G discusses the application of sections 23A and 23B to U.S. branches and agencies of foreign banks. As noted above, sections 23A and 23B apply by their terms only to member banks of the Federal Reserve System, and other federal banking laws have made insured nonmember banks and insured savings associations subject to the sections. Federal banking law generally does not subject the U.S. branches and agencies of foreign banks to sections 23A and 23B.

Section 114(b)(4) of the GLB Act grants the Board authority to impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank. The Board may impose such prudential limits if the Board finds that the limits are appropriate to prevent an evasion of certain Federal banking laws, avoid a significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund, or avoid other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

The Board has for years imposed certain of the requirements of sections 23A and 23B on transactions between a U.S. branch or agency of a foreign bank and its U.S. affiliates engaged in underwriting and dealing in bank-ineligible securities (''section 20 affiliates'').[77] The Board also recently applied sections 23A and 23B to transactions between a U.S. branch or agency of a foreign bank and affiliates conducting merchant banking activities under the GLB Act and portfolio companies held under that authority.[78]

The proposed regulation would fully apply sections 23A and 23B to covered transactions between a U.S. branch or agency of a foreign bank and any affiliate of such foreign bank *directly* engaged in the United States in the following financial activities newly authorized under the GLB Act: (i) insurance underwriting pursuant to section 4(k)(4)(B) of the BHC Act; (ii) securities underwriting and dealing pursuant to section 4(k)(4)(E) of the BHC Act; (iii) merchant banking investment activities pursuant to section 4(k)(4)(H) of the BHC Act; or (iv) insurance company investment activities pursuant to section 4(k)(4)(I) of the BHC Act.[79]

The regulation also would apply these restrictions to transactions between a U.S. branch or agency of a foreign bank and any subsidiary of an affiliate directly engaged in the four activities set forth above (regardless of whether the subsidiary itself engages in any of the four activities).[80] In addition, the regulation would apply sections 23A and 23B to transactions between a U.S. branch or agency of a foreign bank and any portfolio company controlled by the foreign bank under the GLB Act's merchant banking or insurance company investment authorities. The regulation would *not* apply sections 23A or 23B to transactions between a U.S. branch or agency and any other type of affiliate (*e.g.,* foreign affiliates or U.S. affiliates engaged in nonbanking activities under section 4(c)(8) of the BHC Act), or to transactions between the foreign bank's non-U.S. offices and its U.S. affiliates.

Applying the restrictions of sections 23A and 23B to transactions between the U.S. branches and agencies of foreign banks and the indicated U.S. affiliates may help to ensure maintenance of a competitive playing field between U.S. banks and foreign banks operating in the United States. The issue of competitive equity arises most strongly in connection with those activities that a U.S. bank cannot engage in directly or through an operations subsidiary. A U.S. bank may affiliate itself with a company engaged in the newly authorized financial activities listed above only if the company is a holding company affiliate of the bank or, in some cases, a financial subsidiary of the bank.[81] In either case, covered transactions between the U.S. bank and the company would be subject to sections 23A and 23B. Without Regulation W's extension of the scope of these statutory provisions, a foreign

[73] 12 U.S.C. 371c–1(d)(1).

[74] 12 U.S.C. 1468(a)(2)(B).

[75] 12 U.S.C. 371c–1(c).

[76] The Board also believes that if a bank and its affiliate enter into a joint undertaking with a third party, the contract among the parties should make clear that the bank is only responsible for its obligations under the contract.

[77] The Board's Operating Standards for section 20 affiliates require (i) any intraday extensions of credit by a U.S. branch or agency of a foreign bank to its section 20 affiliates to comply with the market terms requirement of section 23B; (ii) any extensions of credit by a U.S. branch or agency of a foreign bank to its section 20 affiliates and any purchase by such branch or agency of securities for which a section 20 affiliate is the principal underwriter to comply with sections 23A and 23B; and (iii) a U.S. branch or agency of a foreign bank to refrain from advertising or suggesting that it is responsible for the obligations of a section 20 affiliate, consistent with section 23B(c). *See* 12 CFR 225.200; 62 FR 45295, Aug. 27, 1997.

[78] *See* 12 CFR 225.176(b)(6); 66 FR 8466, Jan. 21, 2001.

[79] *See* 12 U.S.C. 1843(k)(4)(B), (E), (H), and (I).

[80] The regulation covers subsidiaries of affiliates directly engaged in the four activities in order to prevent evasion. If these subsidiaries were not covered, the U.S. branch of a foreign bank could fund the foreign bank's U.S. insurance underwriter outside the scope of sections 23A and 23B by, for example, lending money to a subsidiary of the underwriter and having the subsidiary dividend or on-lend the loan proceeds to the underwriter.

[81] Regulation W, consistent with the merchant banking rule, would impose sections 23A and 23B on a covered transaction between a U.S. branch or agency of a foreign bank and its U.S. merchant banking affiliate only to the extent the proceeds of the covered transaction are used for the purpose of funding the affiliate's merchant banking activities.

bank's U.S. branch or agency could fund and engage in transactions with these types of affiliates more freely than could a U.S. bank. To the extent that a foreign bank's U.S. branches and agencies are able to fund these types of U.S. affiliates outside of the restrictions of sections 23A and 23B, the affiliates are able to compete for business in the United States with a potential advantage not available to the affiliates of U.S. banks.

The Board does not believe that it is appropriate or necessary at this time to impose the requirements of sections 23A and 23B on transactions between a foreign bank's U.S. branch or agency and its U.S. affiliates that are engaged only in activities that were permissible for bank holding companies before the passage of the GLB Act (other than section 20 affiliates). The Board recognizes the hardship this might impose on foreign banks conducting such activities in the United States under previous law. Moreover, most of these activities may be conducted by a U.S. bank directly (or in an operations subsidiary) and, hence, may be funded by a U.S. bank in a manner that is not subject to sections 23A and 23B.

The potential scope, nature, and risk of transactions and relationships between U.S. branches and agencies of foreign banks and their affiliates engaged in the United States in insurance underwriting, full-scope securities underwriting and dealing, merchant banking, and insurance company investment is unclear at this time. At least until the Board acquires more information and supervisory experience regarding these transactions and relationships, applying sections 23A and 23B may help ensure competitive equity between foreign banks and U.S. banking organizations in the funding of certain of their U.S. nonbank operations.

The regulation also provides that the Board may add to the list of affiliates of a foreign bank that are subject to the restrictions of sections 23A and 23B. The Board intends generally to use this reserved authority to ensure competitive equity between foreign banks and U.S. banks with respect to affiliates engaged in the United States in new activities that the Board may authorize for financial holding companies.

The Board also has considered the issue of how to calculate the capital stock and surplus of a foreign bank's U.S. branch or agency for purposes of section 23A. In light of the fact that foreign banks do not separately capitalize their U.S. branches or agencies, the regulation defines the capital stock and surplus of such branches and agencies by reference to the capital of the foreign bank as calculated under its home country capital standards. This definition is consistent with the approach recently adopted by the Board in its merchant banking rule,[82] and represents a relaxation from the Board's current position with respect to foreign banks that operate section 20 companies in the United States.[83]

IX. Definitions—Subpart H

Subpart H of Regulation W sets forth definitions of the terms used in sections 23A and 23B and in the proposed rule. Terms that are defined in the regulation as they are defined in the statute generally are not discussed below. Terms that the Board proposes to define or clarify for purposes of the regulation are discussed below.

A. Definition of Affiliate—223.24

1. *Investment funds advised by the bank or a bank affiliate—223.24(a)(6).* Section 23A includes as an affiliate any company that is sponsored and advised by the bank or any of its affiliates.[84] Section 23A also includes as an affiliate any investment company for which the bank or its affiliate serves as an investment advisor, as defined in the Investment Company Act of 1940 (''1940 Act'').[85] The proposed regulation sets forth these definitions and also includes as an affiliate any investment fund—even if not an investment company for purposes of the 1940 Act—for which the bank or an affiliate of the bank serves as an investment advisor, if the bank or an affiliate of the bank owns or controls more than 5 percent of any class of voting securities of the fund.

Most investment funds that are advised by a bank (or an affiliate of a bank) are affiliates of the bank under section 23A because the funds either are investment companies under the 1940 Act or are sponsored by the bank (or an affiliate of the bank).[86] In other instances, however, the bank or its affiliate may advise but not sponsor an investment fund that is not an investment company under the 1940 Act. Although such a fund would not fit within the statutory definition of affiliate, section 23A also authorizes the Board to determine, by regulation or order, that any company is an affiliate of a bank if the company has ''a relationship with the member bank or any subsidiary or affiliate of the member bank, such that covered transactions by the member bank or its subsidiary with that company may be affected by the relationship to the detriment of the member bank or its subsidiary.''[87]

The Board believes that the advisory relationship of a bank or affiliate with an investment fund presents the same potential for conflicts of interest regardless of whether the fund is or is not treated as an investment company for purposes of the 1940 Act.[88] An investment fund typically escapes from the definition of investment company under the 1940 Act because it (i) sells interests only to a limited number of investors or only to sophisticated investors; or (ii) invests primarily in financial instruments that are not securities.[89] The Board does not believe that the private nature or investment strategy of a fund should have a substantial effect on the fund's affiliate status under section 23A because these factors do not alter the conflicts of interest presented in the advisory relationship between the bank or its affiliate and the fund.[90]

The Board seeks comment on the appropriateness of treating investment funds as affiliates of a bank under

[82] See 66 FR 8466, 8482, Jan. 31, 2001.

[83] The Board's position on section 20 companies requires U.S. branches and agencies of foreign banks whose home country supervisor has not adopted capital standards consistent with the Basle Accord to calculate their section 23A capital stock and surplus by reference to the capital of the foreign bank parent as calculated under standards applicable to U.S. banking organizations. See 62 FR 45304, Aug. 27, 1997.

[84] 12 U.S.C. 371c(b)(1)(D)(i).

[85] 12 U.S.C. 371c(b)(1)(D)(ii).

[86] Such a fund often is required to register under the Commodity Exchange Act, and a bank affiliate often registers as the fund's commodity pool operator (thereby sponsoring the fund) and commodity trading advisor (thereby advising the fund). *See* 7 U.S.C. 1a(4) (defining commodity pool operator); 7 U.S.C. 1a(5)(B)(i) (defining commodity trading advisor). Banks and trust companies are excluded from the definition of commodity trading advisor under the Commodity Exchange Act and, in certain circumstances, may be excluded from the definition of commodity pool operator. *See* 7 CFR 4.5.

[87] 12 U.S.C. 371c(b)(1)(E).

[88] In fact, a bank may face greater risk from the conflicts of interest arising from its relationships with an investment fund that is not registered as an investment company under the 1940 Act than with a registered investment company because the 1940 Act restricts transactions between a registered investment company and entities affiliated with the company's investment adviser.

[89] The term ''investment company'' in the 1940 Act does not include a company that is owned by qualified persons or by no more than 100 persons, provided that the company does not engage in a public offering of its securities. *See* 15 U.S.C. 80a–3(c)(1), (7). The term also generally does not include investment funds that are engaged primarily in investing in financial instruments other than securities. *See* 15 U.S.C. 80a–3(a)(1).

[90] The Board also believes that investment funds organized outside the United States for which a bank or affiliate serves as investment advisor are affiliates of the bank for purposes of section 23A. *See* Letter dated July 24, 1990, from J. Virgil Mattingly, General Counsel of the Board, to Anne B. McMillen. The term ''investment company'' in the 1940 Act does include investment funds organized under the laws of a non-U.S. jurisdiction.

section 23A if the bank or its affiliate serves as investment advisor to the fund and owns more than 5 percent of any class of voting securities of the fund. The Board particularly seeks comment on whether such investment funds should be treated as affiliates only if the advising bank or affiliate owns more than 5 percent of a class of voting securities of the fund.

The Board is considering adding to the definition of ''affiliate'' any company controlled by an investment fund that is an affiliate of the bank. The conflicts of interest that exist between a bank and any investment fund that it or its affiliate advises also would appear to exist between the bank and a portfolio company controlled by such a fund. The Board invites public comment on this issue.

2. *Financial subsidiaries—223.24(a)(8); 223.26.* Section 23A defines an affiliate of a bank to include any company that controls the bank and any company that is under common control with the bank. Since 1982, however, section 23A has excluded from the definition of affiliate any subsidiary of the bank (other than a bank subsidiary) unless the Board determines by regulation or order that the subsidiary should be considered an affiliate.[91] In 1997, the Board issued for comment a proposal to extend section 23A to covered transactions between a bank and a subsidiary of the bank engaged in activities not permissible for the bank to engage in directly.[92]

Consistent with this proposal, the GLB Act recently amended section 23A to cover transactions between a bank and its ''financial subsidiaries.'' The GLB Act defines a financial subsidiary as any subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States. Section 5136A of the Revised Statutes, in turn, defines a financial subsidiary of a national bank as any company that is controlled by one or more insured depository institutions, other than a subsidiary that (i) engages solely in activities that national banks are permitted to engage in directly (and subject to the same terms and conditions as apply to national banks) or (ii) a national bank is specifically authorized by the express terms of a federal statute (other than section 5136A), and not by implication or interpretation, to control.[93] The GLB Act provides that a financial subsidiary of a bank is considered an affiliate of the bank for purposes of section 23A.

Regulation W specifically provides, consistent with the GLB Act, that a financial subsidiary of a bank is an affiliate of the bank. The proposed regulation includes a definition of financial subsidiary that is identical to the definition of financial subsidiary set forth in section 23A, as amended by the GLB Act. The Board notes that many state banks have authority to engage directly in activities that would not be permissible for a national bank and seeks comment on how the definition of financial subsidiary should be applied to subsidiaries of state banks, including general insurance agency subsidiaries and real estate investment and development subsidiaries.

The definition of financial subsidiary in section 23A and Regulation W would cover some subsidiaries of banks that are engaged only in agency activities. The Board invites public comment on the appropriateness of exempting such subsidiaries from the definition of financial subsidiary in the regulation.

Regulation W also provides that any subsidiary of a bank's financial subsidiary will be considered a financial subsidiary of the bank, even if the subsidiary would not otherwise qualify as a financial subsidiary. The Board believes that treating such companies as financial subsidiaries is consistent with the anti-evasion provisions that the GLB Act added to section 23A and will help prevent banks from avoiding the special restrictions that the GLB Act placed on a bank's transactions with its financial subsidiaries.

3. *Companies held under merchant banking or insurance company investment authority—223.24(a)(9).* The GLB Act amended the BHC Act to permit bank holding companies and foreign banks that qualify as financial holding companies to engage in merchant banking and insurance company investment activities.[94] If a financial holding company owns or controls more than 25 percent of a class of voting shares of a company under the merchant banking or insurance company investment authority, the company is an affiliate of any bank controlled by the financial holding company by operation of the statutory definitions contained in section 23A. The GLB Act also added paragraph (b)(11) to section 23A, which creates a rebuttable presumption that a company is an affiliate of a bank for purposes of section 23A if the bank is affiliated with a financial holding company and the financial holding company owns or controls 15 percent or more of the equity capital of the company pursuant to the financial holding company's merchant banking or insurance company investment authority.[95] The proposed regulation includes within the definition of ''affiliate'' any company subject to this rebuttable presumption. The regulation also provides a definition of equity capital, identifies three situations or ''safe harbors'' where the statute's presumption of control would be deemed to be rebutted, and clarifies the application of the presumption to private equity funds.

The statute does not provide a definition of equity capital. The regulation defines equity capital roughly in accordance with the GAAP definition of stockholders' equity. Equity capital includes a company's perpetual preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock. The definition of equity capital also makes clear that any other account of the company that constitutes equity should be included in the company's equity capital. Accordingly, the Board retains its authority on a case-by-case basis to require a holding company to treat a subordinated debt investment in a company as equity capital of the company for purposes of applying the presumption of control. The Board asks for comment on whether the proposed definition of equity capital is appropriate.

The regulation also provides three specific regulatory safe harbors from the statute's presumption of affiliate status. These safe harbors apply in situations where the holding company owns or controls more than 15 percent of the total equity of the company under the merchant banking or insurance company investment authority (thereby triggering the statutory presumption) and less than 25 percent of any class of voting securities of the company (thereby not meeting the statutory definition of control). The three situations are substantially identical to

[91] *See* 12 U.S.C. 371c(b)(2)(A).

[92] 62 FR 37744, July 15, 1997.

[93] 12 U.S.C. 24a(g)(3).

[94] GLB Act section 103(a); 12 U.S.C. 1843(k)(4)(H) and (I).

[95] GLB Act section 121(b)(2). As noted above, this rebuttable presumption applies only if the affiliated financial holding company owns or controls 15 percent or more of the company's equity capital under the new merchant banking or insurance company investment authorities. The Board notes, however, that under existing Board precedents a bank holding company may not own any shares of a company in reliance on sections 4(c)(6) or 4(c)(7) of the BHC Act where the holding company owns or controls, in the aggregate under a combination of authorities, more than 5 percent of any class of voting securities of the company.

those listed in the Board's merchant banking regulation.[96]

The first exemption applies where no director, officer, or employee of the holding company serves as a director of the company. The second exemption applies where an independent third party controls a greater percentage of the equity capital of the company than is controlled by the holding company, and no more than one officer or employee of the holding company serves as a director of the company. The third exemption applies where an independent third party controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors of the company.

For purposes of these safe harbors, the rule provides that the term ''holding company'' includes any subsidiary of the holding company, including any subsidiary depository institution of the holding company. Accordingly, if a director of a subsidiary bank or nonbank subsidiary of a financial holding company also serves as a director of a portfolio company, the first safe harbor, for example, would be unavailable.

These safe harbors do not require Board review or approval. Moreover, the safe harbors are not intended to be a complete list of circumstances in which the presumption may be rebutted. The regulation also provides, consistent with the GLB Act, that a bank or company may rebut the presumption of affiliation with respect to a company by presenting information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the portfolio company.

A financial holding company generally is considered to own or control only those shares or other ownership interests that are owned or controlled by itself or by a subsidiary of the holding company. The rule clarifies that, for purposes of applying the presumption of affiliation described above, a financial holding company that has an investment in a private equity fund (as defined in the Board's merchant banking rule) will not be considered indirectly to own the equity capital of a company in which the fund has invested unless the financial holding company controls the private equity fund (as described in the Board's merchant banking rule).[97]

4. *Certain joint venture companies—223.24(b)(1)(iii).* As noted above, under the terms of section 23A, subsidiaries of a bank generally are not treated as affiliates of the bank, even if they would otherwise qualify as affiliates.[98] The statute contains two specific exceptions to this general rule: financial subsidiaries of a bank and bank subsidiaries of a bank are treated as affiliates of the parent bank. The statute also provides that the Board may determine that other subsidiaries of a bank should be treated as affiliates if covered transactions between the bank and the subsidiary may be affected by the relationship between the companies to the detriment of the bank.[99]

Pursuant to this authority, the Board proposes to determine that two additional classes of subsidiaries of a bank should be treated as affiliates. First, the proposed regulation provides that any subsidiary of a bank in which an affiliate of the bank directly owns or controls 25 percent or more of any class of voting securities would be considered an affiliate of the bank. For example, a joint venture company that is 50 percent owned by a bank holding company and 50 percent owned by one of its subsidiary banks, would be treated as an affiliate of the bank. In such circumstances, although the joint venture company qualifies as a subsidiary of the bank under section 23A because the bank owns more than 25 percent of the company's voting stock, the holding company's substantial direct interest in the company creates the potential for conflicts of interest that may endanger the bank.

This proposed treatment of certain bank-affiliate joint ventures as affiliates does not apply to joint ventures between a bank and affiliated banks or insured savings associations. For example, if two affiliated banks each own 50 percent of the stock of a company, the company would continue to qualify as a subsidiary and not an affiliate of each bank (despite the fact that an affiliate of each bank owned more than 25 percent of a class of voting securities of the company). Such a special rule for joint ventures between a bank and affiliated banks or insured savings associations is consistent with the purpose behind the sister-bank and affiliated-bank exemptions contained in section 23A. The Board does not believe that transactions between a bank and a company that is wholly owned by the bank and its affiliated banks and insured savings associations generally pose material risks to the safety and soundness of the shareholding institutions or to the Federal deposit insurance funds. The Board would retain authority to treat such joint ventures as affiliates under section 23A on a case-by-case basis.

5. *Employee benefit plans—223.24(b)(1)(iv).* The second proposed regulatory exception to the general rule that subsidiaries of a bank are not treated as affiliates of the bank relates to employee benefit plans. Board staff traditionally has taken the position that most employee stock option plans, trusts, or similar entities that exist to benefit shareholders, members, officers, directors, or employees of a bank or its affiliates (''ESOPs'') should be treated as affiliates of the bank for purposes of sections 23A and 23B. In most cases, the ESOP's share ownership or the interlocking management between the ESOP and its associated bank or bank holding company exceeds the statutory thresholds for determining that a company is an affiliate. Some institutions have argued, however, that ESOPs should be considered subsidiaries of the bank and therefore exempt from coverage.

The Board believes that the relationship between a bank and its or its affiliates' ESOP warrants coverage by sections 23A and 23B. In the past, banks have made unsecured loans to such ESOPs or have guaranteed loans to such ESOPs that were made by a third party. These ESOPs, however, generally have no means to repay the loans other than with funds provided by the bank. In addition, the issuance of holding company shares to an ESOP that is funded by a bank loan could be used as a vehicle by the bank to provide funds to its parent holding company when the bank is unable to pay dividends or is otherwise restricted in providing funds to its holding company. Accordingly, the proposed rule provides that a bank or bank affiliate's ESOP cannot avoid classification as an affiliate of the bank by also qualifying as a subsidiary of the bank.

The Board asks for comment on whether other subsidiaries of a bank should be treated as affiliates of the bank under section 23A.

The Board notes that Regulation W also defines as an affiliate of a bank any partnership for which the bank or any affiliate of the bank serves as a general partner or for which the bank or any affiliate of the bank causes an officer or

[96] *See* 12 CFR 225.176(b)(2) and (3).

[97] *See* 12 CFR 225.176(b)(5).

[98] *See* 12 U.S.C. 371c(b)(1)(A) and (b)(2)(A). Section 23A defines a subsidiary of a specified company as a company that is controlled by the specified company. Under the statute, a company controls another company if the first company owns or controls 25 percent or more of a class of voting securities of the other company, controls the election of a majority of the directors of the other company, or exercises a controlling influence over the policies of the other company. 12 U.S.C. 371c(b)(3) and (4).

[99] 12 U.S.C. 371c(b)(2)(A).

employee of the bank or affiliate to serve as a general partner.

B. Definition of Covered Transaction—223.25

The restrictions of section 23A do not apply to every transaction between a bank and its affiliates. The section only applies to ''covered transactions'' between a bank and its affiliates. The statute defines a covered transaction as (i) an extension of credit to an affiliate; (ii) a purchase of or investment in securities issued by an affiliate; (iii) a purchase of assets from an affiliate; (iv) the acceptance of securities issued by an affiliate as collateral for an extension of credit to any person; and (v) the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.[100] Among the transactions that generally are not subject to section 23A are dividends paid by a bank to its holding company, sales of assets by a bank to an affiliate, an affiliate's purchase of securities issued by a bank, and many service contracts between a bank and an affiliate. This section discusses several interpretive issues that have arisen in determining whether transactions between a bank and an affiliate are covered transactions for purposes of section 23A.

1. *Confirmation of a letter of credit issued by an affiliate.* Section 23A(b)(7)(E) includes as a covered transaction the issuance of a letter of credit by a bank on behalf of an affiliate. The proposed regulation clarifies that the confirmation of a letter of credit issued by an affiliate is a covered transaction. When a bank confirms a letter of credit, it assumes the risk of the underlying transaction to the same extent as if it had issued the letter of credit.

2. *Credit enhancements supporting a securities underwriting.* The Board has confirmed previously that section 23A's definition of guarantee would not include a bank's issuance of a guarantee in support of securities issued by a third party and underwritten by a securities affiliate of the bank.[101] Such a credit enhancement would not be issued ''on behalf of'' the affiliate. In addition, although the guarantee does provide some benefit to the affiliate (by facilitating the underwriting), this benefit is indirect. Accordingly, the proceeds of the guarantee would not be transferred to the affiliate for purposes of the attribution rule of section 23A.[102] Of course, section 23B would apply to the transaction and, where an affiliate was issuer as well as underwriter, the transaction would be covered by section 23A because the credit enhancement would be on behalf of the affiliate.

3. *Cross-guarantee agreements and cross-affiliate netting arrangements.* In addition, Board staff has confirmed previously that a cross-guarantee agreement among a bank, an affiliate, and a nonaffiliate in which the nonaffiliate may use the bank's assets to satisfy the obligations of a defaulting affiliate is a guarantee for purposes of section 23A.[103] The Board believes that such cross-guarantee arrangements among banks and their affiliates should be subject to the quantitative limits and collateral requirements of section 23A.

Similarly, the Board understands that some banks have entered into or are contemplating entering into cross-affiliate netting arrangements. These are arrangements among a bank, one or more affiliates of the bank, and one or more nonaffiliates of the bank, where a nonaffiliate is permitted to net obligations of an affiliate of the bank to the nonaffiliate when settling the nonaffiliate's obligations to the bank. These arrangements also would include agreements where a bank is required to add the obligations of an affiliate of the bank to a nonaffiliate when determining the bank's obligations to the nonaffiliate.

Cross-affiliate netting arrangements expose a bank to the credit risk of its affiliates. Under these agreements, a bank may become obligated effectively to make good on the obligations of its affiliates. The exposure of a bank to its affiliates in such an arrangement resembles closely the exposure of a bank when it issues a guarantee on behalf of an affiliate or extends credit to an affiliate. Accordingly, the Board believes that cross-affiliate netting arrangements are credit transactions under section 23A. Accordingly, the quantitative limits of section 23A would prohibit a bank from entering into a cross-affiliate netting arrangement to the extent that the netting arrangement does not cap the potential exposure of the bank to the participating affiliate(s).

The Board asks for comment on whether alternative treatments of cross-guarantees or cross-affiliate netting arrangements under section 23A would be appropriate.

4. *Keepwell agreements.* Banks have asked for guidance on the question of whether a ''keepwell'' agreement should be considered a guarantee for purposes of section 23A. In a keepwell agreement between a bank and an affiliate, the bank typically commits to maintain the capital levels or solvency of the affiliate. The credit risk incurred by the bank in entering into such a keepwell agreement is similar to the credit risk incurred by a bank in connection with issuing a guarantee on behalf of an affiliate. Accordingly, keepwell agreements generally should be treated as guarantees for purposes of section 23A and, if unlimited in amount, would be prohibited by the quantitative limits of section 23A.

5. *Securitization vehicles.* The Board seeks comment on whether additional clarification is necessary in the area of securitizations. In the securitization process, a bank segregates certain of its or its customer's assets into a relatively homogenous pool and then transfers the pool to a bankruptcy-remote special purpose entity (''SPE''). The SPE, all of whose voting securities are generally held by a party other than the bank or the bank's customer, then issues securities to investors. The asset-backed securities issued by the SPE often receive some form of credit enhancement from the bank, the bank's customer, or a third-party guarantor. The Board requests comment on the question of whether such SPEs should in any circumstances be deemed to be affiliates of the bank involved in the securitization and, if so, what transactions between the bank and the SPE should be considered covered transactions under section 23A.

6. *Loans and extensions of credit.* Although section 23A includes a ''loan or extension of credit'' as a covered transaction, the statute does not define these terms. The proposed regulation defines ''extension of credit'' to mean an extension or renewal of a loan, a grant of a line of credit, or an extension of credit in any manner whatsoever, including on an intraday basis. The regulation also provides a nonexhaustive list of transactions that the Board deems to be extensions of credit, including an advance by means of an overdraft, cash item, or otherwise; a lease that is the functional equivalent of an extension of credit; a purchase of a note or other obligation, including commercial paper or other debt securities; and any increase in the amount of, extension of the maturity of, or adjustment in the interest rate term or other material term of an extension of credit.[104] A floating-rate loan does not

[100] 12 U.S.C. 371c(b)(7).

[101] 62 FR 45295 Aug. 27, 1997.

[102] *See* 12 U.S.C. 371c(a)(2).

[103] *See* Letter dated Aug. 6, 1993, from J. Virgil Mattingly, General Counsel fo the Board, to Richard Lasner.

[104] A floating-rate loan does not become a new covered transaction whenever there is a change in the relevant index (for example, LIBOR or the bank's prime rate) from which the loan's interest rate is calculated. If the bank and the borrower, however, amend the loan agreement to change the

become a new covered transaction whenever there is a change in the relevant index (for example, LIBOR or the bank's prime rate) from which the loan's interest rate is calculated. If the bank and the borrower, however, amend the loan agreement to change the interest rate term from ''LIBOR plus 100 basis points'' to ''LIBOR plus 150 basis points,'' the parties have engaged in a new covered transaction.

As noted, the regulation proposes to clarify that a bank's purchase of a note or debt security, including commercial paper, issued by an affiliate is a loan or extension of credit by the bank to the affiliate for purposes of section 23A.[105] The Board is aware that some banks have purchased or have proposed to purchase the commercial paper of their holding companies, and have done so or proposed to do so without collateralizing the purchase. These banks have argued that a purchase of commercial paper is a ''purchase of or investment in securities issued by an affiliate'' for purposes of section 23A, and that such a purchase cannot also then be an ''extension of credit'' for purposes of section 23A and its collateral requirements.

Although the Board is aware that section 23A's definition of covered transaction separately includes a bank's purchase of securities issued by an affiliate and a bank's extension of credit to an affiliate, the fact that a holder of debt securities expects repayment of principal upon maturity makes debt securities closely resemble loans for purposes of section 23A and the statute's objective of protecting the bank. Therefore, Regulation W provides that a bank that buys debt securities issued by an affiliate has made an extension of credit to an affiliate under section 23A and must collateralize the transaction in accordance with the section 23A collateral requirements applicable to extensions of credit.[106]

The Board seeks comment on whether the rule should permit banks in certain circumstances to purchase debt securities issued by an affiliate without satisfying the collateral requirements of section 23A. In particular, the Board seeks comment on whether it should require section 23A collateralization in circumstances where a bank purchases an affiliate's debt securities (i) from a third party in a *bona fide* secondary market transaction; or (ii) pursuant to a registered public offering document or a private placement memorandum in an offering in which the affiliate receives significant participation from third parties. In these circumstances, the risk that a bank's purchase of an affiliate's debt securities is designed to shore up an ailing affiliate may be reduced. Moreover, in both of these situations, the purchase of affiliate debt securities would be subject to the quantitative limits of section 23A and the market terms requirement of section 23B.

The Board asks for comment on whether other aspects of the definition of extension of credit are in need of clarification.

C. Other Definitions—223.26

1. *Bank—223.26(c).* Regulation W applies to all ''banks.'' As discussed above, sections 23A and 23B apply by their terms to member banks of the Federal Reserve System, and the Federal Deposit Insurance Act subjects insured nonmember banks to the restrictions of sections 23A and 23B as if they were member banks. Accordingly, the proposed rule defines the term ''bank'' to include any ''member bank,'' as defined in section 1 of the Federal Reserve Act, and any ''insured bank'' other than an ''insured branch,'' as such terms are defined in section 3 of the Federal Deposit Insurance Act.[107]

The definition of bank in the regulation also states that most subsidiaries of a bank are to be treated as the bank itself for purposes of sections 23A and 23B. The only subsidiaries of a bank that are excluded from this treatment are financial subsidiaries, depository institution subsidiaries, certain joint venture subsidiaries, and ESOPs—companies that are deemed affiliates of the bank under the regulation. This treatment of subsidiaries reflects the fact that the statute typically does not distinguish between a member bank and its subsidiaries, and all of the significant restrictions of the statute apply to actions taken by a member bank ''and its subsidiaries.'' The Board believes that defining the term ''bank'' as described above and using the term ''bank'' wherever the statute says ''member bank and its subsidiaries'' makes the regulation shorter and easier to understand while also reminding banks that certain subsidiaries of a bank should not be treated as part of the bank for purposes of the statute.

2. *Capital stock and surplus—223.26(d).* Under section 23A, the quantitative limits on covered transactions are based on the ''capital stock and surplus'' of the bank.[108] The proposed regulation includes a definition of capital stock and surplus that the Board previously adopted as an interpretation of section 23A.[109] Capital stock and surplus is defined as the sum of the bank's tier 1 capital and tier 2 capital and the balance of the bank's allowance for loan and lease losses not included in its tier 2 capital. This definition employs familiar concepts contained in the Federal banking agencies' capital adequacy guidelines,[110] and is consistent with the loans-to-one-borrower limits applicable to national banks [111] and the Board's Regulation O, which limits lending to a bank's insiders. [112] Use of a common definition across these rules should reduce compliance burden. The Board requests comment, however, on whether the balance of a bank's allowance for loan and lease losses not included in its tier 2 capital should be included in section 23A's ''capital stock and surplus.''

The National Bank Act requires a national bank, ''in determining compliance with applicable capital standards,'' to deduct from its capital the aggregate amount of any outstanding equity investments, including retained earnings, of the bank in all its financial subsidiaries.[113] The Federal Deposit Insurance Act imposes the same capital deduction requirement on insured state banks that establish financial subsidiaries.[114] In determining compliance with the quantitative limits of section 23A, a bank is required by statute to include in its covered transactions any equity investments (excluding retained earnings) of the bank in its financial subsidiaries. It would be unfair to compel a bank to include such investments in its covered transaction amount (the numerator of the fraction in section 23A's quantitative limits) but to exclude such investments from capital (the

interest rate term from ''LIBOR plus 100 basis points'' to ''LIBOR plus 150 basis points,'' the parties have engaged in a new covered transaction.

[105] This position is consistent with the Board's long-standing view that a purchase of an affiliate's note represents an extension of credit to the affiliate under section 23A. *See* 37 *Federal Reserve Bulletin* 960 (1951).

[106] As discussed above, however, the regulation requires a bank to value purchases of the debt securities of an affiliate, for purposes of computing compliance with the quantitative limits and collateral requirements of section 23A, in accordance with the valuation principles for purchases of debt securities and not those for extensions of credit.

[107] The carve-out for insured branches is explicitly required by the Federal Deposit Insurance Act, which provides that a foreign bank should not be treated as a member bank under section 23A solely because the foreign bank has an insured branch. 12 U.S.C. 1828(j)(3)(A).

[108] 12 U.S.C. 371c(a)(1).

[109] 12 CFR 250.242.

[110] *See, e.g.,* 12 CFR part 225, appendix A.

[111] 12 CFR 32.2(b).

[112] 12 CFR 215.2(i); *see also* 61 FR 19805, May 3, 1996.

[113] 12 U.S.C. 24a(c)(1).

[114] 12 U.S.C. 1831w(a)(2).

denominator of the fraction). Accordingly, a bank with a financial subsidiary may add back to its section 23A ''capital stock and surplus'' the amount of any investment in a financial subsidiary that counts as a covered transaction and is required to be deducted from the bank's capital for regulatory capital purposes.

3. *Control—223.26(f).* Section 23A provides that a company or shareholder shall be deemed to have control over another company if, among other things, such company or shareholder controls in any manner the election of a majority of the ''directors or trustees'' of the other company.[115] Regulation W expands this prong of the control definition to conform it to the control definition contained in the Board's Regulation Y by adding that control also exists when a company or shareholder controls the election of a majority of the ''general partners (or individuals exercising similar functions)'' of another company. This expansion of the control definition is intended to ensure that banks understand that a company or shareholder would be deemed to control another company (including a partnership, limited liability company, or other similar organization) if the company or shareholder controlled the election of a majority of the principal policymakers of such other company.

In addition, the regulation includes two additional presumptions of control that are similar to presumptions contained in Regulation Y. First, a company will be deemed to control securities, assets, or other ownership interests controlled by any subsidiary of the company.[116] Second, a company that controls securities (including options and warrants) that are convertible, at the option of the holder or owner, into other securities, will be deemed to control the other securities.[117]

4. *Low-quality asset—223.26(q).* Two provisions of section 23A restrict a bank's ability to engage in transactions with affiliates that involve low-quality assets. First, the statute prohibits a bank from purchasing a low-quality asset from an affiliate unless the bank performed an independent credit evaluation and committed itself to purchase the asset prior to the asset's acquisition by the affiliate.[118] Second, the statute prohibits a bank from counting a low-quality asset toward section 23A's collateral requirements for a credit transaction with an affiliate.[119]

For purposes of these provisions, section 23A defines a low-quality asset to include (i) an asset classified as ''substandard,'' ''doubtful,'' or ''loss'' or treated as ''other loans especially mentioned'' in the most recent report of examination or inspection by a Federal or State supervisory agency (a ''classified asset''); (ii) an asset in nonaccrual status; (iii) an asset on which payments are more than thirty days past due; or (iv) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.[120] The Board notes that any asset meeting one of the above four criteria, including securities and real property, is a low-quality asset.[121]

The regulation broadens the definition of low-quality asset in three ways. First, the regulation provides that an asset identified by examiners as an ''other transfer risk problem'' (''OTRP'') is a low-quality asset. Such assets represent credits to countries that are not complying with their external debt-service obligations, but are taking positive steps to restore debt service through economic adjustment measures, generally as part of an International Monetary Fund program. Although OTRP assets are not considered classified assets, examiners are instructed to consider such assets in their assessment of a bank's asset quality and capital adequacy.[122] The Board asks for comment on the appropriateness of treating OTRP assets as low-quality assets under section 23A.

Second, the regulation reflects the increasing use by financial institutions of their own internal asset classification systems. A recent Board study of the 50 largest U.S. banks demonstrated that all use internal loan classifications, and a substantial proportion of such institutions have relatively advanced internal rating systems.[123] Although there is considerable variance in how large banks rate performing assets, the banks generally use the same categories employed by the Federal banking agencies for rating classified assets.

Because examinations may be twelve months apart—eighteen months for smaller banks—these internal classification systems may cause a bank to regrade an asset long before its next examination. Accordingly, the Board is proposing to include within the definition of low-quality asset not only assets classified during the last examination but also assets classified by the affiliate's internal classification system (or assets that received an internal rating that is substantially equivalent to classified in such an internal system). These assets generally have been renegotiated or compromised because the borrower is in financial distress and, thus, typically would meet the fourth prong of the statutory definition of low-quality asset. Moreover, the purchase of such assets by a bank raises safety and soundness concerns.

The Board has some concern that this interpretation may induce companies to avoid or defer reclassification of an asset in order to allow its sale to an affiliated bank, but believes that such evasions can be addressed through the examination process. The Board expects companies with internal rating systems to use the systems consistently over time and over similar classes of assets and will view as an evasion of section 23A any company's deferral or alteration of an asset's rating to facilitate sale of the asset to an affiliated bank.

Finally, the proposed rule defines low-quality asset to include foreclosed property designated ''other real estate owned,'' until it is reviewed by an examiner and receives a favorable classification. In the Board's experience, such property is often of such poor quality that its ownership poses the same risk to the bank as a low-quality loan that was purchased or taken as collateral.

5. *Securities—223.26(w).* Section 23A defines ''securities'' to mean ''stocks, bonds, debentures, notes, or other similar obligations.''[124] In light of the ambiguous nature of this definition, the Board generally has looked to the securities laws for guidance in determining which financial instruments should be considered securities for purposes of section 23A. In light of the similarities between commercial paper and debentures and notes and the countervailing fact that the Securities Exchange Act of 1934 excludes some forms of commercial

[115] 12 U.S.C. 371c(b)(3)(A)(ii).

[116] *See* 12 CFR 225.2(e)(2)(i).

[117] *See* 12 CFR 225.31(d)(1)(i).

[118] 12 U.S.C. 371c(a)(3).

[119] 12 U.S.C. 371c(c)(3).

[120] 12 U.S.C. 371c(b)(10).

[121] The Federal banking agencies generally consider non-investment grade securities to be classified assets. *See, e.g.,* ''Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks'' (May 7, 1979); *Federal Reserve Commercial Bank Examination Manual* § 2020.1. The Board also notes that assets identified by examiners through the Shared National Credit and International Country Exposure Review Committee processes should be considered classified assets for purposes of section 23A.

[122] *See Federal Reserve Commercial Bank Examination Manual* § 7040.1.

[123] William F. Treacy & Mark S. Carey, *Credit Risk Rating at Large U.S. Banks,* 84 *Federal Reserve Bulletin* 897 (1998).

[124] 12 U.S.C. 371c(b)(9).

paper from its definition of security,[125] the proposed regulation clarifies that commercial paper is a security for purposes of section 23A. Accordingly, as discussed in more detail above, when a bank purchases commercial paper issued by an affiliate, the bank makes an extension of credit to the affiliate (which must be secured in accordance with section 23A's collateral requirements) and purchases securities issued by the affiliate for purposes of section 23A.

6. *Voting securities—223.26(aa).* Section 23A uses both the terms ''voting shares'' and ''voting securities.'' To remove any ambiguity and to provide additional guidance to banks, the proposed regulation replaces all statutory uses of the term ''voting shares'' with the term ''voting securities'' and defines ''voting securities'' to have the same meaning as ''voting securities'' in Regulation Y.[126]

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this rulemaking. Sections 23A and 23B of the Federal Reserve Act limit transactions between a bank and its affiliates and authorize the Board to issue regulations as may be necessary to administer and carry out the purposes of the sections. The proposed rule would comprehensively implement these sections of the Federal Reserve Act. The rule would simplify for banks the task of complying with the sections and would help ensure that the sections are consistently interpreted and applied by the Federal banking agencies and the banking industry. A description of the reasons why action by the Board is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary material provided above.

The proposed rule would apply to all banks regardless of their size. Although the rule potentially affects all banks, the regulation mainly codifies existing practice. The Board specifically seeks comment on the likely burden that the proposed rule would impose on banks.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Board has reviewed the proposed 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 proposed rule.

Solicitation of Comments Regarding Use of ''Plain Language''

Section 722 of the GLB Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the proposed rule easier to understand, including answers to the following questions:

(1) Has the Board organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

(4) Would a different format (with respect to grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, title 12, chapter II of the Code of Federal Regulations is proposed to be amended by adding a new part 223 to read as follows:

PART 223—TRANSACTIONS BETWEEN BANKS AND THEIR AFFILIATES (REGULATION W)

Subpart A Introduction

Sec.
223.1 Authority, purpose, and scope.

Subpart B—General Provisions of Section 23A

223.2 What is the maximum amount of covered transactions that a bank may enter into with any single affiliate?
223.3 What is the maximum amount of covered transactions that a bank may enter into with all affiliates?
223.4 What safety and soundness requirement applies to covered transactions?
223.5 What are the collateral requirements for a credit transaction with an affiliate?
223.6 May a bank purchase a low-quality asset from an affiliate?
223.7 What transactions by a bank with any person are treated as transactions with an affiliate?

Subpart C—Valuation and Timing Principles Under Section 23A

223.8 What valuation and timing principles apply to credit transactions?
223.9 What valuation and timing principles apply to asset purchases?
223.10 What valuation and timing principles apply to purchases of and investments in securities issued by an affiliate?
223.11 What valuation principles apply to extensions of credit secured by affiliate securities?

Subpart D—Other Considerations Under Section 23A

223.12 How does section 23A apply to a bank's acquisition of an affiliate that becomes a subsidiary of the bank after the acquisition?
223.13 What rules apply to financial subsidiaries of a bank?
223.14 What rules apply to derivative contracts? [Reserved]

Subpart E—Exemptions From the Provisions of Section 23A

223.15 What covered transactions between a bank and an insured depository institution are exempt from the quantitative limits and collateral requirements?
223.16 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?
223.17 What are the standards under which the Board may grant additional exemptions from the requirements of section 23A?

Subpart F—General Provisions of Section 23B

223.18 What is the market terms requirement of section 23B?
223.19 What transactions with affiliates or others must comply with section 23B's market terms requirement?
223.20 What asset purchases are prohibited by section 23B?
223.21 What advertisements and statements are prohibited by section 23B?
223.22 What are the standards under which the Board may grant exemptions from the requirements of section 23B?

Subpart G—Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks

223.23 How do sections 23A and 23B apply to U.S. branches and agencies of foreign banks?

Subpart H—Definitions of Terms

223.24 What is an ''affiliate'' for purposes of sections 23A and 23B?
223.25 What transactions with affiliates are covered by section 23A?
223.26 What are the meanings of the other terms used in sections 23A and 23B?

Authority: 12 U.S.C. 371c(b)(1) (E) and (f), 371c–1(e), 1828(j), 1468.

[125] *See* 15 U.S.C. 78c(a)(10).

[126] *See* 12 CFR 225.2(q).

Subpart A—Introduction

§ 223.1 Authority, purpose, and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation W) under the authority of sections 23A(f)(1) and 23B(e) of the Federal Reserve Act (12 U.S.C. 371c(f)(1), 371c–1(e)).

(b) *Purpose.* Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) establish certain quantitative limits and other prudential requirements for loans, purchases of assets, and certain other transactions between a bank and its affiliates. This Regulation W implements sections 23A and 23B by defining terms used in those sections, explaining the requirements of the sections, and exempting certain transactions from certain of the requirements.

(c) *Scope.* Sections 23A and 23B apply by their terms to ''member banks''—that is, national banks, State banks, trust companies, and other institutions that are members of the Federal Reserve System. The Federal Deposit Insurance Act (12 U.S.C. 1828(j)) subjects insured nonmember banks to sections 23A and 23B as if they were member banks. Accordingly, this Regulation W applies to member banks and insured nonmember banks, and uses the term ''banks'' to describe the companies that are subject to its provisions. This regulation implements sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1); it does not contain every statutory or regulatory restriction on transactions between banks and their affiliates, including those that may apply to banks subject to prompt corrective action under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

Subpart B—General Provisions of Section 23A

§ 223.2 What is the maximum amount of covered transactions that a bank may enter into with any single affiliate?

A bank may not engage in a covered transaction with an affiliate if the aggregate amount of the bank's covered transactions with any affiliate would exceed 10 percent of the capital stock and surplus of the bank.

§ 223.3 What is the maximum amount of covered transactions that a bank may enter into with all affiliates?

A bank may not engage in a covered transaction with any affiliate if the aggregate amount of the bank's covered transactions with all affiliates would exceed 20 percent of the capital stock and surplus of the bank.

§ 223.4 What safety and soundness requirement applies to covered transactions?

A bank may not engage in any covered transaction, including any covered transaction exempt under this regulation, unless the transaction is on terms and conditions that are consistent with safe and sound banking practices.

§ 223.5 What are the collateral requirements for a credit transaction with an affiliate?

(a) *Collateral required for extensions of credit and certain other covered transactions.* A bank must ensure that each of its credit transactions with an affiliate is secured by the amount of collateral required by paragraph (b) of this section at the time of the transaction.

(b) *Amount of collateral required.* A credit transaction described in paragraph (a) of this section must be secured by collateral having a market value equal to at least:

(1) 100 percent of the amount of the transaction, if the collateral is:

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(iii) Notes, drafts, bills of exchange, or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(iv) A segregated, earmarked deposit account with the bank that is for the sole purpose of securing the transaction and is so identified;

(2) 110 percent of the amount of the transaction, if the collateral is obligations of any State or political subdivision of any State;

(3) 120 percent of the amount of the transaction, if the collateral is other debt instruments, including loans and other receivables; or

(4) 130 percent of the amount of the transaction, if the collateral is stock, leases, or other real or personal property.

(c) *Ineligible collateral.* The following items are not eligible collateral for purposes of this section:

(1) Low-quality assets;

(2) Securities issued by any affiliate or the bank;

(3) Intangible assets, including servicing assets; and

(4) Guarantees and letters of credit.

(d) *Perfection and priority requirements for collateral.* (1) A bank must maintain a security interest in collateral required by this section that is perfected and enforceable under applicable law, including in the event of default resulting from insolvency, liquidation, or similar circumstances.

(2) A bank either must obtain a first priority security interest in collateral required by this section or must deduct from the value of collateral obtained by the bank the lesser of:

(i) The amount of any security interest in the collateral that is senior to that of the bank; or

(ii) The amount of any credit secured by the collateral that is senior to that of the bank.

(e) *Replacement requirement for retired or amortized collateral.* A bank must replace any required collateral that subsequently is retired or amortized with additional eligible collateral as needed to keep the percentage of the collateral value relative to the amount of the outstanding credit transaction equal to the minimum percentage required at the inception of the transaction.

(f) *Inapplicability of the collateral requirements to certain acceptances.* The collateral requirements of this section do not apply to an acceptance that already is fully secured either by attached documents or by other property that is involved in the transaction and has an ascertainable market value.

(g) *Inapplicability of the collateral requirements to the undrawn portion of certain extensions of credit.* The collateral requirements of this section do not apply to the undrawn portion of an extension of credit to an affiliate so long as the bank does not have any legal obligation to advance additional funds under the extension of credit until the affiliate posts the amount of collateral required by paragraph (b) of this section with respect to the entire drawn portion of the extension of credit.

§ 223.6 May a bank purchase a low-quality asset from an affiliate?

(a) *In general.* A bank may not purchase a low-quality asset from an affiliate unless the bank, pursuant to an independent credit evaluation, committed itself to purchase the asset prior to the time the asset was acquired by the affiliate.

(b) *Exemption for renewals of loan participations involving problem loans.* The prohibition contained in paragraph (a) of this section does not apply to the renewal of, or extension of additional credit with respect to, a bank's participation in a loan to a nonaffiliate that was originated by an affiliated depository institution if:

(1) The loan was not a low-quality asset at the time the bank purchased its participation;

(2) The renewal or extension of additional credit is approved by the board of directors of the participating bank as necessary to protect the bank's

investment by enhancing the ultimate collection of the original indebtedness;

(3) The participating bank's share of the renewal or additional extension of credit does not exceed its proportional share of the original transaction; and

(4) The participating bank provides its appropriate Federal banking agency with 20 days' prior notice of the proposed renewal or additional extension of credit.

§ 223.7 What transactions by a bank with any person are treated as transactions with an affiliate?

(a) *In general.* A bank must treat any of its transactions with any person as a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.

(b) *Exemptions.* Notwithstanding paragraph (a) of this section, the following transactions are not subject to the quantitative limits of §§ 223.2 and 223.3 or the collateral requirements of § 223.5. The transactions are, however, subject to the safety and soundness requirement of § 223.4, the prohibition on the purchase of a low-quality asset of § 223.6, and the market terms requirement and other provisions of subpart F of this part.

(1) *Certain riskless principal transactions.* An extension of credit by a bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used to purchase a security through a securities affiliate of the bank, and the securities affiliate is acting exclusively as a riskless principal for the nonaffiliate in the transaction;

(ii) The security purchased by the nonaffiliate is not issued or underwritten by, or sold out of the inventory of, any affiliate of the bank; and

(iii) Any riskless principal mark-up or other compensation received by the affiliate from the proceeds of the extension of credit meets the market terms standard set forth in paragraph (b)(2) of this section.

(2) *Brokerage commissions, agency fees, and riskless principal mark-ups.* An affiliate's retention of a portion of the proceeds of an extension of credit described in paragraph (b)(1) of this section or in 12 CFR 250.243 as a brokerage commission, agency fee, or riskless principal mark-up, if that commission, fee, or mark-up is substantially the same as, or lower than, those prevailing at the same time for comparable transactions with or involving other nonaffiliates, in accordance with the market terms requirement of § 223.18.

(3) *Preexisting lines of credit.* An extension of credit by a bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used to purchase a security from or through a securities affiliate of the bank; and

(ii) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a preexisting line of credit that was not established in contemplation of the purchase of securities from or through an affiliate of the bank.

(4) *General purpose credit card transactions.* An extension of credit by a bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used by the nonaffiliate to purchase a product or service from an affiliate of the bank; and

(ii) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a general purpose credit card issued by the bank to the nonaffiliate.

Subpart C—Valuation and Timing Principles under Section 23A

§ 223.8 What valuation and timing principles apply to credit transactions?

(a) *Valuation.* (1) *Initial valuation of direct credit transactions.* Except as provided in paragraph (a)(2) or (3) of this section, a credit transaction with an affiliate initially must be valued at the sum of:

(i) The amount provided to, or on behalf of, the affiliate in the transaction; and

(ii) Any additional amount that the bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(2) *Initial valuation of indirect credit transactions.* If a bank acquires a credit transaction with an affiliate, the covered transaction initially must be valued at the sum of:

(i) The total amount of consideration given (including liabilities assumed) by the bank in exchange for the credit transaction; and

(ii) Any additional amount that the bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(3) *Debt securities.* The valuation principles of paragraphs (a)(1) and (2) of this section do not apply to a bank's purchase of or investment in a debt security issued by an affiliate, which is governed by § 223.10.

(b) *Timing.* (1) *In general.* A bank engages in a credit transaction with an affiliate:

(i) At the time during the day that the bank becomes legally obligated to make an extension of credit to, issue a guarantee, acceptance, or letter of credit on behalf of, or confirm a letter of credit issued by, an affiliate; and

(ii) At the time during the day that the bank acquires an extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(2) *Credit transactions by a bank with a nonaffiliate that becomes an affiliate of the bank.* (i) *In general.* A credit transaction with a nonaffiliate becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the bank. The bank must ensure that any such credit transaction complies with the collateral requirements of § 223.5 promptly after the nonaffiliate becomes an affiliate. The bank also must treat the amount of any such credit transaction as part of the aggregate amount of the bank's covered transactions for purposes of determining compliance with the quantitative limits of §§ 223.2 and 223.3 in connection with any future covered transactions. Except as described in paragraph (b)(2)(ii) of this section, the bank is not required to reduce the amount of its covered transactions with any affiliate because the nonaffiliate has become an affiliate.

(ii) *Credit transactions by a bank with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank.* In addition to the provisions of paragraph (b)(2)(i) of this section, if a bank engages in a credit transaction with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, the bank must ensure that the aggregate amount of the bank's covered transactions (including any such transaction with the nonaffiliate) would not exceed the quantitative limits of §§ 223.2 or 223.3 at the time the nonaffiliate becomes an affiliate.

(iii) *Example.* A bank with capital stock and surplus of $1,000 and no outstanding covered transactions makes a $120 unsecured loan to a nonaffiliate. Several years later, the bank's holding company purchases all the stock of the nonaffiliate, thereby making the nonaffiliate an affiliate of the bank. Promptly after the time of the stock acquisition, the bank must ensure that the loan is in compliance with the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c). The bank will not be in violation of the quantitative limits of section 23A at the time of the stock acquisition (unless the loan was made by the bank in contemplation of the nonaffiliate becoming an affiliate). The bank will, however, be prohibited from engaging in any additional covered transactions until such time as the value of the loan

transaction falls below 10 percent of the bank's capital stock and surplus.

§ 223.9 What valuation and timing principles apply to asset purchases?

(a) *Valuation.* (1) *In general.* Unless the transaction is described in § 223.12, a purchase of an asset (other than a security issued by an affiliate or a note or obligation of an affiliate) by a bank from an affiliate must be valued initially at the total amount of consideration given (including liabilities assumed) by the bank in exchange for the asset. The value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP.

(2) *Examples of the valuation of asset purchases.* The following are examples of how to value a bank's purchase of an asset from an affiliate.

(i) *Cash purchase of assets.* A bank purchases a pool of loans from an affiliate for $10 million. The bank initially must value the covered transaction at $10 million. Going forward, if the borrowers on the loans pay down $6 million of the principal amount of the loans, the bank may value the covered transaction at $4 million.

(ii) *Purchase of assets through an assumption of liabilities.* An affiliate of a bank contributes real property with a fair market value of $200,000 to the bank. The bank pays the affiliate no cash for the property, but assumes a $50,000 mortgage on the property. The bank has engaged in a covered transaction with the affiliate and initially must value the transaction at $50,000. Going forward, if the bank retains the real property but pays off the mortgage, the bank must continue to value the covered transaction at $50,000.

(b) *Timing.* (1) *In general.* A purchase of an asset remains a covered transaction for a bank for as long as the bank holds the asset.

(2) *Asset purchases by a bank from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank.* If a bank purchases assets from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, the asset purchase becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the bank. In addition, the bank must ensure that the aggregate amount of the bank's covered transactions (including any such transaction with the nonaffiliate) would not exceed the quantitative limits of §§ 223.2 or 223.3 at the time the nonaffiliate becomes an affiliate.

§ 223.10 What valuation and timing principles apply to purchases of and investments in securities issued by an affiliate?

(a) *Valuation.* (1) *In general.* Except as provided in paragraph (b) of § 223.13 with respect to securities issued by a financial subsidiary, a bank's purchase of or investment in a security issued by an affiliate must be valued at the greater of:

(i) The total amount of consideration given (including liabilities assumed) by the bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; or

(ii) The carrying value of the security on the financial statements of the bank, determined in accordance with GAAP.

(2) *Examples of the valuation of purchases of and investments in the securities of an affiliate (other than a financial subsidiary).* The following are examples of how to value a bank's purchase of or investment in securities issued by an affiliate (other than a financial subsidiary). Examples of how to value a bank's purchase of or investment in securities issued by a financial subsidiary are provided in paragraph (b)(3) of § 223.13.

(i) *Purchase of the debt securities of an affiliate that is not a financial subsidiary.* The parent holding company of a bank owns 100 percent of the shares of a mortgage company. The bank purchases debt securities issued by the mortgage company for $600. The initial carrying value of the securities on the bank's GAAP financial statements is $600. The bank initially must value the investment at $600.

(ii) *Purchase of the shares of an affiliate that is not a financial subsidiary.* The parent holding company of a bank owns 51 percent of the shares of a mortgage company. The bank purchases an additional 30 percent of the shares of the mortgage company from a third party for $100. The initial carrying value of the shares on the bank's GAAP financial statements is $100. The bank initially must value the investment at $100. Going forward, if the bank's carrying value of the shares declines to $40, the bank must continue to value the investment at $100.

(iii) *Contribution of the shares of an affiliate that is not a financial subsidiary.* The parent holding company of a bank owns 100 percent of the shares of a mortgage company and contributes 30 percent of the shares to the bank. The bank gives no consideration in exchange for the shares. If the initial carrying value of the shares on the bank's GAAP financial statements is $300, then the bank initially must value the investment at $300. Going forward, if the bank's carrying value of the shares increases to $500, the bank must value the investment at $500.

(b) *Timing.* A purchase of or investment in a security issued by an affiliate remains a covered transaction for a bank for as long as the bank holds the security.

§ 223.11 What valuation principles apply to extensions of credit secured by affiliate securities?

(a) *Valuation of extensions of credit secured exclusively by affiliate securities.* An extension of credit by a bank to a nonaffiliate secured exclusively by securities issued by an affiliate of the bank must be valued at the lesser of:

(1) The total value of the extension of credit; or

(2) The fair market value of the affiliate's securities that are pledged as collateral, if such securities meet the market quotation standard contained in paragraph (e)(1) of § 223.16 or the standards set forth in paragraphs (e)(2)(i) and (v) of § 223.16.

(b) *Valuation of extensions of credit secured by affiliate securities and other collateral.* An extension of credit by a bank to a nonaffiliate secured in part by securities issued by an affiliate of the bank and in part by other collateral must be valued at the lesser of:

(1) The total value of the extension of credit less the fair market value of the nonaffiliate collateral; or

(2) The fair market value of the affiliate's securities that are pledged as collateral, if such securities meet the market quotation standard contained in paragraph (e)(1) of § 223.16 or the standards set forth in paragraphs (e)(2)(i) and (v) of § 223.16.

Subpart D—Other Considerations Under Section 23A

§ 223.12 How does section 23A apply to a bank's acquisition of an affiliate that becomes a subsidiary of the bank after the acquisition?

(a) *Certain acquisitions by a bank of securities issued by an affiliate are treated as a purchase of assets from an affiliate.* A bank's acquisition of a security issued by a company that was an affiliate of the bank before the acquisition is treated as a purchase of the assets of an affiliate, if:

(1) As a result of the transaction, the company becomes a subsidiary of the bank and ceases to be an affiliate of the bank; and

(2) The company has liabilities, or the bank gives cash or any other consideration in exchange for the security.

(b) *Valuation.* A transaction described in paragraph (a) of this section but not exempt under paragraph (d) of this section must be valued initially at the sum of:

(1) The total amount of consideration given by the bank in exchange for the security; and

(2) The total liabilities of the company whose securities have been acquired by the bank, as of the time of the acquisition.

(c) *Valuation example.* The parent holding company of a bank contributes between 25 and 100 percent of the voting shares of a mortgage company to the bank. The bank gives no consideration in exchange for the shares. The mortgage company has total assets of $300,000 and total liabilities of $100,000. As a result of the transaction, the mortgage company becomes a subsidiary of the bank and ceases to be an affiliate of the bank. The transaction is treated as a purchase of the assets of the mortgage company by the bank from an affiliate under paragraph (a) of this section. The bank initially must value the transaction at $100,000, the total amount of the liabilities of the mortgage company.

(d) *Exemption for step transactions.* A transaction described in paragraph (a) of this section is not subject to the provisions of subpart B of this part (other than the safety and soundness requirement of § 223.4) if:

(1) The bank acquires the securities issued by the company immediately after the company becomes an affiliate of the bank;

(2) The bank acquires all the securities of the company that were transferred in connection with the transaction that made the company an affiliate of the bank; and

(3) The acquisition complies with the market terms requirement of § 223.18.

§ 223.13 What rules apply to financial subsidiaries of a bank?

(a) *Exemption from the 10 percent limit for covered transactions between a bank and a single financial subsidiary.* The 10 percent quantitative limit contained in § 223.2 does not apply with respect to covered transactions between a bank and a financial subsidiary of the bank. The 20 percent quantitative limit contained in § 223.3 does apply to such transactions.

(b) *Valuation of purchases of or investments in the securities of a financial subsidiary.* (1) *General rule.* A bank's purchase of or investment in a security issued by a financial subsidiary must be valued at the greater of:

(i) The total amount of consideration given (including liabilities assumed) by the bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; and

(ii) The carrying value of the security on the financial statements of the bank, determined in accordance with GAAP but without reflecting the bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the security.

(2) *Carrying value of an investment in a consolidated financial subsidiary.* If a financial subsidiary is consolidated with its parent bank under GAAP, the carrying value of the bank's investment in securities issued by the financial subsidiary shall be equal to the carrying value of the securities on parent-only financial statements of the bank, determined in accordance with GAAP but without reflecting the bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the securities.

(3) *Examples of the valuation of purchases of and investments in the securities of a financial subsidiary.* The following are examples of how a bank must value its purchase of or investment in the securities of a financial subsidiary. Each example involves a securities underwriter that becomes a financial subsidiary of the bank after the transactions described below.

(i) *Initial valuation.* (A) *Direct acquisition by a bank.* A bank pays $500 to acquire 100 percent of the shares of a securities underwriter. The initial carrying value of the shares on the bank's parent-only GAAP financial statements is $500. The bank initially must value the investment at $500.

(B) *Contribution of a financial subsidiary to a bank.* The parent holding company of a bank acquires 100 percent of the shares of a securities underwriter in a transaction valued at $500, and immediately contributes the shares to the bank. The bank gives no consideration in exchange for the shares. The bank initially must value the investment at the carrying value of the shares on the bank's parent-only GAAP financial statements. If the parent holding company's acquisition of the securities underwriter was accounted for as a purchase, the bank's initial carrying value of the shares would be $500. Alternatively, if the parent holding company's acquisition of the securities underwriter was accounted for as a pooling-of-interests, the bank's initial carrying value of the shares would equal the book value of the underwriter prior to the acquisition, which may be less than $500.

(ii) *Carrying value not adjusted for earnings and losses of the financial subsidiary.* A bank and its parent holding company engage in the transaction described in paragraph (b)(3)(i)(B) of this section, and the bank initially values the investment at $500. In the following year, the securities underwriter earns $25 in profit, which is added to its retained earnings. The bank's carrying value of the shares of the underwriter is not adjusted for purposes of this part, and the bank must continue to value the investment at $500. If, however, the bank contributes $100 of additional capital to the securities underwriter, the bank must value the investment at $600.

(c) *Treatment of an affiliate's investments in, and extensions of credit to, a financial subsidiary of a bank.* (1) *Investments.* Any purchase of, or investment in, the securities of a financial subsidiary of a bank by an affiliate of the bank (other than an affiliate that is itself a bank or an insured savings association) will be treated as a purchase of or investment in such securities by the bank.

(2) *Extensions of credit.* Any extension of credit to a financial subsidiary of a bank by an affiliate of the bank (other than an affiliate that is itself a bank or an insured savings association) will be treated as an extension of credit by the bank to the financial subsidiary, if the Board determines, by regulation or order, that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act or the Gramm-Leach-Bliley Act.

(3) *An extension of credit that is treated as regulatory capital of the financial subsidiary.* The Board has determined, under the authority of paragraph (c)(2) of this section, that any extension of credit to a financial subsidiary of a bank by an affiliate of the bank (other than an affiliate that is itself a bank or an insured savings association) will be treated as an extension of credit by the bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

§ 223.14 What rules apply to derivative contracts? [Reserved]

Subpart E—Exemptions From the Provisions of Section 23A

§ 223.15 What covered transactions between a bank and an insured depository institution are exempt from the quantitative limits and collateral requirements?

The following transactions are not subject to the quantitative limits of §§ 223.2 and 223.3 or the collateral requirements of § 223.5. The transactions are, however, subject to the safety and soundness requirement of § 223.4 and the prohibition on the purchase of a low-quality asset of § 223.6.

(a) *Parent institution/subsidiary institution transactions.* Transactions with an insured depository institution if the bank controls 80 percent or more of the voting securities of the insured depository institution or the insured depository institution controls 80 percent or more of the voting securities of the bank;

(b) *Transactions between a bank and an insured depository institution owned by the same holding company.* Transactions with an insured depository institution if the same company controls 80 percent or more of the voting securities of the bank and the insured depository institution; and

(c) *Certain loan purchases from an affiliated insured depository institution.* Purchasing a loan on a nonrecourse basis from an affiliated insured depository institution.

§ 223.16 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

The following transactions are not subject to the quantitative limits of §§ 223.2 and 223.3, the collateral requirements of § 223.5, or the prohibition on the purchase of a low-quality asset of § 223.6. The transactions are, however, subject to the safety and soundness requirement of § 223.4.

(a) *Making correspondent banking deposits.* Making a deposit in an affiliated depository institution or affiliated foreign bank that represents an ongoing, working balance maintained in the ordinary course of correspondent business;

(b) *Giving credit for uncollected items.* Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(c) *Transactions secured by cash or U.S. government securities.* Engaging in a credit transaction with an affiliate that is fully secured by:

(1) Obligations of the United States or its agencies;

(2) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(3) A segregated, earmarked deposit account with the bank that is for the sole purpose of securing the credit transaction and is identified as such;

(d) *Purchasing securities of a servicing affiliate.* Purchasing a security issued by any company engaged solely in providing services described in section 4(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1));

(e) *Purchasing certain liquid assets.* (1) Purchasing an asset (other than a security issued by an affiliate) having a readily identifiable and publicly available market quotation and purchased at or below the asset's current market quotation. An asset has a readily identifiable and publicly available market quotation if:

(i) The asset's price is quoted routinely in a widely disseminated news source; or

(ii) The asset is an obligation of the United States or its agencies or an obligation fully guaranteed by the United States or its agencies as to principal and interest; or

(2) Purchasing a security from a securities affiliate, if:

(i) The security has a ''ready market,'' as defined in 17 CFR 240.15c3–1(c)(11)(i);

(ii) The security is eligible for a State member bank to purchase directly, subject to the same terms and conditions that govern the investment activities of a State member bank, and the bank records the transaction as a purchase of a security for purposes of the bank Call Report, consistent with the requirements for a State member bank;

(iii) The security is not a low-quality asset;

(iv) The bank does not purchase the security during an underwriting, or within 30 days of an underwriting, if an affiliate is an underwriter of the security, unless the security is purchased as part of an issue of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies;

(v) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(A) The price paid by the bank is at or below the current market quotation for the security; and

(B) The size of the transaction executed by the bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; and

(vi) The security is not issued by an affiliate, unless the security is an obligation fully guaranteed by the United States or its agencies as to principal and interest.

(f) *Purchasing municipal securities.* Purchasing a municipal security from a securities affiliate if:

(1) The security is rated by a nationally recognized statistical rating agency or is part of an issue of securities that does not exceed $25 million;

(2) The security is eligible for purchase by a State member bank, subject to the same terms and conditions that govern the investment activities of a State member bank, and the bank records the transaction as a purchase of a security for purposes of the bank Call Report, consistent with the requirements for a State member bank; and

(3)(i) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(A) The price paid by the bank is at or below the current market quotation for the security; and

(B) The size of the transaction executed by the bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; or

(ii) The price paid for the security can be verified by reference to two or more actual, current price quotes from unaffiliated broker-dealers on the exact security to be purchased or a security comparable to the security to be purchased, where:

(A) The price quotes obtained from the unaffiliated broker-dealers are based on a transaction similar in size to the transaction that is actually executed; and

(B) The price paid is no higher than the average of the price quotes; or

(iii) The price paid for the security can be verified by reference to the written summary provided by the syndicate manager to syndicate members that discloses the aggregate par values and prices of all bonds sold from the syndicate account, if the bank:

(A) Purchases the municipal security during the underwriting period;

(B) Obtains a copy of the summary from its securities affiliate and retains the summary for three years; and

(C) Purchases the municipal security at a price that is at or below that indicated in the summary;

(g) *Purchasing an extension of credit subject to a repurchase agreement.*

Purchasing from an affiliate an extension of credit that was originated by the bank and sold to the affiliate subject to a repurchase agreement or with recourse;

(h) *Asset purchases by a de novo bank.* The purchase of an asset from an affiliate by a de novo bank, if the appropriate Federal banking agency for the bank has approved the asset purchase in writing in connection with its review of the formation of the bank;

(i) *Transactions approved under the Bank Merger Act.* Any merger or consolidation between a bank and an affiliated insured depository institution, or any acquisition of assets or assumption of deposit liabilities by a bank from an affiliated insured depository institution, if the transaction has been approved by the responsible Federal banking agency pursuant to the Bank Merger Act (12 U.S.C. 1828(c));

(j) *Purchasing an extension of credit from an affiliate.* Purchasing an extension of credit from an affiliate, if:

(1) The bank makes an independent evaluation of the creditworthiness of the borrower prior to the affiliate making or committing to make the extension of credit;

(2) The bank commits to purchase the extension of credit prior to the affiliate making or committing to make the extension of credit;

(3) The bank does not make a blanket advance commitment to purchase extensions of credit from the affiliate;

(4) The dollar amount of the bank's total accumulated purchases from the affiliate, when aggregated with all other assets purchased from the affiliate by banks and insured savings associations that are affiliates of the bank, does not represent more than 50 percent of the dollar amount of extensions of credit originated by the affiliate; and

(5) The bank and its affiliated banks and insured savings associations do not provide substantial, ongoing funding to the affiliate through this exemption.

(k) *Certain intraday extensions of credit.* (1) *In general.* An intraday extension of credit that arises in connection with the performance by a bank, in the ordinary course of business, of securities clearing and settlement transactions or payment transactions on behalf of an affiliate and effected through one or more accounts that the affiliate holds with the bank, if the bank:

(i) Has no reason to believe that the affiliate will have difficulty repaying the extension of credit in the ordinary course of business;

(ii) Establishes and maintains prudent limits on the net amount of intraday credit that the bank may extend to each affiliate, and all affiliates in the aggregate, and integrates these limits into the bank's overall credit risk exposure limits and systems;

(iii) Establishes and maintains policies, procedures, and systems reasonably designed to:

(A) Assess the credit quality of each affiliate that obtains an intraday extension of credit from the bank and determine each such affiliate's ability to repay such credit extensions;

(B) Periodically monitor each such affiliate's compliance with the established limits during the business day;

(C) Review an affiliate's intraday extensions of credit in the event of the affiliate's violation of the established limits; and

(D) Ensure that any intraday extension of credit received by an affiliate complies with the market terms requirement of § 223.18;

(iv) Maintains records and supporting information that are sufficient to enable the appropriate Federal banking agency to review the position limits and the policies, procedures, and systems described in paragraph (k)(1)(iii) of this section; and

(v) Treats any such extension of credit (regardless of jurisdiction) that exists at the end of the bank's business day in the United States, as a nonexempt covered transaction as of the end of the bank's business day in the United States (assuming no other exemption applies to the transaction at such time).

(2) *Definition of ''payment transactions''.* For purposes of this paragraph (k), ''*payment transactions*'' means transactions undertaken for the purpose of transferring funds to another account of the affiliate or to a third party and includes funds transfers, ACH transactions, check transactions, and other similar transactions.

§ 223.17 What are the standards under which the Board may grant additional exemptions from the requirements of section 23A?

(a) *The standards.* The Board may, at its discretion, by regulation or order, exempt transactions or relationships from the requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c) and subpart B of this Regulation W if it finds such exemptions to be in the public interest and consistent with the purposes of section 23A.

(b) *Procedure.* A bank may request an exemption from the requirements of section 23A and subpart B of this Regulation W by submitting a written request to the General Counsel of the Board.

Subpart F—General Provisions of Section 23B

§ 223.18 What is the market terms requirement of section 23B?

A bank may not engage in a transaction described in § 223.19 unless the transaction is:

(a) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates; or

(b) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliates.

§ 223.19 What transactions with affiliates or others must comply with section 23B's market terms requirement?

(a) The market terms requirement of § 223.18 applies to the following transactions:

(1) Any covered transaction with an affiliate, unless the transaction is:

(i) Exempt under § 223.15 or paragraphs (a) through (e)(1) or (g) through (i) of § 223.16; and

(ii) Consistent with the safety and soundness requirement of § 223.4;

(2) The sale of a security or other asset to an affiliate, including an asset subject to an agreement to repurchase;

(3) The payment of money or the furnishing of a service to an affiliate under contract, lease, or otherwise;

(4) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or to any other person; and

(5) Any transaction or series of transactions with a nonaffiliate, if an affiliate:

(i) Has a financial interest in the nonaffiliate; or

(ii) Is a participant in the transaction or series of transactions.

(b) For the purpose of this section, any transaction by a bank with any person will be deemed to be a transaction with an affiliate of the bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, the affiliate.

§ 223.20 What asset purchases are prohibited by section 23B?

(a) *Fiduciary purchases of assets from an affiliate.* A bank may not purchase as fiduciary any security or other asset from any affiliate unless the purchase is permitted:

(1) Under the instrument creating the fiduciary relationship;

(2) By court order; or

(3) By law of the jurisdiction governing the fiduciary relationship.

(b) *Purchase of a security underwritten by an affiliate.* (1) A bank, whether acting as principal or fiduciary, may not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the bank.

(2) Paragraph (b)(1) of this section does not apply if the purchase or acquisition of the security has been approved, before the security is initially offered for sale to the public, by a majority of the directors of the bank based on a determination that the purchase is a sound investment for the bank, or for the person on whose behalf the bank is acting as fiduciary, as the case may be, irrespective of the fact that an affiliate of the bank is a principal underwriter of the security.

(3) The approval requirement of paragraph (b)(2) of this section may be met if:

(i) A majority of the directors of the bank approves standards for the bank's acquisitions of securities described in paragraph (b)(1) of this section, based on the determination set forth in paragraph (b)(2) of this section;

(ii) Each acquisition described in paragraph (b)(1) of this section meets the standards; and

(iii) A majority of the directors of the bank periodically reviews acquisitions described in paragraph (b)(1) of this section to ensure that they meet the standards and periodically reviews the standards to ensure that they continue to meet the criterion set forth in paragraph (b)(2) of this section.

(c) *Special definitions.* For purposes of this section:

(1) *Principal underwriter* means any underwriter who, in connection with a primary distribution of securities:

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(2) *Security* has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

§ 223.21 What advertisements and statements are prohibited by section 23B?

(a) *In general.* A bank and its affiliates may not publish any advertisement or enter into any agreement stating or suggesting that the bank will in any way be responsible for the obligations of its affiliates.

(b) *Guarantees, acceptances, and letters of credit subject to section 23A.* Paragraph (a) of this section does not prohibit a bank from issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate to the extent otherwise permitted under this Regulation W.

§ 223.22 What are the standards under which the Board may grant exemptions from the requirements of section 23B?

The Board may prescribe regulations to exempt transactions or relationships from the requirements of section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) and subpart F of this Regulation W if it finds such exemptions to be in the public interest and consistent with the purposes of section 23B.

Subpart G—Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks

§ 223.23 How do sections 23A and 23B apply to U.S. branches and agencies of foreign banks?

(a) *Applicability of sections 23A and 23B to foreign banks engaged in underwriting insurance, underwriting or dealing in securities, merchant banking, or insurance company investment in the United States.* Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) and the provisions of this Regulation W apply to transactions between each U.S. branch, agency, or commercial lending company of a foreign bank and:

(1) Any affiliate of the foreign bank directly engaged in the United States in any of the following activities:

(i) Insurance underwriting pursuant to section 4(k)(4)(B) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(B));

(ii) Securities underwriting, dealing, or market making pursuant to section 4(k)(4)(E) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(E));

(iii) Merchant banking activities pursuant to section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) (but only to the extent that the proceeds of the transaction are used for the purpose of funding the affiliate's merchant banking activities);

(iv) Insurance company investment activities pursuant to section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(I)); or

(v) Any other activity designated by the Board;

(2) Any subsidiary of an affiliate described in paragraph (a)(1) of this section; and

(3) Any portfolio company (as defined in 12 CFR 225.177(c)) that the foreign bank or affiliate controls (for purposes of 12 CFR 225.173(d)(4)) and any company that would be an affiliate of the branch, agency, or commercial lending company of the foreign bank under paragraph (a)(9) of § 223.24 if the branch, agency, or commercial lending company were a bank.

(b) *Method of applying sections 23A and 23B to foreign banks.* (1) *In general.* Sections 23A and 23B of the Federal Reserve Act and the provisions of this Regulation W will apply to transactions described in paragraph (a) of this section in the same manner and to the same extent as if the branch, agency, or commercial lending company of the foreign bank were a bank and the companies described in paragraphs (a)(1) through (3) of this section were affiliates of the branch, agency, or commercial lending company.

(2) *Attribution rule.* Sections 23A and 23B of the Federal Reserve Act and the provisions of this Regulation W will apply to transactions between each U.S. branch, agency, or commercial lending company of a foreign bank and any person to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, a company described in paragraphs (a)(1) through (3) of this section.

(3) *Capital stock and surplus.* For purposes of §§ 223.2 and 223.3, the ''*capital stock and surplus*'' of a U.S. branch, agency, or commercial lending company of a foreign bank will be determined by reference to the capital of the foreign bank as calculated under its home country capital standards.

Subpart H—Definitions of Terms

§ 223.24 What is an ''affiliate'' for purposes of sections 23A and 23B?

(a) For purposes of this part and except as provided in paragraphs (b) and (c) of this section, ''*affiliate*'' with respect to a bank means:

(1) *Parent companies.* Any company that controls the bank;

(2) *Companies under common ownership by a parent company.* Any company, including any subsidiary of the bank, that is controlled by a company that controls the bank;

(3) *Companies under other common ownership.* Any company, including any subsidiary of the bank, that is controlled, directly or indirectly, by trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the bank or any company that controls the bank;

(4) *Companies with interlocking directorates.* Any company in which a majority of its directors or trustees (or individuals exercising similar functions) constitute a majority of the persons holding any such office with the bank or any company that controls the bank;

(5) *Sponsored and advised companies.* Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the bank or an affiliate of the bank;

(6) *Investment companies.* (i) Any investment company for which the bank or any affiliate of the bank serves as an investment adviser, as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(20)); and

(ii) Any other investment fund for which the bank or any affiliate of the bank serves as an investment advisor, if the bank or any affiliate of the bank owns or controls more than 5 percent of any class of voting shares or similar interests in the fund;

(7) *Depository institution subsidiaries.* A depository institution that is a subsidiary of the bank;

(8) *Financial subsidiaries.* A financial subsidiary of the bank;

(9) *Companies held under merchant banking or insurance company investment authority.* (i) *In general.* Any company in which a holding company that controls the bank (or a holding company that is controlled by shareholders that control the bank) owns or controls, directly or indirectly, or acting through one or more other persons, 15 percent or more of the equity capital pursuant to section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) or (I)).

(ii) *General exemption.* A company may avoid affiliate status under paragraph (a)(9)(i) of this section if the holding company presents information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the company.

(iii) *Specific exemptions.* A company also may avoid affiliate status under paragraph (a)(9)(i) of this section if:

(A) No director, officer, or employee of the holding company serves as a director, trustee, or general partner (or individual exercising similar functions) of the company;

(B) A person that is not affiliated or associated with the holding company owns or controls a greater percentage of the equity capital of the company than is owned or controlled by the holding company, and no more than one officer or employee of the holding company serves as a director or trustee (or individual exercising similar functions) of the company; or

(C) A person that is not affiliated or associated with the holding company owns or controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors or trustees (or individuals exercising similar functions) of the company.

(iv) *Application of rule to private equity funds.* A holding company will not be deemed to own or control the equity capital of a company for purposes of paragraph (a)(9)(i) of this section solely by virtue of an investment made by the holding company in a private equity fund (as defined in 12 CFR 225.173(a)) that owns or controls the equity capital of the company unless the holding company controls the private equity fund (as described in 12 CFR 225.173(d)(4)).

(v) *Definition of ''holding company''.* For purposes of this paragraph (a)(9), ''*holding company*'' means the holding company and all of its subsidiaries (including any subsidiary depository institution of the holding company);

(10) *Partnerships for which the bank or an affiliate serves as general partner.* Any partnership for which the bank or any affiliate of the bank serves as a general partner or for which the bank or any affiliate of the bank causes any officer or employee of the bank or affiliate to serve as a general partner; and

(11) *Other companies.* Any company that the Board determines by regulation or order to have a relationship with the bank, or any affiliate of the bank, such that covered transactions by the bank with that company may be affected by the relationship to the detriment of the bank.

(b) ''*Affiliate*'' with respect to a bank does *not* include:

(1) *Subsidiaries.* Any company that is a subsidiary of the bank, other than:

(i) A depository institution;

(ii) A financial subsidiary;

(iii) A subsidiary in which any affiliate or affiliates of the bank (other than a bank or insured savings association) directly owns or controls 25 percent or more of any class of voting securities;

(iv) An employee stock option plan, trust, or similar organization that exists for the benefit of the shareholders, partners, members, or employees of the bank or any of its affiliates; and

(v) Any other company determined to be an affiliate under paragraph (a)(11) of this section;

(2) *Bank premises.* Any company engaged solely in holding premises of the bank;

(3) *Safe deposit.* Any company engaged solely in conducting a safe deposit business;

(4) *Government securities.* Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(5) *Companies held DPC.* Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted. This exclusion from the definition of ''affiliate'' applies only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law or regulation, for a period of two years from the date of the exercise of such rights. The Board may authorize, upon application and for good cause shown, extensions of time for not more than one year at a time, but such extensions in the aggregate will not exceed three years.

(c) For purposes of subpart F of this part, ''affiliate'' with respect to a bank also does *not* include any insured depository institution.

§ 223.25 What transactions with affiliates are covered by section 23A?

For purposes of this part, a ''*covered transaction*'' with respect to an affiliate of a bank means:

(a) An extension of credit to the affiliate;

(b) A purchase of, or an investment in, a security issued by the affiliate;

(c) A purchase of an asset from the affiliate, including an asset subject to recourse or an agreement to repurchase, except such purchases of real and personal property as may be specifically exempted by the Board by order or regulation;

(d) The acceptance of a security issued by the affiliate as collateral for an extension of credit to any person or company; and

(e) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate, and a confirmation of a letter of credit issued by the affiliate.

§ 223.26 What are the meanings of the other terms used in sections 23A and 23B?

For purposes of this part:

(a) *Aggregate amount of covered transactions* means the amount of the covered transaction about to be engaged in added to the current amount of all outstanding covered transactions.

(b) *Appropriate Federal banking agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Bank.* (1) *In general. Bank* means:

(i) Any member bank, as defined in section 1 of the Federal Reserve Act (12 U.S.C. 221); and

(ii) Any insured bank that is not an insured branch, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) *Subsidiaries of banks.* For purposes of paragraph (c)(1) of this section, a subsidiary of a bank (other than a subsidiary described in paragraphs (b)(1)(i) through (v) of § 223.24) is treated as the bank.

(d) *Capital stock and surplus* means the sum of:

(1) A bank's tier 1 and tier 2 capital under the risk-based capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of a bank's allowance for loan and lease losses not included in its tier 2 capital under the risk-based capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3).

(e) *Company* means a corporation, partnership, limited liability company, business trust, association, or similar organization and, unless specifically excluded, includes a bank and a depository institution.

(f) *Control.* (1) *In general. Control* by a company or shareholder over another company means that:

(i) The company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(ii) The company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company; or

(iii) The Board determines, after notice and opportunity for hearing, that the company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company.

(2) *Ownership or control of shares as fiduciary.* Notwithstanding any other provision of this Regulation W, no company will be deemed to control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (a)(3) of § 223.24 or if the company owning or controlling the shares is a business trust.

(3) *Ownership or control of shares by subsidiary.* A company will be deemed to control securities, assets, or other ownership interests owned or controlled, directly or indirectly, by any subsidiary (including a bank) of the company.

(4) *Ownership or control of convertible securities.* A company that owns or controls securities (including options and warrants) that are convertible, at the option of the holder or owner, into other securities, controls the other securities.

(g) *Credit transaction* with an affiliate means:

(1) An extension of credit to the affiliate; and

(2) An issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate and a confirmation of a letter of credit issued by the affiliate.

(h) *Depository institution* means a State bank, national bank, banking association, or trust company, or an insured savings association.

(i) *Equity capital* means:

(1) With respect to a corporation, perpetual preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock, plus any other account that constitutes equity of the corporation; and

(2) With respect to a partnership, limited liability company, or other company, equity accounts similar to those described in paragraph (i)(1) of this section.

(j) *Extension of credit* means an extension or renewal of a loan, a grant of a line of credit, or an extension of credit in any manner whatsoever, including on an intraday basis. An extension of credit includes, without limitation:

(1) An advance by means of an overdraft, cash item, or otherwise;

(2) A lease that is the functional equivalent of an extension of credit;

(3) A purchase of a note or other obligation, including commercial paper or other debt securities (which is deemed an extension of credit to the obligor); and

(4) Any increase in the amount of, extension of the maturity of, or adjustment to the interest rate term or other material term of, an extension of credit.

(k) *Financial subsidiary* means:

(1) Any subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States (12 U.S.C. 24a); and

(2) Any subsidiary of a company described in paragraph (k)(1) of this section.

(l) *Foreign bank* and an *agency, branch,* or *commercial lending company* of a foreign bank have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(m) *GAAP* means U.S. generally accepted accounting principles.

(n) *General purpose credit card* means a credit card issued by a bank if:

(1) The card may be used to purchase products or services from nonaffiliates of the bank;

(2) The card is widely accepted by merchants that are not affiliates of the bank for the purchase of products or services; and

(3) Less than 25 percent of the aggregate amount of products and services purchased with the card by all cardholders are purchases of products or services from an affiliate of the bank.

(o) *Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), but (except for purposes of § 223.16(i)) does not include any branch or agency of a foreign bank or any commercial lending company owned or controlled by a foreign bank.

(p) *Insured savings association* means a savings association (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(q) *Low-quality asset* means:

(1) An asset (including a security) classified as ''substandard,'' ''doubtful,'' or ''loss'' or treated as ''other assets especially mentioned'' or ''other transfer risk problems'' either in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency or in any internal classification system used by the bank or the affiliate (including an asset that receives a rating that is substantially equivalent to classified in the internal system of the bank or affiliate);

(2) An asset in a nonaccrual status;

(3) An asset on which principal or interest payments are more than thirty days past due;

(4) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor; and

(5) A foreclosed asset designated as ''other real estate owned'' that has not yet been reviewed in an examination or inspection.

(r) *Municipal securities* has the same meaning as in section 3(a)(29) of the

Securities Exchange Act of 1934 (17 U.S.C. 78c(a)(29)).

(s) *Nonaffiliate* with respect to a bank means any person that is not an affiliate of the bank.

(t) *Payment transactions* is defined in § 223.16(k)(2).

(u) *Principal underwriter* is defined in § 223.20(c)(1).

(v) *Purchase of assets* means the acquisition of an asset in exchange for cash or any other consideration, including an assumption of liabilities.

(w) *Securities* means stocks, bonds, debentures, notes, or similar obligations (including commercial paper).

(x) *Securities affiliate* means a broker or dealer that is an affiliate of the bank and is registered with the Securities and Exchange Commission.

(y) *State bank* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(z) *Subsidiary* with respect to a specified company means a company that is controlled by the specified company.

(aa) *Voting securities* has the same meaning as the term ''voting securities'' found in 12 CFR 225.2(q).

By order of the Board of Governors of the Federal Reserve System, May 3, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11610 Filed 5–10–01; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket R–1015]

Applicability of Section 23A of the Federal Reserve Act to the Purchase of Securities From Certain Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 23A of the Federal Reserve Act restricts the ability of a member bank to fund its affiliates through asset purchases, loans, or certain other transactions (''covered transactions''). The Board is adopting an interpretation that would expand the types of asset purchases that are eligible for the exemption in section 23A(d)(6), which exempts the purchase from an affiliate of an asset that has a readily identifiable and publicly available market quotation. This interpretation would expand the ability of an insured depository institution to purchase securities from its registered broker-dealer affiliates, while ensuring that the transactions are conducted in a manner that is consistent with safe and sound banking practices.

EFFECTIVE DATE: June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; or Molly S. Wassom, Associate Director, Division of Banking Supervision and Regulation (202/452–2305), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board is adopting an interpretation of section 23A(d)(6) of the Federal Reserve Act to expand the types of securities that an insured depository institution (''depository institution'') can purchase on an exempt basis from a registered broker-dealer affiliate.[1] Section 23A of the Federal Reserve Act, originally enacted as part of the Banking Act of 1933, is designed to prevent the misuse of a member bank's resources through ''non-arm's length'' transactions with its affiliates. Section 23A limits covered transactions between a member bank and an affiliate to 10 percent of the bank's capital stock and surplus, and limits the aggregate amount of all transactions between a member bank and all of its affiliates to 20 percent of capital stock and surplus. The purchase of assets by a bank from its affiliates is included in the definition of covered transaction and is subject to the statute's quantitative limits.

Section 23A also contains several exemptions from the statute's quantitative limits and collateral requirements. One exemption is contained in section 23A(d)(6), which exempts from the statute's quantitative limits a purchase of an asset that has ''a readily identifiable and publicly available market quotation'' (''(d)(6) exemption'').[2] In the past, institutions have been advised that the (d)(6) exemption was available only for the purchase of assets, the price of which was recorded in a widely disseminated publication that was readily available to the general public. Such assets included obligations of the United States, securities traded on exchanges, foreign exchange, certain mutual fund shares, and precious metals. Other marketable assets could not meet this standard.

In 1997, the Board removed certain prohibitions on transactions between a bank and its section 20 affiliates (''section 20 firewalls''). Because of the changes to the section 20 firewalls, the Board received several requests from organizations (''Petitioners'') regarding the interpretation of the (d)(6) exemption as it related to the purchase of assets from section 20 affiliates. Several Petitioners stated that, although the removal of the firewall was welcomed, section 23A continued to limit certain transactions with section 20 affiliates. Petitioners argued that certain prohibited transactions do not raise significant safety and soundness issues and that the prohibition impeded the efficient operations of the insured depository institution and the section 20 affiliate. In particular, Petitioners were concerned about the ability of an insured depository institution to purchase securities under the (d)(6) exemption because of the Board's narrow reading of the exemption, which prevented the purchase of otherwise marketable assets.

Summary of Comments and Description of the Rule

Because of Petitioners' requests, the Board proposed to expand the ability of a bank to purchase from a registered broker-dealer affiliate securities that, although not so widely traded as to warrant the inclusion of their prices in publications of general circulation, are actively traded and whose prices can be verified by independent reliable sources (''1998 Proposal''). Under the 1998 Proposal, a purchase of securities by an insured depository institution from its broker-dealer affiliate would meet the (d)(6) exemption if the transaction met the following criteria:

(1) The broker-dealer from which the securities were purchased was registered with the Securities and Exchange Commission (''SEC'');

(2) The securities had a ''ready market,'' as defined by the SEC in its regulation codified at 17 CFR 240.15c3–1(c)(11)(i);

(3) The securities had received an investment grade rating from a nationally recognized statistical rating organization (''NRSRO''), and no NRSRO had stated that the rating was under review for a possible downgrade to below investment grade;

(4) The securities were not purchased during an underwriting or within 30 days of an underwriting if an affiliate was an underwriter of the security;

(5) The price paid for the securities could be verified by

(i) A widely disseminated news source;

(ii) An electronic service that provided indicative data from real-time financial networks; or

(iii) Two or more actual independent dealer quotes on the exact securities to be purchased, where the price paid was not higher than the average of the price quotes obtained from the unaffiliated broker-dealers; and

(6) The securities were not issued by an affiliate, unless the securities were obligations of the United States or fully guaranteed by the United States or its agencies as to principal and interest.

The Board received thirteen comments on the proposed interpretation: nine from banks and bank holding companies, three from trade associations and one from a clearing house. In addition, comments were received from eight Federal Reserve Banks. Commenters generally supported the Board's proposed interpretation. The commenters concurred with the Board that a broader interpretation of the (d)(6) exemption, as proposed, would promote operational efficiencies in a banking organization

[1] 12 U.S.C. 371c(d)(6). By its terms, section 23A only applies to member banks. The Federal Deposit Insurance Act extends the coverage of section 23A to all FDIC-insured nonmember banks. 12 U.S.C. 1828(j). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 applies section 23A to FDIC—insured savings associations. 12 U.S.C. 1468.

[2] 12 U.S.C. 371c(d)(6). Although such asset purchases are exempt from the quantitative restrictions of section 23A, the (d)(6) exemption requires that the bank's purchase be consistent with safe and sound banking practices. 12 U.S.C. 371c(a)(4).

while still ensuring that transactions are conducted in a safe and sound manner.

Although the commenters uniformly supported the Board's proposal to expand its interpretation of the (d)(6) exemption, a number of commenters expressed concerns about the specific qualifying criteria proposed by the Board. The commenters' views regarding each of the criteria and the Board's response are discussed below.

(1) The Securities Must Be Purchased From a Broker-Dealer Registered With the SEC

In order for a purchase of securities to meet the expanded (d)(6) exemption, the Board proposed that the purchase of securities must be from a broker-dealer registered with the SEC.

One commenter specifically supported the Board's proposed requirement that the broker-dealer affiliate be registered with the SEC. Several other commenters, however, urged the Board to loosen the requirement. One commenter argued that the Board should allow depository institutions to buy securities under the exemption from broker-dealers registered with foreign authorities. Several other commenters argued that there is no reason to limit the exemption to broker-dealers. These commenters expressed the view that non-broker-dealers may hold securities that would qualify under the terms of the 1998 Proposal, and these commenters argued that there is no policy reason for prohibiting these non-broker-dealer affiliates from using the proposed interpretation.

Broker-dealers that are registered with the SEC are subject to supervision and examination by the SEC and are required by SEC regulations to keep and maintain detailed records concerning each securities transaction conducted by the broker-dealer. In addition, SEC-registered broker-dealers have experience in determining whether a security has a ''ready market'' under SEC regulations, as described below. The Board believes that these factors will help ensure that banks satisfy the requirements of the expanded exemption and will assist the Federal banking agencies in monitoring such compliance.

The Board does not believe it is appropriate at this time to expand the exemption to include securities purchases from foreign broker-dealers because such entities may be subject to different levels of supervision and regulation and because of the increased difficulties associated with monitoring compliance by foreign entities. An insured depository institution can, however, request that the Board exempt securities purchases from a foreign broker-dealer, and the Board would consider these requests on a case-by-case basis in light of all the facts and circumstances.

In addition, although the proposed expanded (d)(6) exemption is limited to purchases from registered broker-dealers, the Board notes that a purchase of securities or other assets from other types of affiliates would continue to be exempt under section 23A(d)(6) if the price of the asset is routinely quoted in a widely disseminated news source and the asset was purchased at or below its current market price. The Board, in any event, expects to evaluate the continued need for the requirement as insured depository institutions and the Board gain experience with this expanded exemption.

(2) The Securities Must Have a ''Ready Market'' as Defined by the SEC

The 1998 Proposal provided that, in order to meet the expanded (d)(6) exemption, the assets must have a ''ready market,'' as defined by the SEC.[3]

Based on public comments, the Board considered various alternative marketability definitions. Some commenters noted that the Office of the Comptroller of the Currency (''OCC'') defines ''marketable'' under its Investment Securities regulations to include those securities that can be sold with reasonable promptness at a price that corresponds reasonably to fair value.[4] The commenters submitted that banks would be comfortable with this alternative definition of ''ready market.''

One commenter argued that the SEC's ''ready market'' concept was not appropriate for the (d)(6) exemption. The commenter contended that the SEC's ''ready market'' concept is used in the context of determining the liquidity of a broker-dealer's portfolio, and the commenter argued that the concept of liquidity is not analogous to the question raised in the context of the (d)(6) exemption as to whether the security was purchased at a fair market price. The commenter argued that a more appropriate standard is set forth in the ''fair market price'' definition in National Association of Securities Dealers (''NASD'') Rule 2730. The commenter noted that the NASD's ''fair market price'' definition is one with which broker-dealers are already familiar.

In the proposed interpretation, the Board employed the ''ready market'' test because it believed that this definition would help ensure that a ready, competitive market exists for the securities that the bank purchases. Under the SEC's net capital rules, a registered broker-dealer must deduct 100 percent of the carrying value of securities and certain other assets if there is not a ''ready market'' for the assets. The purpose of the ''ready market'' test is to identify securities with a liquid market to ensure that a broker-dealer promptly can sell a security and receive its value. The types of securities that meet this definition include obligations of the United States and its agencies, as well as many asset-backed, corporate debt, and sovereign debt securities. It is a standard understood by SEC-registered broker-dealers and monitored by the SEC, and if the bank is unsure of the status of a security, it can determine the status by asking how the security is treated by the broker-dealer affiliate for its own capital purposes.

The Board believes that the ''ready market'' test provides the best standard that is well understood by the banking and securities industries. Because a broker-dealer must adjust its capital daily—and therefore must confirm daily that its assets meet the ''ready market'' definition—the liquidity of purchased securities is confirmed by an independent standard on a regular basis. The Board believes that the ''ready market'' standard provides more specific guidance to banks than either the OCC's ''marketable'' definition or NASD Rule 2730.

In addition, the Board does not believe that NASD Rule 2730 is appropriate for the exemption because the rule is concerned primarily with the price at which a security is bought. The Board disagrees with commenters who stated that only price, not liquidity, is critical under the (d)(6) exemption. The (d)(6) exemption, by its terms, applies only to assets with a ''market'' quotation. The Board believes that inherent in the concept of a market quotation is the idea that the asset can be bought and sold on a regular basis. Moreover, this proposal deals primarily with assets that are too thinly traded to warrant listing of their price in a widely disseminated publication, and this criterion helps support the validity of the market quote mechanism discussed below. In addition, section 23A requires

[3] 17 CFR 240.15c3–1(c)(11)(i). The SEC defines a ready market as including a recognized established securities market: (i) In which there exist independent *bona fide* offers to buy and sell so that a price reasonably related to the last sales price or current *bona fide* competitive bid and offer quotations can be determined for a particular security almost instantaneously; and (ii) where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.

[4] 12 CFR 1.2(f)(4).

that all covered transactions, whether or not they meet an exemption, be on terms and conditions that are consistent with safe and sound banking practices. The Board believes that it would be inconsistent with safe and sound banking practices to allow a depository institution to purchase from an affiliate unlimited amounts of a security for which no ''ready market'' exists.

(3) The Securities Must Be Eligible for Purchase by a State Member Bank and Must Not Be Low-Quality Assets

In the 1998 Proposal, the Board proposed that a purchase of a security would be eligible for the expanded (d)(6) exemption only if the security were rated investment grade by a nationally recognized statistical rating organization (''NRSRO''). In light of comments received on the proposal, however, the Board now proposes replacing the investment-grade requirement with requirements that the security be eligible for direct purchase by a State member bank under section 9 of the Federal Reserve Act, as determined by the Board,[5] and that the security not be a low-quality asset (as defined in section 23A).

The Board received one comment supporting the Board's proposed requirement that the security being purchased under the expanded (d)(6) exemption have an investment grade rating from an NRSRO. The commenter argued that this requirement would help ensure bank safety and soundness. Approximately ten commenters, however, opposed or proposed modifications to this requirement. Several commenters argued that this condition is unnecessary and overly restrictive, especially in light of the protections afforded by the Board's other proposed criteria. One commenter noted that the focus of the (d)(6) exemption is liquidity and market information, and the commenter argued that a security can have substantial liquidity and be the subject of significant market information even if it is not investment grade. Several commenters also contended that section 23A separately addresses the question of depository institution purchases of low-quality assets from affiliates, and they contended that there is no statutory basis for importing the investment grade requirement into the (d)(6) exemption.

Other commenters proposed alternative standards. Some of them argued that non-rated securities could satisfy the Board's concerns, provided that the purchasing depository institution conducts an independent evaluation of the security. Another commenter noted that the OCC's regulations allow national banks to purchase securities that are rated investment grade or, if not rated, are the ''credit equivalent'' of a security rated investment grade. Two commenters also argued that the Board's proposed requirement of an investment grade rating is superfluous given the OCC's restrictions on what types of securities national banks can purchase. Several commenters also argued that, at a minimum, the investment grade rating requirement should be expanded to include high yield securities traded on the NASD's Fixed Income Pricing System (''FIPS''), because the NASD carefully reviews a security's volume and pricing, and the issuer's name recognition and research following, before approving a security for FIPS quotation.

The Board originally proposed that a security must be rated by an NRSRO because it believed that such a rating ensured the marketability of a security and that the security would not be the equivalent of a ''low-quality asset,'' the purchase of which is prohibited by section 23A. In light of the comments, however, the Board has decided to eliminate the requirement that a security receive an investment grade rating from an NRSRO. Instead, the security will be eligible for the expanded (d)(6) exemption if it is eligible for purchase by a State member bank under section 9 of the Federal Reserve Act and is not a low-quality asset, as defined by section 23A.[6]

Section 9 of the Federal Reserve Act permits a State member bank to purchase securities that a national bank may own pursuant to paragraph 7 of section 5136 of the Revised Statutes.[7] This provision permits the purchase of a variety of securities, including obligations of State and local governments and asset-backed and corporate debt securities, that may not be rated. State member banks can purchase unrated corporate debt securities and asset-backed securities, however, only if the securities generally are the credit equivalent of a security rated investment grade.[8] Moreover, a State member bank's purchases of corporate debt securities of any one obligor are limited to 10 percent of the bank's capital and surplus; and purchases of asset-backed securities, except certain highly rated mortgage-backed securities, are limited to 25 percent of capital and surplus.[9] Institutions using this exemption would be subject to the restrictions described above and all other terms and conditions that govern the investment activities of State member banks.

The Board believes that the statutory and other restrictions placed on a State member bank's ownership of securities also are appropriate limits on the securities eligible for this interpretation of the (d)(6) exemption. The Board further believes that the purchase must be recorded by the insured depository institution as a security purchased, and not as a loan, pursuant to the instructions of the Call Report.

The Board also proposes to restrict the availability of this interpretation of the (d)(6) exemption to purchases of assets that are not low-quality assets (as defined in section 23A). Because of the inherent volatility of low-quality assets and section 23A's special concern with respect to purchases of low-quality assets, it is inappropriate to allow banks to purchase an unlimited amount of low-quality assets from an affiliate pursuant to this interpretation.

These two replacement requirements should increase the types of securities eligible for purchase under the new (d)(6) exemption, as compared with the investment grade requirement, while ensuring that purchases are consistent with section 23A's injunction that covered transactions, even exempt covered transactions, must be consistent with safe and sound banking practices.

(4) No Purchases During an Underwriting Period and for Thirty Days Thereafter

The Board's proposed interpretation would disqualify from the expanded (d)(6) exemption an insured depository institution's purchase of a security from an affiliate during the underwriting period for the security and for 30 days thereafter. Approximately 11 commenters expressed opposition to this criterion. The commenters believed that a 30-day underwriting exclusion is unnecessary. The commenters believed that the proposed restriction was based on misperceptions on the part of the Board about pricing volatility and conflicts of interest in the underwriting of securities.

Several commenters also argued that the Board's concerns regarding potential conflicts of interest between

[5] 12 U.S.C. 335.

[6] 12 U.S.C. 335.

[7] 12 U.S.C. 24(7).

[8] *See* 12 CFR 1.1(e). State member banks also are permitted to invest up to 5 percent of their capital and surplus in securities that may not be the credit equivalent of investment-grade securities, but only if the bank concludes that the obligors will be able to satisfy their obligations under the securities and that the securities may be sold with reasonable promptness at a price that corresponds reasonably to their fair value. *See* 12 CFR 1.3(i).

[9] *See* 12 CFR 1.3.

underwriting affiliates and depository institutions were unfounded. Commenters argued that the Board had not identified any conflicts and could not demonstrate that conflicts were sufficiently serious to require the proposed 30-day underwriting exclusion.

A number of commenters argued that the Board's proposed limitation could not be supported by the language of section 23A, which does not contain any restriction on purchases of securities during an underwriting period. Commenters also noted that section 23B does contain a provision that prohibits a depository institution from purchasing securities during the existence of any underwriting or selling syndicate if a principal underwriter of the securities is an affiliate of the depository institution. The prohibition in section 23B, however, contains an exception if the purchase or acquisition of securities has been approved by a majority of the directors of a depository institution before such securities are initially offered for sale to the public. The commenters contended that, if the Board decides to adopt the proposed restriction, the Board also should add a similar exception for purchases receiving prior director approval.

A number of commenters argued that, at a minimum, the 30-day waiting period after the underwriting should not be required. Some commenters argued that the 30-day buffer should be deleted, if in no other circumstances, in those situations in which an affiliate has been able to sell all of its allotted securities to third parties during the underwriting. Commenters also urged the Board to eliminate the 30-day waiting period for investment-grade securities.

Two commenters noted that, in the preamble to the proposed exemption, the Board stated that the proposed 30-day underwriting exclusion applies to bank-ineligible securities. The commenters noted, however, that the text of the proposed rule would appear to cover all securities, eligible and ineligible. The commenters urged the Board to clarify that the restriction would apply only to bank-ineligible securities.

The Board proposes to maintain the 30-Day Restriction in its final rule with one exception, because of uncertain market values of securities during and shortly after an underwriting period and because of the conflicts of interest that may arise during and after an underwriting period, especially if an affiliate has difficulty selling its allotment.

The Board believes that the 30-Day Restriction should not apply to purchases of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies. The markets for these instruments generally do not require substantial market stabilization by the underwriters, and therefore it is less likely that the risks of stabilization efforts could be transferred from the securities affiliate to the depository institution.

The Board also has reviewed the restriction imposed by section 23B and its relationship to the (d)(6) exemption. As noted above, the requirements of section 23B are in addition to the requirements of section 23A. Section 23B requires the approval of a majority of the insured depository institution's directors prior to the purchase of securities for which an affiliate is a principal underwriter. Even with the directors' vote, however, the insured depository institution's purchase would be subject to the quantitative limits of section 23A. If the securities are exempt under (d)(6), however, there is no quantitative limit imposed on the insured depository institution. The Board believes that given the expansion of the types of securities that insured depository institutions can purchase under this interpretation of the (d)(6) exemption, a vote of the directors is not sufficient protection to the insured depository institution if it is permitted to purchase unlimited amounts of a security before it has even been offered for sale to the public.

(5) Price Verification Methods

Several commenters concurred with the Board's requirement for the verification of the price of each security purchased by a depository institution from an affiliated broker-dealer. At least two commenters supported the Board's inclusion of three alternative price verification methods—(1) A widely disseminated news source; (2) an electronic service that provides indicative data from real-time financial networks; and (3) two independent dealer quotes on the exact security purchased. These commenters believed use of the two independent dealer quotes would ensure that the securities in question are readily marketable and have a price that is verifiable, which may not be the case if only one price quote were obtained.

Approximately ten commenters expressed concerns about the price verification methods proposed by the Board. One commenter suggested the Board eliminate the detailed requirements for price verification. The commenter suggested that these price verification conditions are redundant in light of the ''ready market'' condition discussed above.

Several commenters argued that, in addition to indicative data from real-time networks, the Board should permit the use of pricing matrices proposed by the bank or its affiliate, which the commenters claimed are widely used by dealers and institutional investors and relied upon in setting prices for actual trades. The commenters noted that matrices are updated daily and are based on actual trades and dealer marks-to-market involving securities having substantially similar characteristics. The commenters stated that, so long as a security meets the credit, liquidity, and other criteria of the proposed rule, a depository institution is as assured of obtaining the security at fair market value when using a matrix as the institution is when using any of the other pricing verification methods proposed by the Board.

A number of commenters suggested that, with respect to the third proposed method of verification (verification by two independent dealer bids on the same security), the Board also should permit verification by independent bids on closely *comparable* securities. The commenters argued that requiring quotes on the exact security purchased was needlessly burdensome. Several commenters also contended that permitting quotes on comparable securities would recognize that, as a practical matter, it is often difficult to get quotes on the particular security being purchased.

One commenter argued that there should be a mechanism that allows Board staff to evaluate the use of comparable securities on a case-by-case basis. Such a procedure, the commenter noted, would allow depository institutions to present the comparability question in the context of a specific security. Another commenter suggested that the Board adopt a method by which Board staff may consider the permissibility of new dependable pricing mechanisms as they become available. The commenter noted that rapid developments and enhancements of information systems may produce equally dependable price verification methods in the future, which, the commenter argued, should then be included in the scope of the interpretation.

The 1998 Proposal included a price verification test because of the statutory requirement that the asset have a ''readily identifiable and publicly available market quotation'' and the Board's belief that the proposed criteria would meet the statutory requirement. Prior to publication of the proposal, the

Board reviewed the use of matrices and the use of comparable securities and did not believe that those price verification methods would meet the statutory standard that the quotation be ''publicly available.'' In addition, the Board believed that the value of a security should be independently determined and not by a method that was subject to manipulation by the insured depository institution or its affiliated broker-dealer.

The Board has reviewed its position in light of the comments received on the 1998 Proposal and further analysis of the reliability of various pricing methodologies set forth in the 1998 Proposal. The Board continues to believe that the use of matrices and comparable securities to determine the price of a security may indicate a lack of liquidity in the market for that security, and the purchase of unlimited amounts of such a security from an affiliate raises safety and soundness concerns. Moreover, if a securities purchase could meet the (d)(6) exemption by the use of a matrix or comparable securities, the limitations Congress imposed in the (d)(6) exemption would be meaningless because an insured depository institution could always develop a price for a security using its own methodology. The Board believes that the use of third-party networks helps ensure that a market for the security exists and that the price the insured depository institution pays for the security is a fair market price.

Moreover, the Board has concluded that it would not be appropriate to use independent dealer quotations to establish a market price for a security under the expanded (d)(6) exemption. The Board also is concerned that a security that is not quoted routinely in a widely disseminated news source or a third-party electronic financial network may not trade in a sufficiently liquid market to justify allowing an insured depository institution to purchase unlimited amounts of such security from an affiliate.[10]

The exemption also provides that a depository institution that is taking advantage of the new (d)(6) exemption must pay a price for the relevant security that is no higher than the current market quotation for the security and must ensure that the size of the transaction executed by the depository institution does not cast material doubt on the appropriateness of relying on the current market quotation for the security.

The Board agrees with commenters that there should be procedures in place for the Board to review new dependable market pricing mechanisms as they become available. The Board will continue to assess the appropriateness of new methodologies.

(6) The Securities Must Not Be Issued by an Affiliate

Finally, the proposed interpretation provided that the exemption would not apply to securities issued by an affiliate unless those securities were backed by a guarantee of the U.S. government.

Several commenters specifically supported the Board's decision to exclude from the (d)(6) exemption those securities issued by an affiliate, including asset-backed securities issued by an affiliate and shares of a mutual fund advised by the depository institution or affiliate, unless such securities are guaranteed by the United States government. One commenter noted that inclusion of these securities within the interpretation could lead to potential self-dealing and could double capital exposure from the underwriting activity of the affiliate and the treatment of the security as an asset of the depository institution.

Two commenters argued that advised mutual funds should not be treated like other affiliates under section 23A. The commenters argued that, because a mutual fund's profits do not accrue to its advisor but to the fund's investors, there is little risk that a depository institution's purchase of shares of an advised mutual fund could contribute to the unlimited funding of the affiliated fund. The commenters noted that certain mutual fund shares are permissible investments for national banks under the OCC's regulations, mutual fund share prices are subject to comprehensive regulation under the Investment Company Act, and mutual fund share prices are published daily in *The Wall Street Journal.* The commenters contended that, in light of these facts, there is no justification for a blanket prohibition on depository institution purchases of affiliated mutual fund shares under the (d)(6) exemption.

Several commenters requested that the Board confirm that the sale of asset-backed securities, where the underlying assets were on the depository institution's books immediately prior to the securities offering, would be outside the scope of section 23A. The commenters argued that the Board's proposal should not be interpreted to extend section 23A limits to the investments of insured depository institutions in a securitization of their own loans or other assets merely because the securitization is underwritten or traded by their affiliated broker-dealer.

The proposed regulation prohibits the applicability of the (d)(6) exemption to most affiliate-issued securities because a contrary determination would permit a bank to acquire an unlimited credit exposure to an affiliate in contradiction to the purposes of section 23A. In addition, if a purchase of assets *from* an affiliate is also a purchase *of* affiliate-issued securities (if, for example, a bank purchases securities issued by one affiliate from the inventory of another affiliate), the bank has engaged in two types of covered transaction. Although the (d)(6) exemption may apply to the one-time asset purchase component of the transaction, it should not apply to exempt the ongoing investment in securities issued by an affiliate.

The Board continues to believe that safety and soundness requires restrictions on a bank's ability to purchase securities issued by an affiliate. Such restrictions help prevent a bank from acquiring an unlimited credit exposure to its affiliates, and are consistent with other provisions of section 23A, which limit the bank's ability to lend to an affiliate or accept the affiliate's securities as collateral.

In light of the comments, the Board will continue to review the appropriateness of making the purchase of affiliate-issued asset-backed securities and affiliate-advised mutual funds eligible for the (d)(6) exemption.

(7) Document Retention

Five commenters expressed concerns about the Board's proposed requirement that pricing information be retained in the insured depository institution's files for five years. One commenter requested that the Board change the requirement to allow documents to be retained only for two years. The commenter noted that depository institutions are examined every one or two years and, accordingly, it does not make sense to require retention of documents beyond an examination cycle.

Another commenter requested that Board staff consult and work with market participants regarding what information can be made available without imposing an undue administrative burden. Other commenters requested that the Board clarify that the requirement applies to documentation concerning the actual price paid; the commenters believed that a simple notation of the price paid and source of price verification should

[10] The final (d)(6) interpretation also does not include the ''widely disseminated news source'' pricing option because the old (d)(6) exemption remains as a separate, stand-alone exemption.

be sufficient. The commenters argued that otherwise this requirement would be overly burdensome for depository institutions, especially in light of the fact that historical pricing data are available from other sources.

The Board proposed a five-year standard because it believed that it would provide examiners a basis to review how the exemption was applied over time by insured depository institutions. The Board has determined to shorten the period of time necessary for the insured depository institution to retain the price verification information to two years. The Board concurs with the commenters that this period of time is consistent with the exam schedules of the institutions in question and that further information retention is not necessary in order to ensure compliance with the law. The Board does not believe that the documentation requirements are substantial, and insured depository institutions should contact their primary regulators to determine what documentation is required. At a minimum, however, the Board believes that an institution's records should clearly show the security purchased, the seller, price and date of purchase, and evidence of the method used to determine the price.

(8) Other Issues

Failure to meet the conditions for availability of this interpretation of the (d)(6) exemption does not prevent an insured depository institution from purchasing securities or other assets. A depository institution, of course, can continue to buy securities and other assets from an affiliate subject to the quantitative limits of section 23A and can buy such securities and other assets from unaffiliated parties without any section 23A limit, so long as the purchase is otherwise authorized by law. In addition, this interpretation of the (d)(6) exemption does not interfere with the ability of a depository institution to purchase securities and other assets from affiliates pursuant to the (d)(6) exemption so long as the prices of such assets are recorded in a widely disseminated publication that is readily available to the general public.

Regulatory Flexibility Act

The Board certifies that adoption of this final rule is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most small bank holding companies and insured depository institutions do not have registered broker-dealer affiliates. For this reason, most small bank holding companies would not be affected by this final rule. In addition, the rule would expand the types of transactions that an insured depository institution may engage in with its broker-dealer affiliates. Accordingly, the rule does not impose more burdensome requirements on depository institutions, their holding companies, or their affiliates than are currently applicable.

Administrative Procedure Act

Subject to certain exceptions, 12 U.S.C. 4801(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. This rule is not subject to this delayed effective date requirement because the rule imposes no new requirements on existing operations of depository institutions. The rule only exempts transactions that were previously subject to the restrictions of section 23A.

Paperwork Reduction Act

The Board has determined that the final rule does not involve the collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 250

Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR part 250 as follows:

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(f).

2. Section 250.246 is added to read as follows:

§ 250.246 Applicability of section 23A of the Federal Reserve Act to the purchase of a security by an insured depository institution from an affiliate.

(a) The purchase of a security by an insured depository institution from an affiliate that is a broker-dealer registered with the Securities and Exchange Commission is exempt from section 23A of the Federal Reserve Act (12 U.S.C. 371c) under paragraph (d)(6) of that statute if:

(1) The security has a ''ready market,'' as defined in 17 CFR 240.15c3–1(c)(11)(i);

(2) The security is eligible for a State member bank to purchase directly, subject to the same terms and conditions that govern the investment activities of a State member bank, and the institution records the transaction as a purchase of securities for purposes of the bank Call report, consistent with the requirements for a State member bank;

(3) The security is not a low-quality asset;

(4) The security is not purchased during an underwriting, or within 30 days of an underwriting, if an affiliate is an underwriter of the security, unless the security is purchased as part of an issue of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies;

(5) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(i) The price paid by the insured depository institution is at or below the current market quotation for the security; and

(ii) The size of the transaction executed by the insured depository institution does not cast material doubt on the appropriateness of relying on the current market quotation for the security; and

(6) The security is not issued by an affiliate, unless the security is an obligation fully guaranteed by the United States or its agencies as to principal and interest.

(b) The purchase of the security must comply with paragraph (a)(4) of section 23A, which requires that any covered transactions between an insured depository institution and an affiliate be on terms and conditions that are consistent with safe and sound banking practices.

By order of the Board of Governors of the Federal Reserve System, May 3, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11609 Filed 5–10–01; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket R–1016]

Applicability of Section 23A of the Federal Reserve Act to Loans and Extensions of Credit Made by a Member Bank to a Third Party

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 23A of the Federal Reserve Act restricts the ability of a member bank to fund its affiliates through investments, loans, asset acquisitions, or certain other transactions (''covered transactions''). Section 23A deems transactions between a member bank and a nonaffiliated third party as covered transactions between the bank and its affiliate to the extent that proceeds of the transactions are used for the benefit of or transferred to the affiliate. The Board is adopting an interpretation and exemptions from section 23A for certain loans made by an insured depository institution (''depository institution'') to customers who use the loan proceeds to purchase a security or other asset through an affiliate of the depository institution acting exclusively as a broker or riskless principal in the transaction.

First, the Board is adopting an interpretation confirming that section 23A does not apply to extensions of credit by an insured depository institution to customers that use the loan proceeds to purchase a security or other asset through an affiliate of the depository institution, so long as the affiliate is acting exclusively as a broker in the transaction, and the affiliate retains no portion of the loan proceeds. The Board also is exempting from section 23A that portion of a loan to a third party that an affiliate retains as a market-rate brokerage commission or agency fee.

In addition, the Board is adopting an exemption from section 23A for extensions of credit by an insured depository institution to customers that use the loan proceeds to purchase a security issued by third parties through a broker-dealer affiliate of the institution that is acting as riskless principal in the securities transaction. Finally, the Board is adopting an exemption for extensions of credit by an insured depository institution to customers that use the credit to purchase securities from a broker-dealer affiliate of the institution when that extension of credit was made pursuant to a preexisting line of credit not entered into in contemplation of the purchase of securities from an affiliate of the depository institution.

EFFECTIVE DATE: June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; or Molly S. Wassom, Associate Director (202/452–2305), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20051.

SUPPLEMENTARY INFORMATION:

Background

Section 23A of the Federal Reserve Act, originally enacted as part of the Banking Act of 1933, is designed to prevent the misuse of a member bank's resources through ''non-arm's length'' transactions with its affiliates.[1] To achieve this purpose, section 23A establishes both quantitative limits and qualitative restrictions on transactions by a member bank with its affiliates. The statute limits ''covered transactions'' between a member bank and any single affiliate to no more than 10 percent of the bank's capital and surplus and limits aggregate covered transactions with all affiliates to no more than 20 percent of the bank's capital and surplus.[2] Covered transactions include extensions of credit, investments, and certain other transactions that expose the member bank to the credit risk of an affiliate. Section 23A also requires that credit exposures to an affiliate be secured by collateral, the amount of which is statutorily defined.[3]

In addition to regulating direct transactions between a bank and its affiliates, section 23A deems any transaction by a member bank with any person to be a transaction with an affiliate to the extent that the proceeds of the transaction are ''used for the benefit of, or transferred to,'' that affiliate.[4] This provision of the statute, commonly referred to as the ''attribution rule,'' is designed to prevent an evasion of the quantitative limits and collateral requirements of section 23A through the use of a third party that serves as a conduit for the flow of funds from the bank to its affiliates.[5] The Board and its staff have taken the position that section 23A applies to loans made by a bank to a third party, where the proceeds of the loans are used to purchase various types of assets from the bank's affiliate.[6]

Section 23A also gives the Board authority to grant exemptions from the statute's restrictions. Specifically, the statute permits the Board to exempt transactions or relationships, by regulation or by order, if such exemptions are ''in the public interest and consistent with the purposes of this section.''[7]

In August 1997, the Board adopted Operating Standards governing the activities of section 20 subsidiaries.[8] Operating Standard #6 allows a bank to extend credit to a customer to purchase securities from a section 20 affiliate during the underwriting period for the securities, pursuant to a preexisting line of credit not entered into in contemplation of the purchase of affiliate-underwritten securities. In adopting Operating Standard #6, the Board stated that it would consider whether an exemption from section 23A for transactions permitted under the Operating Standard would be appropriate.

Proposal

On June 10, 1998, the Board proposed two exemptions from the quantitative limitations and collateral restrictions of section 23A for loans made by an insured depository institution, the proceeds of which are used to buy securities from a registered broker-dealer affiliate of the depository institution.[9] The first exemption proposed by the Board applied to loans made by a depository institution to its customers for the purpose of purchasing third-party securities through a registered broker-dealer affiliate of the institution that is acting as broker or riskless principal[10] in the securities

[1] 12 U.S.C. 371c. Although section 23A originally applied only to member banks, Congress has since applied the section to insured nonmember banks and insured savings associations in the same manner as it applies to member banks. *See* 12 U.S.C. 1828(j); 12 U.S.C. 1468.

[2] ''Capital and surplus'' has been defined by the Board as tier 1 and tier 2 capital plus the balance of an institution's allowance for loan and lease losses not included in tier 2 capital. 12 CFR 250.242.

[3] 12 U.S.C. 371c(c).

[4] 12 U.S.C. 371c(a)(2). Section 23A defines an affiliate to include, among other things, ''any company that controls the member bank and any other company that is controlled by the company that controls the member bank.'' 12 U.S.C. 371c(b)(1).

[5] *See* A Discussion of Amendments to Section 23A of the Federal Reserve Act Proposed by the Board of Governors of the Federal Reserve System 36 n.1 (September 1981).

[6] *See, e.g.*, Letter from General Counsel of the Board to Ms. Charla Jackson (August 26, 1996) (crop-production loan to farmer who leases farm land from a bank's affiliate is covered by section 23A).

[7] 12 U.S.C. 371c(f)(2).

[8] 12 CFR 225.200.

[9] 63 FR 32,766 (1998).

[10] ''Riskless principal'' is the term used in the securities business to refer to a transaction in which

transaction (''Broker/Riskless Principal Exemption''). As proposed, the exemption was applicable even if the broker-dealer affiliate of the depository institution retained part of the loan proceeds as a brokerage commission or, in the case of a riskless principal transaction, a mark-up for effecting the securities transaction.

The second proposed exemption applied to extensions of credit by a depository institution to a customer made pursuant to a preexisting line of credit, the proceeds of which were used to purchase securities underwritten or sold as principal by a registered broker-dealer affiliate of the institution (''Preexisting Line of Credit Exemption''). The proposal also required that the line of credit not have been entered into in contemplation of the purchase of securities from an affiliate and that either the line of credit be unrestricted or the extension of credit be clearly consistent with any restrictions imposed under the line.[11]

Summary of Comments and Final Rule

The Board received approximately 14 comments on the proposed exemptions. The commenters included ten banks or bank holding companies, and four trade associations that represent the banking industry. The Board also received seven comments from the Federal Reserve Banks. The commenters overwhelmingly supported the goals of the Board's proposals, which they believed would provide benefits to both consumers and depository institutions without raising the types of concerns that section 23A was intended to address, but many commenters argued that the Board should achieve its goals through alternative means.

Broker/Riskless Principal Exemption

Commenters generally agreed with the position taken in the Board's proposal that loans by an insured depository institution to a third party to purchase securities through a broker-dealer affiliate of the depository institution that is acting exclusively in a brokerage or riskless principal capacity should not be within the ambit of section 23A. Many commenters, however, argued that the Board should not adopt an exemption to section 23A that applies only to broker-dealers and securities. These commenters contended that a better course of action would be for the Board to issue an *interpretation* broader in scope than the proposed exemption. The interpretation suggested by the commenters would confirm that in no case is a loan from a depository institution to a third party subject to section 23A when the third party purchases assets through a bank affiliate acting exclusively as broker or agent for the third party (regardless of the affiliate's retention of brokerage or agency fees).

The commenters argued that adoption of a specific exemption for securities brokerage transactions involving broker-dealer affiliates implies that, absent a grant of exemption, the Board considers brokerage or agency transactions involving other types of affiliates and assets to be covered by section 23A. The commenters contended that, if an affiliate is acting only as broker or agent in a transaction, the affiliate does not receive a ''benefit'' from the transaction, and the transaction cannot be viewed as fitting within section 23A. One commenter, however, found support for the Board's decision to issue an exemption for riskless principal transactions, noting that there could be disagreement as to whether riskless principal transactions should be viewed as within the scope of section 23A.

The exemption from section 23A proposed by the Board would have applied when an insured depository institution lends to its customers for the purpose of purchasing third-party securities through a registered broker-dealer affiliate acting solely as broker or riskless principal in a securities transaction with the customer. The Board believed that the exemption would be consistent with the purposes of section 23A because of the negligible risk that loans made pursuant to the exemption would be used as a source of funding from an insured depository institution to its broker-dealer affiliate. As proposed, the exemption only would have been available when the securities being sold were not in the inventory of the broker-dealer. Accordingly, the loan proceeds, although initially transferred to the affiliate to purchase the securities, would be transferred in turn (minus a brokerage fee or riskless principal mark-up) to the seller of the securities, which would not be an affiliate of the depository institution.

The Board concurs with the commenters that extensions of credit by a depository institution to customers to purchase third-party securities and assets through an affiliate of the depository institution that is acting exclusively in a brokerage or agency capacity fall outside of the reach of section 23A to the extent that the affiliate retains no part of the loan proceeds. Accordingly, rather than issuing the proposed exemption from section 23A to cover certain types of brokerage transactions, the Board is issuing a broader *interpretation*, as requested by the commenters. The interpretation confirms that section 23A does not apply when a depository institution's borrower uses loan proceeds to enter into agency transactions with an affiliate of the depository institution so long as the securities or other assets being purchased by the borrower are not issued by, or sold from the inventory of, any affiliate of the depository institution and to the extent that no affiliate retains any portion of the loan proceeds.

A somewhat different analysis under section 23A is required, however, when an affiliate retains a portion of a depository institution's loan to a third party as a brokerage commission or agency fee. The portion of the loan used by the borrower to pay the affiliate's commission or fee would be subject to section 23A because that transaction fee represents the proceeds of a loan retained and used for the benefit of an affiliate under the attribution rule.

In accordance with its original proposal, the Board has determined to *exempt* from section 23A that portion of a loan from a depository institution to an unaffiliated customer that is retained by an affiliate of the institution as a market-rate brokerage fee or agency commission; that is, a fee or commission no greater than that prevailing at the same time for comparable agency transactions entered into by the affiliate with persons who are neither affiliates nor borrowers from an affiliated depository institution, as required by section 23B of the Federal Reserve Act (12 U.S.C. 371c–1). The Board expects that such transaction fees will be nominal amounts and will represent a small percentage of the overall agency transaction and, accordingly, believes that these fees present little opportunity for a depository institution to benefit its broker-dealer affiliate.

Finally, a loan from a depository institution to a customer who engages in a riskless principal trade through a broker-dealer affiliate of the depository institution would be covered transactions under section 23A. Riskless principal trades—although the functional equivalent of securities brokerage transactions—involve the purchase of a security by the depository institution's broker-dealer affiliate.

a broker-dealer, after receiving an order to buy (or sell) a security for a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer. *See, e.g.*, 12 CFR 225.28(b)(7)(ii); *The Bank of New York Company, Inc.*, 82 Federal Reserve Bulletin 748 (1996).

[11] For example, if the customer had a preexisting line of credit limited to purchases of rated securities, then the bank would continue to be prohibited from lending to purchase unrated securities underwritten by an affiliate.

Accordingly, the broker-dealer retains the loan proceeds at least for some moment in time.[12] As noted in the proposing release, there is negligible risk that loans made by a depository institution to borrowers to engage in riskless principal trades through a broker-dealer affiliate of the depository institution would be used to fund the broker-dealer. For this reason, the Board believes that it is appropriate to adopt the proposed *exemption* from section 23A to cover riskless principal securities transactions engaged in by depository institution borrowers through broker-dealer affiliates of the depository institution.[13] This grant of exemption is applicable even if the broker-dealer retains a portion of the loan proceeds as a market-rate mark-up for executing the riskless principal securities trade.

Preexisting Line of Credit Exemption

Approximately a dozen commenters offered specific comments on the proposed preexisting line of credit exemption. A majority of these commenters supported the Board's proposed exemption and concurred with the Board's view that exempting an extension of credit pursuant to a preexisting credit line from section 23A would not raise safety and soundness concerns.

Several commenters expressed concern about the requirement that the credit line be ''preexisting.'' The commenters urged the Board to adopt other safeguards in lieu of the ''preexisting'' requirement. For example, one commenter argued that the Board should only require that banks conduct independent credit analyses before granting credit. Other commenters offered alternative standards.

The Board is adopting the exemption for preexisting lines of credit substantially as proposed. As noted above, the exemption applies to extensions of credit by a depository institution made pursuant to a preexisting line of credit, the proceeds of which are used to buy securities underwritten or held as principal by a registered broker-dealer affiliate of the depository institution. Under the exemption, extensions of credit must be made by a depository institution pursuant to a preexisting line of credit that was not entered into in contemplation of the purchase of securities by the borrower from an affiliate of the institution, and the extension of credit must be consistent with any restrictions imposed by the line. The Board believes that the ''preexisting'' and other requirements for such lines of credit are important safeguards to ensure that the credit was not extended by the depository institution for the purpose of inducing a borrower to purchase securities from or issued by an affiliate.

Several of the commenters that opposed the requirement that the line of credit be ''preexisting'' argued that, if, despite their objections, the Board decided to use a ''preexisting'' requirement as part of this exemption, the Board should adopt a safe harbor. These commenters urged the adoption of a five-day safe harbor, in which the credit line would meet the ''preexisting'' requirement if the line were established at least five days prior to the customer's securities transaction with the bank's broker-dealer affiliate.

The Board does not regard as necessary or appropriate a five-day safe harbor for determining whether a line of credit is truly ''preexisting.'' The Board intends that this exemption be used in good faith by depository institutions. As noted in the proposing release, in determining whether the exemption is being used in good faith, examiners will consider the timing of the line of credit. In addition, examiners will consider the conditions imposed on the credit line and whether the line of credit has been used for purposes other than the purchase of securities from an affiliate. The Board will issue additional examiner guidance regarding the ''preexisting'' requirement should such guidance prove necessary.

Some commenters objected that the proposed Preexisting Line of Credit Exemption was not necessary to cover a borrower's purchases of bank-eligible securities from an affiliate, which the commenters apparently believed fall outside the purview of section 23A. The attribution rule of section 23A does not, however, distinguish between bank-eligible and bank-ineligible securities: A loan from a depository institution, the proceeds of which are used by the borrower to buy securities underwritten or held as principal by an affiliate of the depository institution, would be covered by section 23A regardless of whether the securities purchased are bank-eligible or bank-ineligible. To avoid having the loan covered by the quantitative limits of section 23A, the loan would need to qualify for an exemption under the statute—either the Preexisting Line of Credit Exemption being adopted by the Board today or some other exemption (*e.g.*, the exemption in section 23A(d)(4) for obligations fully secured by deposit accounts or U.S. government obligations).

At the request of one commenter, the Board also is clarifying that the Preexisting Line of Credit Exemption may not be used in circumstances in which the line has been merely pre-approved. Accordingly, for an extension of credit to qualify for this exemption, the credit line must be, in fact, ''preexisting'' and not merely ''preapproved.''

Regulatory Flexibility Act

The Board certifies that adoption of these rules is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the Board's action creates exemptions and clarifies certain interpretations under section 23A of the Federal Reserve Act. Accordingly, the Board's action does not impose more burdensome requirements on depository institutions, their holding companies, or their affiliates than are currently applicable.

Administrative Procedure Act

Subject to certain exceptions, 12 U.S.C. 4801(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. These rules are not subject to this delayed effective date requirement because the rules impose no new requirements on existing operations of depository institutions. The rules only exempt transactions that were previously subject to the restrictions of section 23A.

Paperwork Reduction Act

The Board has determined that the rules do not involve the collection of information pursuant to the provisions

[12] For this reason, riskless principal trades involve risks that are different from securities brokerage transactions. *See, e.g.*, Exchange Act Rel. No. 33,743, *reprinted in* [1993–1994] Fed. Sec. L. Rep. (CCH) 85,326 (March 9, 1984).

[13] As in the proposed rule, the final rule would make clear that the exemption for riskless principal transactions would not apply if the broker-dealer affiliate sold securities to the third-party borrower out of its own inventory or out of the inventory of another affiliate of the depository institution. This condition is not intended to make the exemption unavailable when the broker-dealer affiliate sells as principal to the third-party borrower a security that it purchased immediately prior to the sale in order to effect the riskless principal transaction requested by the borrower, so long as the broker-dealer affiliate did not purchase the security from another affiliate of the depository institution.

of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 250

Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR part 250 as follows:

PART 50—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(f).

2. Section 250.243 is added to read as follows:

§ 250.243 Applicability of section 23A of the Federal Reserve Act to loans and extensions of credit by an insured depository institution to a nonaffiliate to enable the nonaffiliate to purchase an asset through an affiliate of the institution that is acting exclusively in an agency or brokerage capacity in the transaction.

(a) The attribution rule of section 23A of the Federal Reserve Act (12 U.S.C. 371c) provides that ''a transaction by a member bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.'' [1] The Board has considered the question of whether a loan or extension of credit by an insured depository institution (''depository institution'') to an unaffiliated borrower who uses the proceeds of the transaction to purchase an asset through an affiliate of the institution that is acting exclusively as an agent or broker in the transaction should be subject to the attribution rule because of the limited benefit that the affiliate receives when it acts only as an agent or broker in the transaction. The Board believes that a loan by a depository institution to an unaffiliated borrower who uses the proceeds of the loan to purchase an asset through an affiliate of the institution that is acting exclusively in an agency or brokerage capacity is not covered by section 23A if the affiliate retains no portion of the loan proceeds as a fee or commission for its services.

(b) A somewhat different analysis is required when the affiliate acting as agent or broker in the transaction retains a portion of the loan proceeds as a fee or commission. In such a case, the portion of the loan not retained by the affiliate as a fee or commission still would be outside the coverage of section 23A. On the other hand, the portion of the loan retained by the affiliate as a fee or commission would be subject to section 23A because it represents proceeds of a loan by a depository institution to a third party that are transferred to, and used for the benefit of, an affiliate of the institution. The Board hereby grants an exemption from section 23A for such fees and commissions.

(c) The Board notes that this interpretation would not apply if the securities or other assets purchased by the third-party borrower through the affiliate of the depository institution were issued or underwritten by, or sold out of the inventory of, another affiliate of the depository institution. In such a case, proceeds of the loan from the depository institution would be transferred to, and used for the benefit of, the affiliate that issued, underwrote, or sold the asset on a principal basis to the third party.

(d) The Board also notes that the transactions described above (including the loan to the third-party borrower and any fee or commission paid to the affiliate of the depository institution out of the loan proceeds) would be subject to the market terms requirement of section 23B, which applies to ''any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or any other person.'' [2]

3. Section 250.244 is added to read as follows:

§ 250.244 Exemption from section 23A of the Federal Reserve Act for certain loans and extensions of credit by an insured depository institution to a nonaffiliate to enable the nonaffiliate to purchase securities through a registered broker-dealer affiliate of the institution that is acting exclusively as riskless principal in the securities transaction.

(a) A loan or extension of credit by an insured depository institution (''depository institution'') to any person other than an affiliate of such depository institution is exempted from section 23A of the Federal Reserve Act (12 U.S.C. 371c) if—

(1) The loan or extension of credit is on terms that are consistent with safe and sound banking practices; and

(2) The proceeds of the loan or extension of credit are used to purchase a security through an affiliate of the depository institution that is a broker-dealer registered with the Securities and Exchange Commission, where

(i) The affiliate is acting exclusively as a riskless principal in the securities transaction; and

(ii) The security is not issued or underwritten by, or sold out of the inventory of, any affiliate of the depository institution.

(b) This grant of exemption is applicable to a loan or extension of credit covered by paragraph (a) of this section even if a portion of the proceeds of the loan or extension of credit is used by the borrower to pay a riskless principal mark-up to the affiliate, provided that the mark-up is substantially the same as, or lower than, those prevailing at the same time for comparable transactions with or involving other nonaffiliated companies, in accordance with section 23B of the Federal Reserve Act (12 U.S.C. 371c–1).

4. Section 250.245 is added to read as follows:

§ 250.245 Exemption from section 23A of the Federal Reserve Act for certain loans and extensions of credit by an insured depository institution to a nonaffiliate made pursuant to a preexisting line of credit.

Section 23A of the Federal Reserve Act (12 U.S.C. 371c) shall not apply to an extension of credit by an insured depository institution (''depository institution'') to any person other than an affiliate of such depository institution if—

(a) The proceeds of the loan or extension of credit are used to purchase a security from or through an affiliate of the depository institution that is a broker-dealer registered with the Securities and Exchange Commission; and

(b) The loan or extension of credit is made pursuant to, and consistent with any conditions imposed in, a preexisting line of credit that was not established in contemplation of the purchase of securities from or through an affiliate of the depository institution.

By order of the Board of Governors of the Federal Reserve System, May 3, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11607 Filed 5–10–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket No. R–1104]

Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions With Affiliates and Intraday Extensions of Credit to Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

[1] 12 U.S.C. 371c(a)(2).

[2] 12 U.S.C. 371c–1(a)(2)(D).

ACTION: Interim rules with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System is adopting on an interim basis rules to address the application of sections 23A and 23B of the Federal Reserve Act to credit exposure arising out of derivative transactions between an insured depository institution and its affiliates and intraday extensions of credit by an insured depository institution to its affiliates. The rules require institutions to adopt policies and procedures reasonably designed to monitor, manage, and control credit exposures arising out of the transactions and clarify that the transactions are subject to section 23B.

DATES: The interim rules are effective January 1, 2002. Comments must be submitted on or before August 15, 2001.

ADDRESSES: Comments should refer to Docket No. R–1104 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 (or mailed electronically to regs.comments@federalreserve.gov). Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. weekdays and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street, NW., between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; Michael G. Martinson, Associate Director (202/452–3640), or Heidi W. Richards, Assistant Director (202/452–2598), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Sections 23A and 23B of the Federal Reserve Act are intended to limit the risks to an insured depository institution (''institution'') from transactions with its affiliates.[1] Sections 23A and 23B also limit the ability of an institution to transfer to its affiliates the subsidy arising from the institution's access to the Federal safety net.

Section 23A achieves these goals in three major ways. First, it limits the aggregate amount of an insured depository institution's ''covered transactions'' with any single affiliate (other than a financial subsidiary of the institution) to no more than 10 percent of the institution's capital and surplus, and the aggregate amount of covered transactions with all affiliates combined (including financial subsidiaries of the institution) to no more than 20 percent of the institution's capital and surplus. Covered transactions include purchases of assets from an affiliate, extensions of credit to an affiliate, guarantees issued on behalf of an affiliate, and certain other transactions that expose an institution to an affiliate's credit or investment risk.

Second, the statute requires all covered transactions between an insured depository institution and its affiliates to be on terms and conditions that are consistent with safe and sound banking practices, and prohibits an institution from purchasing low-quality assets from its affiliates. Finally, the statute requires that an insured depository institution's extensions of credit to affiliates and guarantees issued on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B protects an insured depository institution by requiring that transactions between the institution and its affiliates be on market terms; that is, on terms and under circumstances that are substantially the same, or at least as favorable to the institution, as those prevailing at the time for comparable transactions with *unaffiliated* companies. The market terms requirement of section 23B applies to any covered transaction (as defined in section 23A) with an affiliate as well as a broad range of other transactions, such as a sale of securities or other assets to an affiliate and a contract for the payment of money or furnishing of services to an affiliate.

The Gramm-Leach-Bliley Act (''GLB Act'') requires the Board to adopt, by May 12, 2001, final rules under section 23A to ''address as covered transactions credit exposure arising out of derivative transactions between [insured depository institutions] and their affiliates and intraday extensions of credit by [insured depository institutions] to their affiliates.''[2] The Board is adopting the interim final rules explained below pursuant to the amendments to section 23A contained in the GLB Act.

Explanation of Interim Rules

A. Derivative Transactions

Derivative transactions between an insured depository institution and its affiliates generally arise either from the risk management needs of the institution or the affiliate. Transactions arising from the bank's needs typically arise when an institution enters into a swap or other derivative contract with a customer but chooses not to hedge directly the market risk generated by the derivative contract or is unable to hedge the risk directly because the institution is not authorized to hold the hedging asset. In order to manage the market risk, the institution may have an affiliate acquire the hedging asset. The institution would then do a ''bridging'' derivative transaction between itself and the affiliate maintaining the hedge.

Other derivative transactions between an insured depository institution and its affiliate are affiliate-driven. An institution's affiliate may enter into an interest-rate or foreign-exchange derivative with the institution in order to accomplish the asset-liability management goals of the affiliate. For example, an institution's holding company may hold a substantial amount of floating-rate assets but issue fixed-rate debt securities to obtain cheaper funding. The holding company may then enter into a fixed-to-floating interest-rate swap with its subsidiary insured depository institution to reduce the holding company's interest-rate risk.

Insured depository institutions and their affiliates that seek to enter into derivative transactions for hedging (or risk-taking) purposes could enter into the desired derivatives with unaffiliated companies. Institutions and their affiliates often choose to use each other as their derivative counterparties, however, in order to maximize the profits of and manage risks within the consolidated financial group.

The Board believes that derivative transactions between an insured depository institution and an affiliate are subject to section 23B under the

[1] Section 23A originally was enacted as part of the Banking Act of 1933 and applied only to banks that were members of the Federal Reserve System. Congress amended the Federal Deposit Insurance Act in 1966 to extend section 23A to insured nonmember banks. 12 U.S.C. 1828(j). In 1989, Congress further extended the coverage of section 23A to insured savings associations. 12 U.S.C. 1468. Congress enacted section 23B of the Federal Reserve Act as part of the Competitive Equality Banking Act of 1987, and has subsequently expanded its scope to cover the same set of depository institutions as are covered by section 23A.

[2] GLB Act section 121(b)(3) (codified at 12 U.S.C. 371c(f)(3).

express terms of the statute.[3] The Board has not ruled on the question of whether derivative transactions between an insured depository institution and its affiliates are covered transactions under section 23A.

Derivative transactions between an insured depository institution and an affiliate resemble section 23A covered transactions in many respects. Such transactions may expose institutions to the credit risk of their affiliates. Although the typical institution-affiliate derivative transaction does not create current credit exposure for the institution at the inception of the transaction, an institution may incur current credit exposure to an affiliate during the term of a derivative transaction and nearly always faces some amount of potential future exposure on such a transaction. The credit exposure on a derivative transaction with an affiliate poses a risk to the safety and soundness of the bank that is similar in many respects to the risk posed by a loan to an affiliate, and may be more volatile and indeterminate than the credit exposure created by a loan.

Determining the appropriate treatment for derivative transactions under section 23A is a complex and important endeavor. In light of the complexities of the subject matter and in light of the May 12, 2001, statutory schedule in the GLB Act, the Board is taking the following two steps to address institution-affiliate derivative transactions under sections 23A and 23B. First, the Board is publishing this interim rule, which (i) requires, under section 23A as amended by the GLB Act, that an institution establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the institution's derivative transactions with affiliates and (ii) clarifies that institution-affiliate derivative transactions are subject to the market terms requirement of section 23B. The policies and procedures must at a minimum provide for monitoring and controlling the credit exposure arising from the institution's derivative transactions with each affiliate, and all affiliates in the aggregate, and ensuring that the institution's derivative transactions with affiliates comply with section 23B. In addition, the interim rule defines the term ''derivative transaction'' to mean any derivative contract covered by the Board's capital adequacy guidelines (which includes most interest-rate, currency, equity, and commodity derivative contracts) and any similar derivative contract, including credit derivative contracts.

Second, the Board has included provisions in the proposed Regulation W issued concurrently with this interim rule to address further the credit exposure associated with derivative transactions. Regulation W proposes a set of questions on measures in addition to those contained in this interim rule that could be applied to institution-affiliate derivative transactions under section 23A. In connection with this interim rule and proposed Regulation W, the Board solicits public comment on the most appropriate treatment under section 23A of the credit exposure arising from derivative transactions.

As noted above, regardless of how the Board ultimately decides to address credit exposure on derivative transactions between an institution and an affiliate under section 23A, these transactions are subject to the market terms requirement of section 23B. Accordingly, each institution should have in place credit limits on its derivatives exposure to affiliates that are at least as strict as the credit limits the institution imposes on unaffiliated companies that are engaged in similar businesses and are substantially equivalent in size and credit quality. Similarly, each institution should monitor derivatives exposure to affiliates in a manner that is at least as rigorous as it uses to monitor derivatives exposure to comparable unaffiliated companies. In addition, each institution should price, and require collateral in, derivative transactions with affiliates in a way that is at least as favorable to the institution as the way the institution would price, or require collateral in, a derivative transaction with comparable unaffiliated counterparties.

Although the Board continues to explore and analyze the complex issue of how best to address institution-affiliate derivative transactions under section 23A, the Board has not made a determination at this time that the credit exposure arising from such derivatives ought to be made subject to all the requirements of section 23A. The Board continues to collect information regarding the derivatives practices of insured depository institutions and asks for additional data on such practices in order to assist the Board in determining whether the approach set forth in the interim rule would suffice to prevent institutions from incurring material credit exposure to affiliates on derivative transactions. It appears that several of the larger insured depository institutions that participate in the derivatives markets increasingly manage credit risk arising from derivatives exposure to financial institutions by requiring such counterparties to post collateral. The Board understands that these institutions generally require full collateralization of their current credit exposure (*i.e.,* positive net mark-to-market values recalculated daily based on the previous day's exposures) on derivative transactions with financial institutions above a relatively small threshold amount.

The Board requests information regarding (i) how institutions currently measure, monitor, and limit derivatives credit exposure to unaffiliated companies; (ii) whether institutions include an estimate of potential future exposure in their measurement of credit exposure to unaffiliated derivatives counterparties and, if so, how institutions estimate potential future exposure on a derivative transaction; (iii) in what circumstances and to what extent institutions require unaffiliated counterparties to post collateral to secure derivatives credit exposure; (iv) what types of collateral institutions accept to secure derivatives credit exposure (and what haircuts are used for the various collateral types); (v) how often institutions mark to market (and require additional collateral with respect to) their derivative transactions with unaffiliated counterparties; (vi) how institutions price derivative transactions with unaffiliated counterparties; and (vii) how large the uncollateralized derivatives credit exposures are that institutions have to unaffiliated companies.

After a more complete review and analysis of the credit risk mitigation practices of insured depository institutions participating in the derivatives markets and of the public comments received on this interim rule and Regulation W, the Board may decide to subject credit exposure on institution-affiliate derivatives to some or all of the requirements of section 23A.

B. Intraday Extensions of Credit

As noted above, the GLB Act requires the Board to address as covered transactions under section 23A the credit exposure arising from intraday extensions of credit by insured depository institutions to their affiliates. Depository institutions regularly provide transaction accounts to their affiliates in conjunction with providing

[3] In addition to applying to covered transactions as defined in section 28A, the market terms requirement of section 23B applies broadly to, among other things, ''[t]he payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.'' 12 U.S.C. 371c–1(a)(2)(C). Institution-affiliate derivatives generally involve a contract or agreement to pay money to the affiliate or furnish risk management services to the affiliate.

payment and securities clearing services. As in the case of unaffiliated commercial customers, these accounts are occasionally subject to overdrafts during the day that are repaid in the ordinary course of business. The Board has not to date ruled on whether these or other types of intraday credit extensions are covered transactions under section 23A or are subject to the market terms requirement of section 23B.

Existing business practices indicate that the potential risk reduction benefits afforded by full application of the requirements of section 23A to intraday credit exposures may not justify the costs to banking organizations of implementing these requirements at this time. Intraday overdrafts and other forms of intraday credit extensions are generally not used as a means of funding or otherwise providing financial support for an affiliate. Rather, these credit extensions typically facilitate the settlement of transactions between an affiliate and its customers when there are mismatches between the timing of funds sent and received during the business day. Although some risk exists that such intraday credit extensions could turn into overnight funding of an affiliate, this risk may be sufficiently remote that application of the strict collateral and other requirements of section 23A would not be warranted for the intraday credit exposure. Moreover, mandating that banks collateralize intraday exposures could require banks to measure exposures across multiple accounts, offices, and systems on a global basis and to adjust collateral holdings in real time throughout the day. The Board is concerned that few banks currently have these capabilities and that they would be very costly to implement.

As with institution-affiliate derivative transactions, the Board is taking a two-step approach to addressing intraday credit extensions by an institution to an affiliate under sections 23A and 23B. First, the Board is publishing this interim final rule. The interim rule (i) requires, under section 23A, that institutions establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the institution's intraday extensions of credit to affiliates and (ii) clarifies that intraday extensions of credit by an insured depository institution to an affiliate are subject to the market terms requirement of section 23B. The policies and procedures must at a minimum provide for monitoring and controlling the institution's intraday credit exposure to each affiliate, and all affiliates in the aggregate, and ensuring that the institution's intraday credit extensions to affiliates comply with section 23B.

Second, the Board has proposed in Regulation W an alternative approach that would subject certain intraday credit extensions to section 23A. The Board specifically invites public comment on whether the Board's final rule on intraday credit extensions under section 23A should reflect the approach taken in this interim rule, the approach set forth in proposed Regulation W, an approach that more fully subjects intraday credits to section 23A, or another approach.

C. Delayed Effective Date

The GLB Act authorizes the Board to delay the effective date of its final rule under section 23A on derivative transactions and intraday credit extensions ''for such period as the Board deems necessary or appropriate to permit banks to conform their activities to the requirements of the final rule without undue hardship.'' [4] Pursuant to this authority, the Board has determined to delay the effective date of these interim final rules until January 1, 2002, to allow institutions an appropriate amount of time to put in place the policies and procedures required by the rules. The delayed effective date also will provide the Board with an opportunity to revise the interim rules to reflect public comments as necessary.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this rulemaking. The rules implement provisions of section 121 of the GLB Act that require the Board to adopt final rules under section 23A of the Federal Reserve Act to address as a covered transaction the credit exposure arising out of derivative transactions between insured depository institutions and their affiliates and intraday extensions of credit by institutions to their affiliates.

The interim rules require insured depository institutions to establish and maintain policies and procedures regarding their derivative transactions with affiliates and intraday credit extensions to affiliates. The policies and procedures required by the rules are necessary to ensure that institutions conduct these activities in a safe and sound manner and to enable the Board to execute properly its supervisory function. These requirements apply to all insured depository institutions, regardless of size, engaged in these activities. The Board believes that institutions that engage in these activities, in most cases, already have policies and procedures in place to manage the risks of these activities.

The Board specifically seeks comment on the likely burden that the interim rules will impose on insured depository institutions that engage in derivative transactions with affiliates or extend credit on an intraday basis to affiliates.

Administrative Procedure Act

The provisions of these rules are effective on January 1, 2002, on an interim basis. Pursuant to 5 U.S.C. 553, the Board finds that it is impracticable to issue these rules in proposed form and that there is good cause to issue these rules as interim final rules due to the fact that the GLB Act requires the Board to adopt final rules addressing the credit exposure arising from derivative transactions between institutions and affiliates and intraday extensions of credit from institutions to affiliates by May 12, 2001. The Board is seeking public comment on all aspects of the interim rules and will amend the rules as appropriate after reviewing the comments.

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. In accordance with this provision of the Administrative Procedure Act, these interim rules do not become effective until January 1, 2002.

Paperwork Reduction Act

The Board has determined that the interim rules do not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Plain Language

Section 722 of the GLB Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present its interim rules in a simple and straightforward manner. The Board invites comments on whether there are additional steps the Board could take to make the rules easier to understand.

List of Subjects in 12 CFR Part 250

Federal Reserve System.

[4] 12 U.S.C. 371c(f)(3)(B).

For the reasons set out in the preamble, the Board amends 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 78, 248(i), 371c(f) and 371c–1(e).

2. Section 250.247 is added to read as follows:

§ 250.247 Application of sections 23A and 23B of the Federal Reserve Act to derivative transactions between insured depository institutions and their affiliates.

(a) Derivative transactions between an insured depository institution and its affiliates are subject to the market terms requirement of section 23B(a)(1) of the Federal Reserve Act (12 U.S.C. 371c–1(a)(1)).

(b) An insured depository institution must establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from its derivative transactions with affiliates in a safe and sound manner. The policies and procedures must at a minimum provide for:

(1) Monitoring and controlling the credit exposure arising from the institution's derivative transactions with each affiliate and all affiliates in the aggregate; and

(2) Ensuring that the institution's derivative transactions with affiliates comply with section 23B.

(c) For purposes of this regulation, derivative transactions include any derivative contract listed in paragraphs A. III. E. 1. a. through d. of appendix A to 12 CFR part 225 and any similar derivative contract, including credit derivative contracts.

3. Section 250.248 is added to read as follows:

§ 250.248 Application of sections 23A and 23B of the Federal Reserve Act to intraday extensions of credit by insured depository institutions to their affiliates.

(a) Intraday extensions of credit by an insured depository institution to its affiliates are subject to the market terms requirement of section 23B(a)(1) of the Federal Reserve Act (12 U.S.C. 371c–1(a)(1)).

(b) An insured depository institution must establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from its intraday extensions of credit to affiliates in a safe and sound manner. The policies and procedures must at a minimum provide for:

(1) Monitoring and controlling the credit exposure arising from the institution's intraday extensions of credit to each affiliate and all affiliates in the aggregate; and

(2) Ensuring that the institution's intraday extensions of credit to affiliates comply with section 23B.

By order of the Board of Governors of the Federal Reserve System, May 3, 2001.

Dated: May 3, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11608 Filed 5–10–01; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Friday,
May 11, 2001

Part III

Department of Housing and Urban Development

Notice of Funding Availability: Tribal Colleges and Universities Program; Fiscal Year 2001

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4674–N–01]

Notice of Funding Availability: Tribal Colleges and Universities Program; Fiscal Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose of the Program.* To assist Tribal colleges and universities to build, expand, renovate, and equip their own facilities.

Available Funds. Approximately $3 million.

Eligible Applicants: Only tribal colleges and universities that meet the definition of a TCU established in Title V of the 1998 Amendments to the Higher Education Act of 1965 (Pub. L. 105–244; enacted October 7, 1998)

Application Deadline. August 3, 2001.

Match. None.

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2528–0215. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before 12 midnight, Eastern time, on August 3, 2001 at HUD Headquarters.

Applications Submission Procedures. *Mailed Applications.* Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD address on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date.

Hand Carried Applications. If your application is required to be submitted to HUD Headquarters, and you arrange for the application to be hand carried, hand carried applications delivered before and on the application due date must be brought to the specified location at HUD Headquarters and room number between the hours of 8:45 am to 5:15 pm, Eastern time. Applications hand carried on the application due date will be accepted in the South Lobby of the HUD Headquarters Building at the address below from 5:15 pm until 12 midnight, Eastern time. This deadline date is firm. Please make appropriate arrangements to arrive at the HUD Headquarters Building before 12 midnight, Eastern time, on the application due date.

Address for Submitting Applications. Your completed application consists of an original signed application and two copies of the application. Submit your completed application to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC, 20410. When submitting your application, please refer to TCUP and include your name, mailing address (including zip code) and telephone number (including area code).

HUD will accept only one application per TCU campus for this program. If your institution has multiple campuses, each one may submit a separate application. If your institution submits more than one application, per campus, HUD will ask you to identify which application you want evaluated. Only one application will be evaluated. If you do not respond within the stipulated cure period (see Section VI below), all of your applications will be disqualified. You should take this policy into account and take steps to ensure that multiple applications are not submitted.

For Application Kits. For an application kit and any supplemental material, you should call the SuperNOFA Information Center at 1–800–HUD–8929. If you have a hearing or speech impairment, please call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, you should refer to TCUP and provide your name and address (including zip code) and telephone number (including area code). You may also access the application on the Internet through the HUD web site at www.hud.gov.

For Further Information and Technical Assistance. You may contact Jane Karadbil of HUD's Office of University Partnerships at 202–708–1537, extension 5918 or Sherone Ivey of the Office of Native American Programs at 202–401–7914, extension 4200. If you have a hearing or speech impairment, you may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. You may also write to Ms. Karadbil via email at *Jane_R._Karadbil@hud.gov* and Ms. Ivey at *Sherone_E._Ivey@hud.gov.*

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at http://www.hud.gov.

II. Amount Allocated

Approximately $3 million in FY 2001 funds is being made available under this NOFA for TCUP.

The maximum grant period is 24 months. The performance period will commence on the effective date of the grant agreement.

The maximum amount to be requested and awarded is $400,000. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed budget and grant request, and in the interest of fairness to all applicants, if you submit an application requesting more than $400,000 in HUD funds, the application will be ruled ineligible. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purpose of TCUP is to assist TCUs to build, expand, renovate, and equip their own facilities, especially those facilities that are used by or available to the larger community.

(B) *Eligible Applicants.* Only if your institution is a nonprofit institution of higher education and meets the statutory definition of a TCU in Title V of the 1998 Amendments to the Higher Education Act of 1965 (P.L. 105–244) are you eligible to apply. If you are one of several campuses of the same institution, you may apply separately from the other campuses as long as your campus has a separate administrative structure and budget from the other campuses.

(C) *Eligible Activities.* Each activity you propose for funding must meet one of the following national objectives:

(a) Benefit low- and moderate-income persons;

(b) Aid in the prevention or elimination of slums or blight; or

(c) Meet other community development needs having a particular urgency and other financial resources are not available to meet such needs.

You may not use any of your grant for public services, as defined in 24 CFR 570.201(e). You may use no more than 20 percent of your grant for planning and administrative activities, as defined in 24 CFR 570.206. Grant funds can only be used to build, expand, renovate, and equip facilities owned by your institution. Long-term leases of property (*i.e.*, at least five years in duration) are considered an acceptable form of ownership under this program. Equipment can include, but is not limited to, computers, furniture, books, etc.

While community-wide use of your facility is permissible, the facility must be predominantly for the use of your institution (*i.e.*, it must be used by your institution at least 51% of the time). The facility to be assisted must be for some activity or activities that your institution normally provides, as opposed to activities undertaken by other entities using your facility. Buildings in which your institution undertakes activities are eligible for assistance even if they do not serve those enrolled in your institution. A few examples are provided to show eligible uses of the grant. If your institution operates a small business assistance center, renovation of the facility in which the center is located would be an eligible grant activity, because the center is part of your institution even though it is not serving enrolled students. Conversely, if your institution rents space to another entity that operates a small business assistance center, renovation of the facility in which that center is located would not be an eligible grant activity, unless the space is used by your institution at least 51% of the time. As another example, you could build a new gymnasium solely for your students or propose to offer some physical education classes or other activities in the evening to the larger community. But if you proposed to build a new gymnasium, with the majority of the activities for non-students, or with the activities being primarily run by an outside entity, that would be an ineligible activity.

While you may choose to apply for a grant for any kind of college or university facility, facilities that will be used by or available to the larger community (as long as the use is still predominantly for your institution, as noted above) are eligible to receive extra points where the larger community has participated in the planning and implementation of this project. For example, in order to get these points, you could request a grant to rehabilitate a student union building that would also serve as a community meeting facility, with the community helping to plan the renovations and also helping to operate additional activities. As another example, you could expand a facility currently serving as a small business assistance center where current and potential small business owners helped design the expansion. As a third example, you could equip a computer lab where the larger community helped you identify the equipment needs and will also help in implementing workshops, etc. If you are proposing work on a facility that is solely for your institution (*e.g.*, a dormitory or administration building), you can only get these points if you involve the community in the planning and implementation of the project. See Rating Factor 3 for more details. You should call Jane Karadbil or Sherone Ivey at the above numbers if you have any questions about the eligibility of any activities you may propose.

(D) *Other Requirements.* (1) *Leveraging.* Although a match is not required to qualify for funding, if you claim leveraging from any source, including your own institution, you must provide letters or other documentation evidencing the extent and firmness of commitments of leveraging from other Federal (*e.g.*, Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published NOFA. Potential sources of leveraging assistance include your own institution (for both direct and indirect costs), tribes, the Indian housing authorities, financial institutions and private businesses, foundations, and faith-based institutions.

(2) *Federal Requirements.* If awarded a grant, you must comply with all Federal requirements, including the following:

(a) If your TCU is a part or instrumentality of a tribe, you must comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), but if your TCU is not a part or instrumentality of a tribe, you must comply with the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.* , Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1, and Section 109 of the Housing and Community Development Act of 1974, as amended, with respect to nondiscrimination on the basis of age, sex, religion, or disability and implementing regulations at 24 CFR part 6;

(b) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, prohibiting discrimination on the basis of age;

(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, prohibiting discrimination against handicapped individuals;

(d) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, requiring that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons;

(e) The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87;

(f) The requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(g) Nondiscrimination provisions of Section 109 and Labor standards of section 110 of the Housing and Community Development Act of 1974 (HCDA 1974)(42 U.S.C. 5301 *et seq.*), referenced at 24 CFR 570.602 and 570.603, respectively. However, in accordance with HCDA 1974 section 107(e)(2), the Secretary waives the provisions of HCDA 1974 section 109 and 110 with respect to this program for grants to a TCU that is a part of a tribe, *i.e.*, a TCU that is legally a department or other part of the tribal government, but not a TCU that is established under tribal law as an entity separate from the tribal government. If your TCU is not a part of a tribe, the nondiscrimination provisions and labor standards of HCDA section 109 and 110 apply to activities under the grant to your TCU.

(4) *OMB Circulars.* Your grant will be governed by the provisions of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–21 (Cost Principles for Education Institutions), and A–133 (Audits of States, Local Governments, and Non-Profit Organizations). The application kit contains a detailed explanation of what these costs are. You can access the OMB circulars at the White House website at http://www.whitehouse.gov/OMB/circulars.

IV. Application Selection Process

HUD will conduct two types of review: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration.* Under this threshold review, your application can only be rated if it is in compliance with the requirements of this NOFA and the following additional standards are met:

(1) You must be an eligible TCU;

(2) Your application requests a Federal grant of $400,000 or less over the two-year grant period;

(3) There is only one application from your institution or a campus of your institution;

(4) At least one of the activities in your application is eligible.

In addition you must meet the following Civil Rights threshold requirements.

If you, the applicant, (1) have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(2) Are a defendant in a Fair Housing Act lawsuit by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of noncompliance findings under Title VI, Section 504 or Section 109 , HUD will not rate or rank your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline stated in this NOFA. HUD's decision regarding whether a charge, lawsuit, or letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(B) *Factors Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 100. HUD has five standard factors and several subfactors that it uses for evaluating almost all of its programs. However, because of tribal sovereignty issues and because this is the first year of the Tribal Colleges and Universities Program, not all of these factors and subfactors are being used. If this program is funded again next year, HUD will determine the extent to which these standard factors and sub-factors will be applied to this program.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which your application demonstrates the knowledge and experience of the overall project director and staff, including the day-to-day program manager, consultants, and contractors in planning and managing the kinds of programs for which funding is being requested. More points will be awarded for this factor where the experience belongs to members of the TCU staff than where it belongs to consultants, contractors, and other staff outside your institution. In addition, more points will be awarded where the experience belongs to people who will actually work on your proposed project. Experience will be judged in terms of recent, relevant, and successful experience of your staff to undertake activities in:

(a) Developing and equipping facilities for your institution; and

(b) Working with your community on the planning and implementation of projects.

Rating Factor 2: Need/Extent of the Problem (10 points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the importance of meeting this need. In responding to this factor, you will be evaluated on the extent to which you document the level of need for the proposed activities and the importance of meeting the need. You should use statistics and analyses contained in one or more data sources that are sound and reliable. To the extent possible, the data you use should be specific to the area where the proposed activities will be carried out.

Rating Factor 3: Soundness of Approach (60 points)

This factor addresses the quality and cost-effectiveness of your proposed work plan and the commitment of your institution to sustain the proposed activities.

(1) *Quality of the Work Plan* (50 Points)

(a) *Specific services and/or activities* (15 Points). Specifically, HUD will consider the extent to which your proposed activities will:

(i) Meet an identified important need; and

(ii) Relate to and not duplicate other activities in the target area.

(b) *Community Involvement* (10 points) HUD will consider the extent to which you have involved the community in all stages of the proposed project.

(c) *Work Plan Impact* (15 Points). HUD will consider the feasibility of success of your program, the measurable objectives, and how timely your products will be delivered. Specifically, HUD will examine the extent to which:

(i) The project you propose can be completed within the two year grant period; and

(ii) The objectives are measurable (*e.g.*, the number of classrooms added, the number of additional clients that can be helped in an expanded small business assistance center), result in measurable improvement to the community (*e.g.*, fifty more people receiving computer literacy training, twenty more small businesses started, etc.), and how well you demonstrate that these objectives will be achieved by your proposed management plan and team and will result directly from your activities.

(d) *Involvement of the Faculty and Students* (10 points). The extent to which your application proposes to use students and faculty, as part of their coursework, for project activities. HUD's goal is to encourage students and faculty to be able to use this grant to enhance their education experience and assist their community at the same time.

(2) *Institutionalization of Project Activities* (10 points). The extent to which your project will result in the kinds of proposed activities being sustained by becoming part of the mission of your institution. In reviewing this subfactor, HUD will consider the extent to which program activities relate to your institution's mission, benefit students because they are part of a service learning program at your institution, and are reflected in the curriculum. HUD will look at your monetary and non-monetary commitments to faculty and staff continuing work in the target area or other similar areas and to your longer term commitment (five years after the start of the grant) of hard dollars to similar work.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure community resources, which can be combined with HUD program funds to achieve program objectives.

In evaluating this factor, HUD will consider the extent to which you have established partnerships with other entities to secure additional resources to increase the effectiveness of the

proposed activities. Resources may include funding or in-kind contributions, such as services or equipment. Resources may be provided by governmental entities, *e.g.*, the Tribe, the Federal government (BIA, HHS, Education), etc., public or private nonprofit organizations, for-profit private organizations, or other entities. You may also establish partnerships with other program funding recipients to coordinate the use of resources in the target area.

You may count overhead and other institutional costs (*e.g.*, salaries) that are waived as leveraging. However, higher points will be awarded if you secure leveraging resources from sources outside your institution.

You must provide letters or other documentation showing the extent and firmness of commitments of leveraged funds (including your own resources) in order for these resources to count in determining points under this factor. Commitment letters must state a dollar amount in order to earn points for this factor. If your application does not include evidence of leveraging, it will receive zero (0) points for this Factor.

(C) *Selections.* In order to be funded, you must receive a minimum score of 70 points. HUD will fund applications in rank order, until it has awarded all available funds. If two or more applications have the same number of points, the application with the most points for Factor 3, Soundness of Approach, shall be selected. If there is still a tie, the application with the most points for Factor 1, Capacity, shall be selected.

After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with that applicant.

HUD will not fund specific proposed activities that do not meet one of the national objectives referenced in Section IIIC above. In addition, HUD reserves the right to fund less than the full amount requested in your application if any of your proposed activities is not eligible for funding under the statute creating this program.

V. Application Submission Requirements

You should include an original and two copies of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form. Binder clips or loose leaf binders are acceptable. Also, please do not use colored paper. Please note the page limits for some of the items listed below and do not exceed them.

Your application must contain the items listed in this section. These items include the standard forms, certifications, and assurances found in Appendix A of this NOFA. The remaining application items that are forms (*i.e.*, excluding such items as narratives), referred to as the ''non-standard forms,'' can be found as Appendix B of this NOFA. The items are as follows:

(A) *SF–424*, Application for Federal Assistance.

(B) *HUD–424*, Federal Assistance Funding Matrix.

(C) *Application Checklist.*

(D) *Transmittal Letter*, signed by the Chief Executive Officer of your institution or his or her designee. If someone else in your institution signs this letter, your application must include an official designation of signing authority to that person.

(E) *Abstract/Executive Summary* (one page limit) describing the goals and activities of the project.

(F) *Narrative Statement Addressing the Factors for Award.* (50 page limit, including tables, and maps, but not including any letters of commitment and budget forms)

(1) The Statement of Work incorporates all activities to be funded in your application and details how your proposed work will be accomplished. (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.) For each proposed activity, your Statement of Work must:

(a) Present a step-by-step breakdown of the major activities for which you seek funding (*e.g.*, rehabilitation of a business development center, construction of new classrooms), identify the primary persons (as described in addressing Rating Factor 1) involved in carrying out the activity and accountable for the deliverables, and delineate the major tasks involved in carrying it out. You should also describe how each activity meets one of the national objectives referenced in Section IIIC above.

(b) Indicate the sequence in which tasks are to be performed, noting areas of work that must be performed simultaneously. The sequence, duration, and the products to be delivered should be presented in six month intervals, up to 24 months.

(c) Identify the specific numbers of quantifiable intermediate and end products and objectives (*e.g.*, the number of classrooms added, the number of additional clients that can be helped in an expanded small business assistance center, etc.) you aim to deliver by the end of the grant period as a result of the work performed.

(d) Provide a description of how any proposed new construction or renovation of existing facilities will comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8.21).

(2) The budget presentation should be consistent with the Statement of Work and include:

(a) A budget by activity, using Form HUD–30006 included in the application kit and Appendix B of this NOFA. This form separates the Federal and non-Federal costs of each program activity. Particular attention should be paid to accurately estimating costs; determining the necessity for and reasonableness of costs; and correctly computing all budget items and totals.

(b) A narrative statement of how you arrived at your costs, for any line item over $5,000. Indirect costs must be substantiated and the rate must have been approved by the cognizant Federal agency. If you are proposing to undertake rehabilitation of residential, commercial, or industrial structures or acquisition, construction, or installation of public facilities and improvements, you must submit reasonable costs supplied by a *qualified* entity other than your institution (*e.g.,* an architect, engineer, construction firm, etc.).

(3) Your narrative statement addressing the factors for award should address each of the four factors for award. (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.)

In addressing Factor 4, for each leveraging source, cash or in-kind, you must submit a letter, dated no earlier than the date of this NOFA, from the provider on the provider's letterhead that addresses the following:

- The dollar amount or dollar value of the in-kind goods and/or services committed. For each leveraging source, the dollar amount in the commitment letter must be consistent with the dollar amount you indicated in the Budget;
- How the leveraging amount is to be used;

• The date the leveraging amount will be made available;

• Any terms and conditions affecting the commitment, other than receipt of a HUD TCUP Grant; and

• The signature of the appropriate executive officer authorized to commit the funds and/or goods and/or services. (See the application kit and Appendix B for a sample commitment letter.)

(G) *Certifications.*

(1) SF–424B, Assurances for Non-Construction Programs or SF–424D, Assurances-Construction Programs, depending on the activities you propose to undertake.

(2) HUD–50071, Certification of Payments to Influence Certain Federal Transactions;

(3) SF–LLL, Disclosure of Lobbying Activities (if applicable);

(4) HUD–2880, Applicant/Recipient Disclosure/Update Form;

(5) HUD–50070, Certification of Drug-Free Workplace;

(6) HUD–2992, Certification Regarding Debarment and Suspension.

(H) *Acknowledgment of Receipt of Applications (HUD–2993).* If you wish to confirm that HUD received your application, please complete this form. This form is optional.

(I) *Client Comment and Suggestions (HUD–2994).* If you wish to offer comments on the TCUP NOFA, please complete this form. This form is optional.

You may not submit appendices or general support letters or resumes. If you submit letters of leveraging commitment, they must be included in your response to Factor 4. If you submit other documentation, it must be included with the pertinent factor responses (taking note of the page limit).

VI. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by mail, return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

VII. Environmental Requirements

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk in Room 10276 of the HUD Headquarters Building.

Environmental Review. Certain eligible activities under this NOFA are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to review under related laws, in accordance with 24 CFR 50.19 (b)(1), (b)(3), (b)(12), or (b)(14). Selection for award does not constitute approval of any proposed sites. If the TCUP application proposes the use of grant funds to assist any non-exempt activities, following selection for award, HUD will perform an environmental review of activities proposed for assistance under the program, in accordance with 24 CFR part 50. The results of the environmental review may require that your proposed activities be modified or that your proposed sites be rejected. You are particularly cautioned not to undertake or commit funds for acquisition or development of proposed properties prior to HUD approval of specific properties or areas. Your application constitutes an assurance that your institution will assist HUD to comply with part 50; will supply HUD with all available and relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select alternate property; and will not acquire, rehabilitate, convert, lease, repair, or construct property and not commit or expend HUD or local funds for these program activities with respect to any eligible property until HUD approval of the property is received. In supplying HUD with environmental information, you should use the same guidance as provided in the HUD Handbook entitled ''Field Environmental Review Processing for HUD Colonias Initiative Grants'' issued January 27, 1999.

VIII. Other Matters

(A) *Executive Order 13132, Federalism.* Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(B) *Prohibition Against Lobbying Activities.* You, the applicant, are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (TDHEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.

(C) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4,

subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this SuperNOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this SuperNOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (update information also reported on Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(D) *Section 103 HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(F) *Catalogue of Federal Domestic Assistance.*

The Catalogue of Federal Domestic Assistance number is: 14.519.

IX. Authority

This program was approved by the Congress under the CDBG appropriation for Fiscal Year 2001, as part of the FY 2001 HUD Appropriations Act (Public Law 106–377). TCUP is being implemented through this NOFA and the policies governing its operation are contained herein.

Dated: May 7, 2001.

Mel Martinez,

Secretary.

Appendix A

The standard forms, which follow, are required for your TCUP application.

Appendix B

The non-standard forms, which follow, are required for your TCUP application.

BILLING CODE 4210–62–P

Appendix A

Application for Federal Assistance

OMB Approval No. 0348-0043

	2. Date Submitted (mm/dd/yyyy)	Applicant Identifier
1. **Type of Submission** **Application** ☐ Construction ☐ Non-Construction **Pre-application** ☐ Construction ☐ Non-Construction	3. Date Received by State (mm/dd/yyyy)	State Application Identifier
	4. Date Received by Federal Agency (mm/dd/yyyy)	Federal Identifier

5. **Applicant Information**

Legal Name	Organizational Unit
Address (give city, county, State, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. **Employer Identification Number (EIN) (xx-yyyyyyy)**

☐ — ☐

7. **Type of Applicant** (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Inter-municipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N Nonprofit
O Public Housing Agency
P. Other (Specify)

8. **Type of Application:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify)

9. **Name of Federal Agency**

10. **Catalog of Federal Domestic Assistance Number (xx-yyy)**

☐ — ☐

Title:

11. **Descriptive Title of Applicant's Project**

12. **Areas Affected by Project** (cities, counties, States, etc.)

13. **Proposed Project**		14. **Congressional Districts of**	
Start Date (mm/dd/yyyy)	Ending Date (mm/dd/yyyy)	a. Applicant	b. Project

15. **Estimated Funding**

Complete form HUD-424-M, Funding Matrix

16. **Is Application Subject to Review by State Executive Order 12372 Process?**

a. **Yes** This pre-application/application was made available to the State Executive Order 12372 Process for review on:

Date (mm/dd/yyyy)_____

b. **No** ☐ Program is not covered by E.O. 12372

or ☐ Program has not been selected by State for review.

17. **Is the Applicant Delinquent on Any Federal Debt?**

☐ Yes If "Yes," attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/pre-application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number (Include Area Code)
d. Signature of Authorized Representative		e. Date Signed (mm/dd/yyyy)

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form **SF-424** (7/97)
Prescribed by OMB Circular A-102

Appendix A

Instructions for the SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043, Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget.
Send it to the address provided by the sponsoring agency .

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For pre-applications, use a separate sheet to provide a summary description of this project.

Item Entry

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. **Use form HUD-4243-M, Funding Matrix**. Amount requested or to be contribut during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix A
OMB Approval (pending)

Federal Assistance Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which Federal funding is being requested, and complete the certifications.

Program*	Applicant Share	Federal Share	State Share	Local	Other	Program Income	Total
Grand Totals							

* For FHIPs, show both initiative and component

Instructions for the HUD-424-M

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form is to be used by applicants requesting funding from the Department of Housing and Urban Development for application submissions for Federal assistance.

Enter the following information:

Program: The HUD funding program you are applying under.

Applicant Share: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Federal Share: Enter the amount of HUD funds you are requesting with your application.

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is contributing to your project or program of activities.

Local Share: Enter the amount of funds or cash equivalent of in-kind services your local government is contributing to your project or program of activities.

Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being contributed to your project or program of activities.

Program Income: Enter the amount of program income you expect to generate and contribute to this program over the life of your award.

Total: Please total all columns and fill in the amounts.

Appendix A

Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency .

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.O. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 36701 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a and 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (e) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of

Appendix A

project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the national Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

Appendix A

Assurances — Construction Programs

OMB Approval No. 0348-0042

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency .

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other non-discrimination Statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Appendix A

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a and 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

19. Will comply with all applicable requirements of all other Federal laws, Executive Orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

Appendix A

Certification of Payments to Influence Federal Transactions

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title

Signature	Date (mm/dd/yyyy)

Previous edition is obsolete

form HUD 50071 (3/98)
ref. Handboooks 7417.1, 7475.13, 7485.1, & 7485.3

Appendix A

Disclosure of Lobbying Activities

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for Instructions and Public Reporting burden statement)

1. Type of Federal Action
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type
☐ a. initial filing
b. material change
For Material Change Only
year (yyyy) _____ quarter _____
date of last report (mm/dd/yyyy) _____

4. Name and Address of Reporting Entity
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime

Congressional District, if known

6. Federal Department/Agency

7. Federal Program Name/Description

CFDA Number, if applicable _____

8. Federal Action Number, if known

9. Award Amount, if known
$

10a. Name and Address of Lobbying Registrant
(if individual, last name, first name, MI)

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI)

(attach continuation sheet(s) if necessary)

11. Amount of Payment (check all that apply)
$ _____ ☐ actual ☐ planned

12. Form of Payment (check all that apply)
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply)
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other (specify) _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11

(attach continuation sheet(s) if necessary)

15. Continuation sheets attached ☐ **Yes** ☐ **No**

16. Information requested through this form is authorized by Sec.319, Pub. L. 101-121, 103 Stat. 750, as amended by sec. 10; Pub. L. 104-65, Stat. 700 (31 U.S.C. 1352). This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____
Print Name _____
Title _____
Telephone No. _____
Date (mm/dd/yyyy) _____

Federal Use Only:

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Standard Form-LLL (7/97)

Appendix A

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient, Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide specific and detailed description of the services that the lobbist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just the time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) are attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency .

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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Standard Form-LLL (7/97)

Appendix A

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 3/31/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code): ( ) -	2. Social Security Number or Employer ID Number: - -
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
   ☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
   ☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature: X	Date: (mm/dd/yyyy)

Appendix A

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;

(2) You are updating a prior report as discussed below; or

(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance): General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

Appendix A

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Appendix A

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federalagency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here ☐ if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.
(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title
Signature X	Date

form **HUD-50070** (3/98)
ref. Handbooks 7417.1, 7475.13, 7485.1 & .3

Appendix A

Certification Regarding Debarment and Suspension

U.S. Department of Housing and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was place when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

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Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant		Date
Signature of Authorized Certifying Official	Title	

form **HUD-2992** (3/98)

Appendix A

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

Appendix A

Client Comments and Suggestions

U.S. Department of Housing and Urban Development

You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Grants Management and Compliance
Room 2182
451 7th Street, SW
Washington, DC 20410

Please Provide Comments on HUD's Efforts:

The NOFA (insert title) _____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvement (please specify)

(c) other (please specify)

The application form (insert title) _____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

Name & Organization (Optional):

Are additional pages attached? ☐ Yes ☐ No

form **HUD-2994** (2/2001)

Appendix B

Budget - Tribal College and Universities Program

U.S. Department of Housing and Urban Development
Office of Policy Research and Development

OMB Approval No. 2528-0215
(exp. 7/31/2001)

Applicant should duplicate this page as necessary

The information collection requirements contained in this notice of funding availability and application kit will be used to rate applications, determine eligibility, and establish grant amounts for the Tribal Colleges and Universities Program (TCUP). Total reporting burden for collection of this information is estimated to average 80 hours. This include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information submitted in response to the notice of funding availability for TCUP is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989, U.S.C. 3545). The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Activity #1 Name:

	Cost Item	Grant Request	Leveraged Funds*	Total Cost
1.	Administrative and legal expenses			
2.	Land, structures, rights-of-way, appraisals, etc.			
3.	Relocation expenses and payments			
4.	Architectural and engineering fees			
5.	Other architectural and engineering fees			
6.	Project inspection fees			
7.	Site work			
8.	Demolition and removal			
9.	Construction			
10.	Equipment			
11.	Miscellaneous			
12.	Total Activity # 1 Cost			

Activity #2 Name:

1.	Administrative and legal expenses			
2.	Land, structures, rights-of-way, appraisals, etc.			
3.	Relocation expenses and payments			
4.	Architectural and engineering fees			
5.	Other architectural and engineering fees			
6.	Project inspection fees			
7.	Site work			
8.	Demolition and removal			
9.	Construction			
10.	Equipment			
11.	Miscellaneous			
12.	Total Activity # 2 Cost			

*Letters of leveraging costs must accompany the application in order for leveraged funds to be accepted.

form **HUD-30006**(4/2001)

Appendix B

	Activity #3 Name:			
	Cost Item	Grant Request	Leveraged Funds*	Total Cost
1.	Administrative and legal expenses			
2.	Land, structures, rights-of-way, appraisals, etc.			
3.	Relocation expenses and payments			
4.	Architectural and engineering fees			
5.	Other architectural and engineering fees			
6.	Project inspection fees			
7.	Site work			
8.	Demolition and removal			
9.	Construction			
10.	Equipment			
11.	Miscellaneous			
12.	Total Activity # 2 Cost			

	Activity #4 Name: Planning and Administration			
1.	Direct Labor			
2.	Fringe Benefit			
3.	Materials			
4.	Travel			
5.	Equipment			
6.	Consultants			
7.	Subcontracts			
8.	Other Direct Costs			
9.	Indirect Costs			
10.	Total Activity Cost #3			
	Grand Totals (all pages)			

*Letters of leveraging costs must accompany the application in order for leveraged funds to be accepted.

[FR Doc. 01–11957 Filed 5–10–01; 8:45 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Potatoes (Irish) grown in—
  - Washington; published 4-11-01

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Atlantic herring; published 2-27-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Washington; perchloroethylene dry cleaning facilities; published 3-12-01

Pesticide, food, and feed additive petitions:
- Monsanto Co.; published 5-11-01

Superfund program:
- Toxic chemical release reporting; community right-to-know—
  - Chromite ore from Transvaal Region, South Africa; published 5-11-01

HEALTH AND HUMAN SERVICES DEPARTMENT

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- Federal financial participation limits
  - Effective date delay; published 3-12-01

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  - Effective date delay; published 2-9-01

Drawbridge operations:
- California; published 4-11-01

Regattas and marine parades:
- Events requiring permits, written notices, or neither; identification; final rule and withdrawal of interim rule
  - Effective date delay and conforming amendments; published 2-9-01

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- SOCATA-Groupe AEROSPATIALE; published 3-28-01¶

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- Rinderpest and foot-and-mouth disease; disease status change—
  - Great Britain and Northern Ireland; comments due by 5-14-01; published 3-14-01
  - Great Britain and Northern Ireland; correction; comments due by 5-14-01; published 4-6-01

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National Oceanic and Atmospheric Administration

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  - Atlantic bluefin tuna; comments due by 5-14-01; published 4-2-01
- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permits; comments due by 5-15-01; published 4-30-01
- Northeastern United States fisheries—
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- West Coast States and Western Pacific fisheries—
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  - Naval activities; surveillance towed array sensor system low frequency active sonar; incidental harassment; comments due by 5-18-01; published 4-16-01

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- Idaho; comments due by 5-14-01; published 4-12-01
- Ohio; comments due by 5-17-01; published 4-17-01
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 132/P.L. 107–6
To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the ''Goro Hokama Post Office Building''. (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7
To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the ''Ronald W. Reagan Post Office of West Melbourne, Florida''. (Apr. 12, 2001; 115 Stat. 9)

Last List March 21, 2001

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